



**INSURANCE  
COUNCIL**  
OF AUSTRALIA

Professor Neil Rees  
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Dear Professor Rees

**SURVEILLANCE IN PUBLIC PLACES: CONSULTATION PAPER**

The Insurance Council of Australia Limited<sup>1</sup> (Insurance Council) appreciates the opportunity to comment on the options for reform proposed in the Victorian Law Reform Commission's (VLRC's) "Surveillance in Public Places: Consultation Paper" (the Consultation Paper). Insurance Council members have a vital interest in being able to undertake surveillance in public places, for example to assess a personal injury claim (particularly for Compulsory Third Party and workers' compensation claims) and in defence of a decision to decline a claim. Surveillance may also be used by insurers in investigating fraud or misrepresentation in relation to a claim. In addition a number of Insurance Council members maintain branch networks with surveillance devices to maximise staff security.

The Insurance Council is supportive of the purpose of the Review which is to encourage the responsible use of surveillance technology. However, the Insurance Council and our members are concerned that the Consultation Paper does not place the Review in the wider context of regulatory reform, both in regard to privacy and more broadly in relation to issues with a national scope.

As noted in the Consultation Paper, the Australian Law Reform Commission (ALRC) released in May 2008 its Report 108 "For your information: Australian Privacy Law and Practice" (ALRC 108). The Report and the submissions made to the ALRC during its consultations were an almost unanimous endorsement of the development of a single set of privacy principles to be applied nationally.<sup>2</sup> We recognise that the ALRC did not cover unrecorded surveillance within its Report<sup>3</sup>. However, surveillance where a record is made does come within the scope of the Commonwealth regime. It is important that the regulation of surveillance be considered holistically. For this reason, the ALRC referred to the VLRC Review and noted that its findings would be presented to the Standing Committee of Attorneys-General.<sup>4</sup>

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<sup>1</sup> The Insurance Council of Australia is the representative body of the general insurance industry in Australia. Our members represent more than 90 percent of total premium income written by private sector general insurers. Insurance Council members, both insurers and reinsurers, are a significant part of the financial services system. March 2009 Australian Prudential Regulation Authority statistics show that the private sector insurance industry generates gross premium revenue of \$26.7 billion per annum and has assets of \$84.2 billion. The industry employs approx 60,000 people and on average pays out about \$99.2 million in claims each working day.

Insurance Council members provide insurance products ranging from those usually purchased by individuals (such as home and contents insurance, travel insurance, motor vehicle insurance) to those purchased by small businesses and larger organisations (such as product and public liability insurance, professional indemnity insurance, commercial property, and directors and officers insurance).

<sup>2</sup> ALRC 108 pages 202-209.

<sup>3</sup> Although photographs and video footage can be classified as "personal information", because of the requirement that the information be collected as part of a "record", live surveillance (e.g. via CCTV) does not come under the Commonwealth Privacy Act. ALRC 108 page 329.

<sup>4</sup> ALRC 108, page 330.

Further, through the Coalition of Australian Governments (COAG), major reforms are being made in many areas of economic and social policy to achieve a single regulatory regime and so eliminate unnecessary and costly differences amongst Australia's various jurisdictions. (Current significant examples are a national consumer law and a national registration and accreditation scheme for health practitioners.) For a business which is national in scope, it is clearly preferable to have one set of laws governing each area of the business rather than a fragmented patchwork of regulation which is often difficult to consolidate into one workable process nationally. Consequently, as the majority of our members provide general insurance across Australia, the Insurance Council strongly endorses the thrust of these COAG reforms.

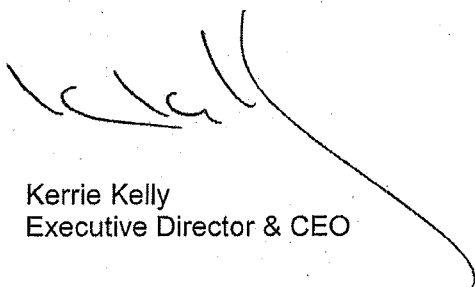
The Insurance Council acknowledges that the VLRC's Review stemmed from a specific reference from the Victorian Attorney-General. However, we submit that options for reform of surveillance must be considered within the wider national context. An example is the choice of an appropriate surveillance regulator. The Victorian Privacy Commissioner is an obvious choice if the scope is limited to Victoria. However, at a time when national regulatory regimes are being developed to minimise the cost of compliance to business and the community, the Federal Privacy Commissioner should also be a serious contender.

Another example is the discussion on creating a statutory cause of action for serious invasions of privacy. Given that the Federal Government has undertaken to examine the case for such a cause of action as part of its second tranche of privacy reforms, we submit that it is appropriate and important to discuss such a possibility in Victoria by referencing the difficulties that the cause of action would create for nationally operating businesses.

The Consultation Paper is a valuable assessment of the key issues in regulating surveillance. However, the Insurance Council submits that it should be a contribution to a wider national debate on privacy regulation. Consequently, the Insurance Council urges the VLRC to include in its final report a recommendation that the Victorian Government present the report to the Standing Committee of Attorneys-General and push for any reforms to be considered nationally, alongside the creation of a national privacy regime.

Specific comments are provided in the Attachment on the reform options identified in the Consultation Paper.

Yours sincerely



Kerrie Kelly  
Executive Director & CEO

**RESPONSES TO QUESTIONS ASKED IN CONSULTATION PAPER****PRINCIPLES TO GUIDE PUBLIC PLACE SURVEILLANCE**

1. We submit that the draft principles to guide policy making are satisfactory - they are broad enough to have flexible application.
2. A key factor in determining the appropriate regulation of surveillance is the motivation of the party undertaking the surveillance. We submit that this would help decide whether once off or intermittent use of surveillance should be regulated.

**A NEW ROLE FOR AN INDEPENDENT REGULATOR**

3. As explained in the covering letter, we submit that regulation of surveillance should be dealt with federally. Consequently, it would be appropriate for the Office of the Federal Privacy Commissioner (OFPC) to be the regulator.

**SPECIFIC FUNCTIONS FOR THE REGULATOR**

4. The functions proposed are acceptable.
5. We submit that it makes sense for all surveillance to be dealt with by the same regulator, being the OFPC as recommended by the Insurance Council.
6. We hold the view that the possible registration of surveillance cameras needs further consideration. The requirement in the UK model for notification of the processing of personal data should be assessed in terms of the likely benefits compared to the effort involved
7. We believe that the OFPC, as empowered by the recommendations in ALRC 108, would be able to undertake satisfactory investigations and develop guidance.
8. As above.
9. As above.

**VOLUNTARY BEST PRACTICE STANDARD**

- 10.-11. Guidance similar to that already employed by the OFPC would be very useful.

**MANDATORY CODES OF PRACTICE**

- 12.-15. The OPFC can currently issue binding guidance. The ALRC has endorsed retention of this power. Consistent with its position supporting the OFPC as the appropriate regulator, Insurance Council would support the exercise of this power in relation to surveillance.

**A LICENSING SYSTEM FOR SOME SURVEILLANCE PRACTICES**

16. We hold the view that licensing appears to be a useful method of controlling surveillance. However, for a large organisation such as an insurer who uses surveillance at branches for staff security, we submit that only one license should be required for all the organisation's activities. Multiple licenses would make compliance unnecessarily onerous. Consistent with Insurance Council's overall position, we submit that the licensing system should be national in scope.
17. No comment.

**CHANGES TO CLARIFY AND STRENGTHEN THE SURVEILLANCE DEVICES ACT (VIC)**

- 18.-23. No comment.

**CREATING A STATUTORY CAUSE OF ACTION FOR SERIOUS INVASIONS OF PRIVACY**

24. As explained in the covering letter, we submit that this question should be dealt with nationally. If it is agreed that such a cause of action was necessary, appropriate exemptions would need to be given to protect the legitimate need for insurers to undertake surveillance.