

**Submission  
No 3**

**INQUIRY INTO REMEDIES FOR THE SERIOUS INVASION  
OF PRIVACY IN NEW SOUTH WALES**

**Name:** Mr Greg Piper MP

**Date received:** 7/08/2015

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PARLIAMENT OF NEW SOUTH WALES  
LEGISLATIVE ASSEMBLY

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Reference: dcs.s15/04

**RECEIVED**

7 JUL 2015

31 July 2015

The Director  
Standing Committee on Law and Justice  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

**SUBMISSION: REMEDIES FOR THE SERIOUS INVASION OF PRIVACY IN NSW**

I make submission to the Standing Committee's Inquiry into Remedies for the Serious Invasion of Privacy in NSW. My submission deals specifically with the use of surveillance technologies on residential property for private purposes and the lack of existing legislation to protect those who may be targeted by such devices.

Complaints from two constituents who maintain their common neighbour (occupying the house in between them) deliberately uses home surveillance equipment in a way that is intimidatory and intrudes on their privacy, alerted me to this apparent gap in legislation.

To respect the privacy of these parties, I will not identify them in this submission, however the complaints received by my office have been forwarded to the Attorney-General in the form of a ministerial representation.

One of the complainants reported that the house in question had seven audio-enabled cameras installed, some of which were directed at his lounge room window, front entry stairs, driveway and back yard. The other complainant said there were cameras directed towards her bedroom window, the front of her house and into her back yard.

I have visited the street to view the properties myself and can confirm surveillance cameras on the house in question appear to be trained towards neighbouring properties.

I understand there has been some history of acrimony between the two complainants and the common neighbour, and the cameras may have been installed in response to this situation. Regardless, the surveillance equipment appears to be operating in a way that constitutes a serious invasion of the complainants' privacy.

Under current legislation the complainants appear to have no recourse to force the neighbour to redirect the cameras installed on his home away from their properties. Section 91 of The NSW Crimes Act 1900 deals with filming for the purposes of voyeurism, but does not cover general instances of surveillance on private residential property. The Surveillance Devices Act 2007 sets out regulations for the use of such devices in law enforcement, and the Workplace Surveillance Act deals with camera use in the workplace, but neither apply to the use of surveillance equipment by members of the public on private property.

Indeed, the Information and Privacy Commission NSW website gives the following advice, under the heading "CCTV on private property":

*"The Information and Privacy Commission NSW (IPC) is not able to provide any advice related to individual rights and obligations in relation to surveillance laws, as this does not fall under our jurisdiction".*

One of the complainants to my office advised that police recently attended the camera-equipped house in response to his complaints about the surveillance devices and spoke to the owner. He believes the audio system may have been subsequently disabled, but the cameras remained in operation. When the complainant made a follow-up inquiry with the police, he was advised by the officer who had attended that he could take no further action as there was no legislation prohibiting inappropriate use of surveillance cameras on private property.

I am aware this instance is not isolated and other people have discovered, to their surprise and bewilderment, they have no legislative protection against the use of surveillance cameras in a way that invades their privacy.

The matter was raised in a Private Member's Statement by the Member for Cronulla, now Environment Minister, the Honourable Mark Speakman, on November 23, 2011, when he related the circumstances of a similar situation involving some of his constituents (document attached). He made the following comments:

*"At the least there is uncertainty and, more likely, a lack of remedy in current law. At best, the law is unclear; at worst, the law fails to protect the privacy of those whose neighbours use surveillance cameras. It is clear that reform is required."*

I appreciate there are circumstances under which a person may, for security or other reasons, have a legitimate motive for installing security cameras on a residential property, but this should not be done at the expense of another person's privacy or in a way that is intended to harass another person. Every citizen deserves the right to protect themselves from the intimidatory and inappropriate use of surveillance devices.

Apart from the anxiety and unease such actions can inflict upon people who find themselves unwillingly in the focus of these devices, the increasing growth of digital media platforms and the ease with which footage can be uploaded, means there is little control over where surreptitiously recorded film may be viewed.

I believe this is a serious privacy issue that demands the attention of the committee and that a remedy for breaches of this nature should be considered. I am happy to offer any further assistance the committee may require.

Yours sincerely

Greg Piper, MP  
**Member for Lake Macquarie**  
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## Surveillance Cameras

### Surveillance Cameras

Extract from NSW Legislative Assembly Hansard and Papers Wednesday 23 November 2011.

## Surveillance Cameras

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### SURVEILLANCE CAMERAS

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**Mr MARK SPEAKMAN** (Cronulla) [7.02 p.m.]: I draw to the attention of the House uncertainty and likely gaps in the law relating to the installation and use of surveillance cameras on residential properties. Last month at the Local Government Association annual conference the following Sutherland Shire Council motion appeared on the business paper:

That the Local Government Association of NSW request the NSW Government to adopt legislation which regulated the use of security cameras on private property and provide a mechanism for affected persons to ask authorities to initiate enforcement action to prevent the security devices being used inappropriately.

As the conference was inquorate at the time the motion was to be debated, it was not dealt with. The Office of the NSW Privacy Commissioner has analysed the law on its website page devoted to frequently asked questions. It states that currently no laws specifically restrict the use of surveillance systems in residential settings. It states also that it is possible that the installation of surveillance cameras that intrude on the privacy of neighbours is a planning issue and that the Environmental Planning and Assessment Act does not clearly support such a position. There appears to be no case of the council attempting to deal with this issue through the use of its development control powers.

The Office of the NSW Privacy Commissioner states that if video surveillance has reached a high level of intensity there may be a common law claim of nuisance on the basis of unreasonable interference with the enjoyment of property. In only one local case the court granted an interim injunction to a neighbour to restrain the intrusive use of a video camera. Isolated cases may enable the issue to be dealt with in the broader context of an application for an apprehended violence order, as well as a few provisions in the Crimes Act if voyeurism and the like were involved. At present, limited criminal and civil law remedies may assist in some cases of inappropriate use of surveillance cameras. I shall illustrate the problem by reference to two of my constituents whose privacy appears to be gravely affected by the use of security cameras on adjoining private property.

The next-door property has five surveillance cameras atop a four-metre pole. They comprise two rotating and three fixed security cameras. The rotating cameras can swivel 360 degrees, are activated by movement sensors and can zoom in for close-ups of any activity in the street and on adjoining properties. My constituents are concerned that this digital film footage could end up anywhere on the internet, including sites such as YouTube. My constituents were told by Sutherland council that the definition of "development" in the Environmental Planning and Assessment Act does not extend to cameras for the purposes of a development application. They were told that the intent of the Act is to regulate the environment, not social issues such as cameras and their use. At the least there is uncertainty and, more likely, a lack of remedy in current law. What are the solutions to

this problem?

A first solution would be the creation of a general statutory cause of action for invasion of privacy. Creating such a tort has been recommended by the New South Wales and Australian law reform commissions. Of course, such a wide-ranging and contentious proposal may never happen. In any event, if it were to become law it may have to take into account national developments. A second and more focused approach to this problem, following the wording of the Sutherland Shire Council motion and given growing community concern about the issue, would be specific legislation that prescribes the circumstances and ways in which security cameras on private property can be used.

A third approach would be to amend planning legislation to clarify that development consent is required before any surveillance cameras can be installed on residential property. The current Planning System Review led by former environment Minister Tim Moore and former public works Minister Ron Dyer could address this issue. At best, the law is unclear; at worst, the law fails to protect the privacy of those whose neighbours use surveillance cameras. It is clear that reform is required.