

8 February 2022

Law Council supports statutory tort for serious invasion of privacy

In its [submission](#) to the review of the *Privacy Act 1988* (Cth) (**Privacy Act**), the Law Council has expressed support for the development of a statutory tort of serious invasion of privacy.

“If an individual is harmed by a serious invasion of their privacy – such as someone’s private activities being watched or recorded, or private information like medical records being made public – there is currently no tortious right of action,” Law Council of Australia President, Mr Tass Liveris said.

“This limits a person’s ability to pursue compensation or an injunction.”

“Technological advances have increased the risk of these types of breaches, while limiting the capacity for our current legislative framework to keep pace.”

Therefore, the Law Council’s submission reinforces the Australian Law Reform Commission’s conclusion contained in its report *‘Serious Invasions of Privacy in The Digital Era’*, that the design of legal privacy protection must be sufficiently flexible to adapt to rapidly changing technologies and capabilities without needing constant amendments.

“We support introduction of this statutory right on the condition there are sufficiently high thresholds in place to ensure actions are limited to serious invasions of privacy and the scope of the tort is carefully considered and drafted to address the risk of unintended consequences. This will require extensive public consultation in order to get the balance right.

“The location of a new statutory tort will also need to be carefully considered, particularly if it is to apply to intrusion upon seclusion (e.g. physically intruding into a person’s private space or by watching, listening to or recording private activities or private affairs) as the Privacy Act primarily regulates information privacy.”

Other recommendations contained in the Law Council’s submission include that the definition of ‘personal information’ be updated and existing exemptions, including in relation to small businesses, employee records and journalism, be clarified.

Contact: Kristen Connell, P. 0400 054 227, E. kristen@talkforcemedia.com.au