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[VIA EMAIL – law.reform@lawreform.vic.gov.au]

Consultation on Surveillance in Public Places
Victorian Law Reform Commission
PO Box 4637
GPO Melbourne VIC 3001

Dear Sir/Madam,

Consultation on Surveillance in Public Places

We appreciate the opportunity to provide a response to the Victorian Law Reform Commission (VLRC) Consultation Paper-*"Surveillance in Public Places"*.

Suncorp is a financial services company providing banking, insurance, investment and superannuation. Our focus is on retail customers and small to medium businesses. Suncorp is Australia's 5th largest bank and Australia's largest general insurer by Australian gross written premium. We provide domestic, commercial and life insurance policies as well as superannuation, investment and banking products. Some of our brands include AAMI Suncorp Bank, Vero, GIO, Asteron, Tyndall and Apia.

Before looking at the actual suggestions regarding potential new law in Victoria, it is appropriate to discuss whether or not there is any real need to change State law in view of the proposed changes to the Federal Privacy Law – which has so far been outlined by the Australian Law Reform Commission (ALRC) in two papers, the most recent being- *ALRC 108 For Your Information: Australian Privacy Law and Practice*. Following this various changes will be made to the Australian Privacy Framework, which would address a large number of the issues that have been raised by the VLRC. The first draft Bill is due to be released in June 2009. Suncorp supports the need to balance surveillance functions such as detecting and preventing fraud as well as providing security with the need to protect the dignity, autonomy and privacy of individuals. Suncorp has contributed to the recent Australian Law Reform Commissions' privacy review.

For a national organisation, such as Suncorp, it remains preferable for there to be one set of laws governing each area of activity of the business, rather than fragmented regulation which is often difficult to consolidate into one workable

process nationally and is expensive to design, implement and administer. This issue has been recognised by both State and Federal government and a large amount of work has been done to date to Federalise or harmonise various systems including credit, unfair contract terms, consumer law and OH&S. This is consistent with the stated preferred position by the Federal Government and Council of Australian Governments (COAG) to federalise state based laws when they affect the entire country.

The ALRC's proposed changes and the forthcoming Bill resulting from the ALRC's work includes expanding the definition of personal information under the Federal Act to include images, which means that most of the concerns regarding surveillance, as identified by the VLRC, will be addressed. By including images under the new definition, the notification, use and disclosure principles will apply to an identifiable image, which should fill part of the policy gap that the VLRC has mooted. Secondly small business will be included under the Privacy Act 1988, which will fill a large gap regarding who is regulated, i.e. pubs, restaurants, small shops or chains etc will now be regulated by the Federal Act. Additionally in phase two of the proposed Federal reform there will be a statutory tort of privacy enacted. This will expand the concepts of who is covered and will include the concept of entitlement to privacy in a public space where an individual has been subject of unauthorised surveillance.

Taking the above into consideration, it is therefore suggested that any proposed changes in this area by the Victorian Government will lead to duplication of requirements in the long term and greater compliance costs in the short term without much commensuration.

Therefore, it would be preferable, from Suncorp's view for the VLRC to work with the Federal Government, other states and the Office of the Privacy Commissioner (OPC) to create guidance regarding how the privacy law works in relation to surveillance, on a national basis. This would allow the States to work effectively with the Federal agencies and will potentially result in a cheaper more efficient and effective privacy regime for all.

Although our preferred position is for Federal oversight of surveillance in public places, we consider it appropriate to specifically comment on the proposals in the Consultation Paper, as we believe we have legitimate business reasons to conduct surveillance in the State of Victoria.

LEGITIMATE PURPOSES OF SURVEILLANCE

Definition of public space

The broad definition of public space as used in the Consultation Paper would mean that most surveillance activities currently conducted by Suncorp are in public spaces.

In the event that a recommendation were to be made that legislation was required to manage surveillance in public places, Suncorp only conducts legitimate surveillance activities, such as ATM, bank branch and insurance claim investigation/surveillance in accordance with relevant Product Disclosure Statements (PDS). These surveillance activities fulfil important functions such as providing security for both customer and staff alike.

Banking

Suncorp Bank has a number of banking facilities located in Victoria that include both branch and ATMs. These facilities use CCTV to deter crime and the footage may be used for law enforcement purposes. This practice is widespread within the banking sector and there is adequate disclosure made to the public that they are under surveillance whilst using those facilities or attending a bank branch.

Insurance Claims

Surveillance may occur when investigating the legitimacy of an insurance claim and customers are advised that investigations may be conducted in the PDS documentation. Insurance companies may use surveillance to investigate alleged fraud or to assess the veracity of a disability claim. An insurance company needs to ascertain as to whether statements made to it are true and factual, and surveillance is one mechanism that allows insurers to verify information provided to them by claimants. This is a legitimate purpose and ensures that only legitimate claims are paid, keeping premiums at a minimum.

Visual surveillance observing private activities is conducted on very small number of claims where discrepancies as to the legitimacy of the claim have arisen. The surveillance may include the usage of a recording device in public spaces to obtain evidence to corroborate statements.

We believe that surveillance serves an important function by allowing us to verify information given to us by claimants, prevent and detect fraud, reducing claims costs and keeping premiums at a viable level.

OPTIONS FOR REFORM

Principles

Suncorp agrees with the principles as outlined in the Consultation Paper. The principles recognise that there are some legitimate situations in which transparency of public surveillance would detract from the effectiveness (such as private investigators using surveillance to obtain independent corroboration of information to substantiate a claim). They also recognise that surveillance conducted on a continuous basis should be proportional to its legitimate purpose, and this principle supports the usage of CCTV in bank branches.

The VLRC has provided six options for regulatory reform for surveillance practices in public places. Although Suncorp's preferred option is for this oversight to sit at a Federal level we do wish to comment upon the options in the event the Victorian government decides to go ahead with regulatory reform.

The six draft regulatory options as canvassed by the VLRC are:

1. An independent Regulator to monitor public place surveillance

Suncorp does not believe that there is currently a need for an independent regulator with the responsibility of monitoring surveillance in public spaces. We believe that in the event there was a proven need for a regulator in this area, that responsibility should sit federally with the OPC. The OPCs' powers are likely to be increased in line with the recent recommendations of the ALRC and as such it will be able to more effectively regulate this area of privacy.

2. New voluntary best practice standards to promote responsible use of surveillance in public place

Suncorp would prefer voluntary best practice standards. These standards/guidelines could be issued at Federal level from the OPC so there would be no requirement to establish a new structure to regulate surveillance. The standards/ guidelines should be principle based to ensure that there is broad coverage and applicability. Different standards should be developed for different forms of surveillance practices and these should be developed in consultation with the users, key stakeholders and the broader community.

3. Mandatory codes of practice

Suncorp does not support a mandatory code of practice to monitor surveillance activities as we believe that there is no real evidence to support these proposals. Mandatory codes will be more onerous on business and add further unnecessary compliance costs without any substantial benefit to the community.

4. A licensing system for some surveillance practices

Suncorp opposes the licensing option as its multiple entities conduct various surveillance activities creating the need for multiple license applications and associated costs.

5. Changes to clarify and strengthen the *Surveillance Devices Act 1999 (Vic)*

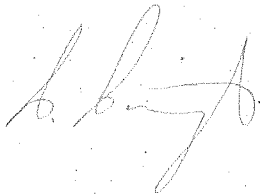
Suncorp neither supports or opposes this however believes the ALRC proposals would ensure that surveillance is adequately captured under the Privacy Act 1988(Cth).

6. Creating a statutory cause of action for serious invasions of privacy

Suncorp believes that the ALRC proposal creating a statutory cause of action for serious invasions of privacy will suffice and that it sits better at the Federal level to ensure consistency of application across Australia.

We thank you for the opportunity to participate in this consultation.

Yours sincerely



Chris Cunnington
Executive General Manager, Regulatory Affairs