

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

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The Director
Standing Committee on Law and Justice
Parliament House
Macquarie St
Sydney NSW 2000

Dear Committee Chair

Inquiry into remedies for the serious invasion of privacy in New South Wales

As the Acting Australian Information Commissioner and head of the Office of the Australian Information Commissioner (OAIC), I thank you for your invitation to provide a submission to the inquiry of the Standing Committee on Law and Justice into remedies for the serious invasion of privacy in New South Wales (NSW).

The OAIC is an independent Commonwealth statutory agency within the Attorney General's portfolio. The OAIC exercises a range of functions and powers directed towards protecting the privacy of individuals under the *Privacy Act 1988* (Cth) (the Privacy Act). The OAIC also has oversight of the operation of the *Freedom of Information Act 1982*.¹

The OAIC has previously considered the issue of redress for serious invasion of privacy and options for establishing such a redress mechanism in its submission to the Australian Law Reform Commission (ALRC) Discussion Paper 80 *Serious invasions of privacy in the digital era* and I refer the Committee to this submission (see attached). In summary, the OAIC took the view in its submission to the ALRC that the most effective way to address serious invasions of privacy (beyond those presently covered by the Privacy Act) would be a complaints model. Under this suggested approach, a person whose privacy has been invaded would initially lodge a complaint with the OAIC rather than starting court proceedings. This approach would be more accessible to individuals and would encourage informal and low-cost resolution of disputes through conciliation. A court proceeding may be an option at a later stage in resolving a grievance.

Consistent with the OAIC's submission to the ALRC, I am generally supportive of the extension of privacy law to cover redress for serious invasion of privacy and consider an extension of privacy law in this area would be consistent with Australia's international obligations in relation to privacy protection.² In my role as the Acting Australian Information Commissioner, my interest lies in promoting a consistent or uniform approach to privacy regulation throughout Australian jurisdictions, including in relation to the development of any redress mechanism for a serious invasion of privacy.

¹ The Freedom of Information Amendment (New Arrangements) Bill 2014, which proposes the closure of the OAIC on 31 December 2014, was not considered by the Senate before the end of the 2014 sitting period. The OAIC will therefore remain operational until further notice.


² For example, see Article 17 of the *International Covenant on Civil and Political Rights*.

A nationally consistent or uniform approach to remedies for serious invasion of privacy would help to avoid further fragmentation of privacy rights and obligations between Australian privacy jurisdictions. Inconsistencies can cause confusion about where and how to complain in the event of an interference with an individual's privacy and undermine the intended effectiveness of the protections. A consistent approach to redress across Australian jurisdictions may also limit opportunities for forum shopping by individuals seeking redress.

In my experience uniformity also helps to reduce overlap between jurisdictions and regulatory schemes, which can place additional compliance burdens on business. Businesses that operate nationally may face increased compliance costs and uncertainty where they have obligations across Australian jurisdictions that are inconsistent or overlap. I encourage the Committee to consider the existing legal frameworks in relation to any proposal for an additional remedial mechanism.

Should the Standing Committee require further background, please contact I
Director, Regulation and Strategy Branch, on

Yours sincerely


Timothy Pilgrim PSM
Acting Australian Information Commissioner
10 September 2015