

Australian Press Council submission to the Victorian Law Reform Commission in response to Consultation Paper No. 7, 2009: Surveillance in Public Places

Executive Summary:

- The Australian Press Council is concerned that any regulatory mechanisms risk unintended consequences, including impeding the ability of the media to report on matters of public interest.
- Any regulatory mechanisms which have the potential to impact on newsgathering activities should include a media exemption based on adherence to a voluntary code of conduct
- Any legislative or regulatory mechanisms must include exemptions and defences designed to ensure press is free to report on matters of public interest.

The Australian Press Council is concerned that any reform of the regulation of surveillance devices in Victoria may have a tendency to restrict the freedom of the media to collect information for the purposes of gathering news, or to restrict the right of the press to publish news. The Press Council recognizes that any restriction on the freedom of the media to gather and disseminate information for the purposes of news gathering would be unintentional, nonetheless the Council urges the Law Reform Commission to exercise caution in formulating proposed reforms to existing regulations or in formulating any new regulatory mechanisms in respect of surveillance devices.

The process of news gathering frequently involves collecting images of people in public locations. Examples of such images would include crowd shots taken at sporting events, filming people participating in street demonstrations, recording of public events and activities, such as outdoor concerts, and recording of events having a public interest dimension, such as police actions. Inevitably, private individuals will be captured within these images, often without their knowledge or consent, and often inadvertently. The concern of the Press Council is that alteration or extension to the regulation of surveillance in Victoria has the potential to impede the recording or publication of these images.

The Press Council does not object absolutely to the regulation of surveillance. Rather, the Press Council proposes that any legislation which aims to regulate or limit the use of surveillance should distinguish between different classes of users, with media organisations being exempt from the legislation on condition that they commit to a code of conduct which sets down the standards for appropriate conduct when engaging in activities which might otherwise be considered a breach of the regulations. This approach is consistent with that which is implemented in the federal *Privacy Act 1988*. Under section 7B(4) of that Act, media organisations are exempt from certain aspects of the legislation, provided that the relevant conduct is done “in the course of journalism” and the organisation is publicly committed to a set of privacy standards:

Privacy Act 1988 (Commonwealth), Section 7B(4):

- (4) An act done, or practice engaged in, by a media organisation is exempt for the purposes of paragraph 7(1)(ee) if the act is done, or the practice is engaged in:
 - (a) by the organisation in the course of journalism; and
 - (b) at a time when the organisation is publicly committed to observe standards that:
 - (i) deal with privacy in the context of the activities of a media organisation (whether or not the standards also deal with other matters); and
 - (ii) have been published in writing by the organisation or a person or body representing a class of media organisations.

The Australian Press Council oversees a set of privacy standards for the print media, and hears complaints against publishers who breach those principles.¹ In a similar vein, the Australian Press Council would be happy to consult with its members, and with other interested parties, with a view to formulating an appropriate set of standards in relation to activities by or on behalf of media organisations which have the potential to fall within the scope of surveillance legislation. These standards would address issues such as the appropriate use of cameras and listening devices, the right of individuals to privacy in public locations, and the right of the media to report on matters of public interest. The Australian Press Council would take on the responsibility of dealing with breaches of these standards by print publishers.

Although the Press Council holds genuine concerns about the potential for regulation of surveillance to impact negatively on the media, the Council is prepared to cooperate with the Victorian Law Reform Commission and the government of Victoria in the development of a scheme of media self-regulation in the use of surveillance, provided that the media are granted an exemption from any regulatory mechanisms.

¹ See http://www.presscouncil.org.au/pcsite/complaints/priv_stand.html