



30 June 2009

**Victorian Law Reform Commission  
Surveillance in Public Places Consultation Paper**

**Youthlaw's submission**

**Introduction**

Youthlaw is Victoria's state-wide community legal centre for young people under 25 years of age. Youthlaw works to achieve systemic responses to the legal issues facing young people, through casework, policy development, advocacy and preventative education programs, within a human rights and social justice framework.

We welcome the opportunity to assist the Commission to consult with young people about the issues raised in the Consultation Paper.

Youthlaw also welcomes the opportunity to make comment on the Commission's consultation paper. In general terms we wholeheartedly endorse recommendations that the use of surveillance, the recording, use and storage of images, be regulated.

In particular our submission focuses on the use of CCTV surveillance. Youthlaw has grave concerns about the overuse and abuse of closed-circuit television (CCTV) surveillance in both public and private spaces, so much as it impinges on human rights of young people protected by the Charter of Human Rights and Responsibilities (2006) (Vic) ("the Charter"). Given that for many young people public space is a place of socialisation, CCTV use has the potential to discriminate against young people legitimately using public space, to amount to an invasion of their right to privacy, a reduction of their right to freedom of movement and association and exclusion of young people from their enjoyment of public spaces.

The legitimate interest that public authorities and private organisations have in using surveillance devices to safeguard against threats to public safety and interference with property must be balanced against the potential infringement of these individual rights protected by the Charter.

Youthlaw supports a range of law reform initiatives that will assist government to effectively balance competing interests and to discourage and prevent inappropriate use of surveillance.

**Effectiveness of CCTV for safety, crime detection, and prevention**

Youthlaw acknowledges that some people may indeed derive a sense or perception of safety from the presence of cameras. However evidence that CCTV is effective in controlling crime remains largely inconclusive. The "*Safe City Cameras Program Evaluation 2003*", cited in the Consultation Paper, which is an evaluation of the use of CCTV in the City of Melbourne, found that cameras are *not* perceived to be a major contributing factor to people feeling safe in the CBD<sup>2</sup>.

Additionally Youthlaw questions the efficacy of CCTV as a crime detection and prevention tool. In terms of the use of CCTV for crime detection, Youthlaw is aware of cases where the surveillance systems failed to capture incidents of assault, or accurately identify a person

<sup>1</sup> "*Safe City Cameras Program Evaluation 2003, City of Melbourne.*

<sup>2</sup> "*Safe City Cameras Program Evaluation 2003, City of Melbourne, p 9.*

whose image is captured on CCTV footage. The City of Melbourne study referred to above also found that there was little consensus in both literature and studies of the value of CCTV programs in effectively acting as a crime prevention tool.

### **Invasion of right to privacy in public places**

Without knowing exact numbers, we are aware that CCTV is the most widely used form of surveillance in both public and private places. This raises significant privacy issues.

### **Recommendations**

Youthlaw endorses the strengthening of information privacy laws, as recommended by the Australian Law Reform Commission Privacy Review in 2008, especially as privacy law and practice impacts on children and young people.<sup>3</sup>

We submit that the Privacy Principles should apply to information accessed through CCTV. Such changes will help protect against intrusions of privacy by public place surveillance, at least for those surveillance practices that amount to the collection of personal information.

We repeat our call for the creation of a statutory cause of action for breach of privacy.

### **Surveillance targeting young people**

The Commission cites research<sup>4</sup> that has found public place surveillance disproportionately affects or targets some members of the community, in particular young people. Young people are more impacted by public place surveillance, because of their greater use of public places, and the negative views held toward youth held operators. Young people are often perceived as troublemakers, associated with criminal or deviant behaviour, and viewed with fear or suspicion by other community members particularly especially when 'congregating in public places'.<sup>5</sup>

### **Exclusion of young people from public areas**

Police, transport operators, local councils and traders all use surveillance cameras for crime-prevention purposes, but they also serve as a general deterrent to a range of other anti social behaviours.

CCTV camera operators often target young people's behaviour, using it to look for everything from theft, to a range of "anti social" behaviours including inappropriate language, to being a nuisance, merely looking suspicious, or in some way actively disturb the main activity of the area, namely shopping. This targeting often results in young people being unfairly preventing young people from moving through, remaining in, gathering and "*hanging out*" in areas of public space, such as shopping centres.

Young people have told us many experiences of being moved on by security guards at shopping complexes, even though they are just congregating in a safe, popular accessible space. In a suburban outer metropolitan shopping centre owned by Westfield the proprietor's policy is that young people can only be in groups of 3-4 otherwise the security guard can move them on.

Police have ready access to CCTV footage from surveillance cameras owned and operated by others, including local councils, transport operators and private businesses. An example

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<sup>3</sup> ALRC Privacy Review, p 48. .

<sup>4</sup> Such as Norris and Armstrong , authors of *CCTV and the Social Structuring of Surveillance*" in K. Painter and N. Tilley (eds) *Surveillance of Public Space: CCTV, Street lighting and Crime Prevention* (1999) 176) cited in para 4.43 of the Consultation Paper.

<sup>5</sup> Ibid p. 28.

of police using surveillance to minimise anti-social behaviour was recently reported in the Geelong Advertiser, that police officers will use manned CCTV and radio communications between shopping centre security and cleaners to stop large groups of youths loitering in Geelong Mall.<sup>6</sup> Senior Sergeant Francis said:

*"If students are in town for the day, they should not hang around there for hours and they should arrange meetings in more appropriate areas."*

### **Access to CCTV footage**

At Youthlaw we have assisted a number of clients who are victims of assault and been refused access to footage from CCTV by private operators at nightclubs which may be able to identify the perpetrator etc. This has effectively impeded the prosecution of their matter.

### **Recommendation**

Youthlaw believes people should have access to their personal data on CCTV footage. For instance people recorded on CCTV should be given the opportunity to access that data in a timely and affordable manner.

### **Surveillance must be proportionate and reasonable**

The Charter requires that any limitation on a right contained in the Charter must meet the requirements set out in the 'general limitations clause' (section 7(2)), namely proportionality between the surveillance practice and the purpose it seeks to achieve. This means that a user of surveillance ought to use the least privacy-intrusive means of achieving the purpose, and excessively intrusive forms of surveillance may only be justifiable when designed to protect individuals from grave physical harm.

Those making policy in relation to the use of CCTV for example, need to be aware of the potential for CCTV to discriminate against those legitimately using public space, and the need to be conscious of safety as well as ensuring an inclusive use of public space.

### **Recommendations**

Youthlaw endorses a number of requirements for video surveillance by public authorities and private users of public surveillance as identified by the Venice Commission (and cited in the Consultation Paper at para 5.135) aimed at ensuring that surveillance is a proportionate response to potential harm:

- People should be notified if they are being watched in public places, or else the surveillance system should be obvious;
- People subject to surveillance should have an effective remedy if they believe their rights have been infringed; they must also be informed of the remedy and how to use it;
- Personal data resulting from the surveillance should be obtained and processed fairly and lawfully;
- Personal data should be collected for a specified and legitimate purpose and relevant and not excessive in relation to the purpose;
- Personal data should not be used in ways incompatible with the purpose for which it was collected;
- Personal data should be accurate and, where necessary, kept up to date;
- Personal data should be preserved in a form which permits identification of the data subjects for no longer than is required for the purpose for which it is stored; and
- Personal data should be available for access by the individuals to which it relates, subject to restrictions which balance their rights against the need to restrict access for the purpose of prevention and prosecution of crime, and the privacy interests of third parties.

<sup>6</sup> Geelong Advertiser, Jessica Craven, 24 June 2009, cited at [http://www.geelongadvertiser.com.au/article/2009/06/24/80161\\_news.html](http://www.geelongadvertiser.com.au/article/2009/06/24/80161_news.html)

## Other responses to questions from Consultation Paper

### **Q1. Do you agree with the draft principles proposed by the commission to guide policymaking about public place surveillance?**

Youthlaw endorses the commission's four draft policy principles that seek to balance the competing interests at stake when surveillance devices are used in public places. These guiding principles may inform and guide changes to the way in which surveillance in public places is regulated in Victoria.

1. People are entitled to some privacy when in public places.
2. Wherever practicable public place surveillance should be transparent.
3. Public place surveillance conducted on a continuous basis should be carried out for a legitimate purpose that is relevant to the activities of the organisation conducting it.
4. Public place surveillance conducted on a continuous basis should be proportional to its legitimate purpose.

### **Q2. Should the once-off or intermittent use of surveillance practices by individuals be regulated? Yes**

### **Q3. Do you agree with the proposal that an independent regulator should have responsibility for monitoring the use of public place surveillance in Victoria?**

Yes - Youthlaw supports the proposal of an independent regulator to monitor, report, and provide information about public place surveillance in Victoria.

We are of the view that the Victorian Privacy Commissioner is well placed to exercise regulatory functions concerning the use of surveillance in public places

### **Q4. Should the regulator be given the functions proposed by the commission? Yes**

### **Q5. Are there any other functions that should be given to the regulator?**

#### **Recommendations**

Youthlaw submits that the regulator should have responsibilities to:

**a) *Issue licenses for different forms of surveillance practices;***

**b) *monitor the use of surveillance in public places and compliance with the provisions of the SDA (Vic);***

Such monitoring should reduce likelihood of discriminatory practices against young people in the use of CCTV.

We also recommend the introduction of a central register that records the location and ownership of surveillance cameras in public places.

**c) *inform/educate people about how to best comply with the law, and about the privacy and human rights implications of surveillance practices;***

This should be accompanied by a public education campaign raising awareness about the use of surveillance.

**d) *develop and promote observance of proposed voluntary best-practice standards promoting responsible use of surveillance;***

**e) *approve mandatory codes to govern the use of surveillance in public places with sanctions for non-compliance, and investigate complaints of potential breaches;***

**f) report regularly to parliament about whether regulation of public place surveillance is adequate; and**

**g) oversee a complaints process**

Part of the Regulator's role would be to receive complaints from members of the community who are concerned about surveillance activities. In particular the Regulator's office must ensure that young people have equitable access to the mechanisms in place for making a complaint.

Approaches could include:

- setting up a specific contact/advice point for young people to access in case of a misuse of surveillance that disproportionately infringes their rights.
- better resourcing and funding of youth specific legal services to assist young people to utilise existing complaints mechanisms.
- training to youth workers regarding use of surveillance and assisting young people to protect their rights or provide outreach workers from the Privacy Commission to deliver information to youth services or schools.

**Q6. Would a registration scheme assist the regulator to acquire information about surveillance use? Yes**

**Q7. What (if any) investigatory powers should be given to the regulator? and  
Q8. Should the regulator have an own motion investigatory power in order to identify systemic problems with surveillance in public places?**

Victorian Privacy Commissioner should be have their powers expanded to match those of the federal Privacy Commissioner, including necessary powers to investigate individual complaints, and on their own motion, investigatory powers to better understand underlying systemic problems.

**Q9. Should the regulator have the power to develop advisory guidelines which explain the law concerning surveillance in public places? Yes**

**Q10. Would voluntary best-practice standards developed or approved by the regulator be useful? Yes**

**Q13. If mandatory codes are introduced, should the regulator have the power to approve industry codes that operate in their place? Yes**

**14. Should the regulator be empowered to investigate complaints made about potential breaches of a mandatory code? Yes.**

**Q15. What kind of sanctions should be imposed for breaches of a mandatory code?**

We endorse the enforcement option would be to permit the regulator to act upon complaints made by people who claim to have been harmed by conduct that breaches a mandatory code and issue a range of criminal or civil penalties, including fines. The regulator's powers could be modelled on those of the Victorian Privacy Commissioner who has the power to receive complaints and issue compliance notices about information privacy matters.

**Q24. Should there be a statutory cause of action for serious invasions of Privacy**

We repeat our call for the creation of a statutory cause of action for breach of privacy made previously to the ALRC in their Privacy Review.