INFORMATION AND PRIVACY COMMISSION

NEW SOUTH WALES

OFFICE OF THE PRIVACY COMMISSIONER

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LAUNCH OF PRIVACY MONTH

MUSEUM OF SYDNEY

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# PRIVACY PROTECTION IN AUSTRALIA – WHY NEW SOUTH WALES SHOULD LEAD

The Hon. Michael Kirby AC CMG

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# THE LONG AND SORRY STORY OF PRIVACY PROTECTION IN AUSTRALIA –WHY NEW SOUTH WALES SHOULD LEAD

The Hon. Michael Kirby AC CMG[*]

## *THE LONG AND SORRY TALE OF PRIVACY PARALYSIS*

In 1975 I was appointed to chair the newly created Australian Law Reform Commission (ALRC), established by the Federal Parliament. That was the year in which the New South Wales Parliament established the Privacy Committee of that State[1] the first comprehensive mechanism for privacy protection in Australia and predecessor of the Privacy Commissioner. One of the first projects given to the Law Reform Commission by the Fraser Government was to review the law of defamation in matters of federal comprehensive responsibility. That task was accompanied by a concurrent instruction to the ARLC to report on legal protections for privacy under federal law.

[*] Former Chairman of the Australian Law Reform Commission (1975-1984); Chair of the OECD Expert Group on Privacy (1978-1980); Justice of the High Court of Australia (1996-2009); Inaugural Australian Privacy Medal (2010); Gruber Justice Prize (2012); Patron of the Australian Privacy Foundtion.
[1] *Privacy Committee Act* 1975 (NSW), s15. See ALRC 22, para [135] [1235].

The ALRC examined the diversity of defamation law and practice throughout Australia. Any federal approach to the problem obliged us, amongst other things, to resolve the different forms of the defence of justification then in force in this country. In some Australian jurisdictions, as at common law, it was a sufficient defence for the defendant to establish the *truth* of the imputations in the matter complained of. In others, the defendant was required to show that the imputations in the matter were true and that its publication had also been made *in the public interest* or for the *public benefit*. This added element was part of the law of New South Wales as it then stood[2]. The added element gave a measure of protection for privacy. If the ALRC had been minded to recommend *truth* as a defence, this would actually have set back an existing protection of privacy under Australian law, secured by the need to prove *public* interest or *public* benefit.

For this and other reasons, the ALRC proposed a re-conceptualisation of the governing law. It conceived of a new federal civil wrong, generally described as 'unfair publication'. This would provide remedies both for affronts to reputation and for serious invasions of privacy. These were the only terms upon which the Commission was prepared to remove the components of "public interest" or "public benefit" in the defence of justification. The proposed cause of action for privacy recommended by the ALRC proposed the provision of a legal remedy where:

> *"... a person publishes sensitive private facts concerning an individual where the person publishes matter relating or purporting to relate to the health, private behaviour, home life or personal or family relationships of*

[2] Australian Law Reform Commission, *Unfair Publication – Defamation and Privacy* (ALRC 11, 1979), 25 [42] citing *McLean v David Syme & Co Ltd* (1970) 92 WN(NSW) 611.

*the individual in circumstances in which the publication is likely to cause distress, annoyance or embarrassment to an individual in [that] position …*"[3]

Various defences were proposed to such a claim, namely consent; triviality, accident; legal authority; privileged or protected dissemination; fair, accurate and contemporaneous reports; reasonable self-protection; and proof of the public interest. A right of action for appropriation of the name, identity or likeness of an individual was also proposed. However, the powerful interests of the media, while warmly applauding the ALRC's adoption of the defence of justification in terms of truth, opposed vehemently the concurrent proposal for remedies for breach of privacy[4]. And they won.

Ultimately, in 2005, a national uniform defamation law was achieved in Australia[5]. However, the Act did not reflect the careful balance proposed in the ALRC proposal, neither in the provision of specific remedies for publication of private facts, nor in revised and additional remedies by way of entitlements to court ordered corrections or rights of reply. In the end, uniformity on the law of defamation was won by the media. But it was achieved at a price of substantially giving in to the media's demands. The concentration of media power in Australia, in relatively few hands, exacted its price. The Parliaments and their politicians in Australia were prepared to pay that price. A serious blow was dealt to the legal protection for privacy in those parts of Australia that had

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3 *Ibid*, ALRC 11, 214, Draft Legislation.

4 See e.g. Michael Cameron, "Libel Law Danger to Free Press", *The Australian*, 5 August 2004, 22; Mark Day, "Save Freedom of Speech in Unifying Defamation Code", *The Australian*, 12 August 2004, 22.

5 *Defamation Act* 2005 (Vic), s25 (Defence of justification: "substantially true". Uniform Act).

previously preserved the element of public benefit or interest. That requirement was abolished.

Whilst these battles were being played out in Australia, I came to participate in the international activities that were then taking place concerning privacy protection in the context of digital data and trans-border data flows. Between 1978-80, I chaired an expert group of the Organisation for Economic Co-operation and Development (OECD). That group prepared the Guidelines on Privacy adopted by the Council of that body[6]. This engagement with privacy protection was to prove useful to the ALRC in the preparation of its later report on information privacy[7]. In due course, that report led to the extensive federal legislation on that subject[8].

The federal legislation on privacy in 1988 was not, however, concerned with publication of private facts relating to individuals. It was mainly (but not exclusively) focused on privacy and computer systems which, in other countries, is treated as involving the law of data protection and data security. For the time being, the protection of privacy in media and other publications was allowed to lie unattended. This was exactly where the Australian media (particularly the print media) wished it to be.

Having done my best in organised law reform to provide the Federal Parliament with recommendations for the better protection of privacy in Australia, I returned to the courts. In the Court of Appeal of New South Wales, a number of cases arose concerning privacy in the context of

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6 OECD, *Guidelines: The Protection of Privacy in Trans-Border Data Flows*, (1980, Paris).

7 Australian Law Reform Commission, *Privacy* (ALRC 22) (1983).

8 *Privacy Act* 1988 (Cth). See especially National Privacy Principles, ss6A, 13, 14, 15, 16.

publication[9]. I also participated in a decision of the New South Wales Court of Appeal in the *Spycatcher* saga, where the courts were required to examine the limits, and applications, of the civil wrong of breach of confidence[10]. Happily, the orders that Justice McHugh and I favoured (in the majority) in the *Spycatcher* appeal were upheld, on further appeal, by the High Court of Australia[11]. But that decision did not advance the legal protection of privacy.

Two decisions in which I participated in the High Court of Australia did concern the protection of privacy in publication. They were *Australian Broadcasting Corporation v Lenah Game Meats Pty Ltd*[12] and *Dow Jones & Co Inc v Gutnick*[13]. The latter was a decision that concerned the particular challenges that exist in contemporary circumstances as a result of the advent of the internet, with its pervasive, global features and (relevant to the hurts of publication) the worldwide capacity of search engines and the features of trans-border flows, including now in the form of social networks.

An earlier decision of the High Court in 1937 in *Victoria Park Racing Grounds v Taylor*[14] had rejected the suggestion that Australian law afforded legal protections for privacy. Another attempt was made in the *Lenah Game Meats* case in 2001 to get the judges themselves to develop and declare a remedy for privacy invasion. However, that case was not suitable for that step. Lenah was seeking remedies for the unconsensual installation, on its slaughterhouse premises, of a

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9 E.g. *Ettingshausen v Australian Consolidated Press Ltd* (1995) 38 NSWLR 404 (CA).
10 *Attorney-General (UK) v Heinemann Publishers Australia Pty Ltd* (1987) 10 NSWLR 86 (CA).
11 *Attorney-General (UK) v Heinemann Publishers Australia Pty Ltd* (1988) 165 CLR 30.
12 (2001) 208 CLR 199.
13 (2002) 210 CLR 575.
14 (1937) 58 CLR 479.

recording and filming device. Lenah conceded that there was nothing really private, confidential or secret about the matter being recorded except that it happened on private property. This, in my opinion, made *Lenah* a completely inapposite case in which to re-express the Australian common law to recognise a new general cause of action for breach of privacy[15].

In *Lenah*, I noted the 1937 decision in *Taylor* and the ALRC's rejection of a general statutory right to privacy[16]. As I put it[17]:

> *"... [I]n Australia, the elucidation of this aspect of the common law is influenced by the content of universal principles of fundamental rights, Art.17 of the International Covenant on Civil and Political Rights appears to relate only to the privacy of the human individual. It does not appear to apply to a corporation or agency of government. The foregoing view is reinforced by the way in which the right to privacy has developed in the United States, where it has had a long gestation. ... Cases from other jurisdictions (and some from Australia) demonstrate that there are many instances of invasions of privacy of individual human being that are likely to present the question raised by the respondent in circumstances more promising of success than the present. It appears artificial to describe the affront to the respondent as an invasion of its privacy. The real affront in this case lies in the unimpeded use by the appellant of the video tape procured by illegal, tortious, surreptitious and otherwise improper means in circumstances where such use would be unconscionable."*

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15 (2001) 208 CLR 199 at 299 [185]-[187].

16 ALRC 22 (1983), Vol.2, 26 [1085]. See *Lenah* (2001) 208 CLR 199 at 278 [188].

17 *Lenah* (2001) 208 CLR 199 at 279 [190] (citations omitted).

*ESSENTIAL PRIVACY AND ABUSE*

The abuses of privacy that have occurred in the media have certainly increased in the 15 years since the *Lenah* decision was delivered by the High Court in 2001. Meantime, no statutory cause of action has been adopted in Australia. A few Australian court decisions have referred to aspects of privacy[18]. The ALRC, together with the New South Wales and Victorian Law Reform Commissions, in later reports, have recommended the creation of a statutory right to privacy[19]. They have done so repeatedly, cogently and to much popular support. Citizens like their privacy in Australia. Yet politicians have been very weak in standing up to media attacks on law reform proposals.

For a time, although the Rudd Government indicated its intention to support successive, 'tranches' of law reform to implement aspects of the ALRC report of 2008, favouring strengthened protections for privacy, it remained silent about the ALRC recommendation that a general statutory protection should be enacted for invasions of privacy in the context of publication. Governments in Australia, as elsewhere, were intimidated by the great power of the media with their capacity and inclination to set the political agenda and to oppose any regulation that might weaken or diminish their substantially uncontrolled self-regulation in the publication of private matters.

If one were in charge of media interests (newspapers, radio and television), opposing the enactment of a general right to privacy would be understandable. Why would such interests support, or even be

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[18] Some of the cases are discussed in *Privacy Law Bulletin*, November 2011, p.72.

[19] Australian Law Reform Commission, *For Your Information: Australian Privacy Law and Practice* (ALRC 108, 2008), Part K. See also New South Wales Law Reform Commission, *Invasion of Privacy* (ALRC 120, 2009).

neutral about, the replacement of the present state of self-regulation with rights of action that could be challenged before one of the few sources of power in Australian society independent of the media: the judiciary? As the media had earlier been so successful in securing the shelving of the ALRC report on unfair publication in 1979, the usual suspects presented their campaigns against the new ALRC report. News Limited, in particular, repeatedly published stories in a campaign, thinly disguised as news and serious reportage[20].

However, a serious problem was quickly presented to the media campaign in Australia by shocking instances of serious invasions of privacy that came to light, particularly in the United Kingdom, involving the media. So shocking were the instances revealed, for example in the hacking of the mobile phone of a murder victim, Milly Dowler, and the revelation of the confronting surveillance of Madeleine Pulver, that reportedly 4,000 victims began to emerge who told serious and sometimes harrowing stories about the invasions of their privacy and intrusions into their private conversations and relationships done by publishing interests. These reports, and the public's reaction to them, demanded action and redress.

The result of these developments was not damage control (such as the winding up of the United Kingdom title *News of the World*); but also the establishment of high level public enquiries into the news media both in Britain and Australia; the launching of police investigations; the restructuring of corporate leadership amongst some of the worst offenders; and (most surprisingly) the greater willingness of politicians, under public stimulus, to take steps to redress the balance of power in

[20] See e.g. C. Merritt, "Concern Over Tort Starting to Spread", *The Australian*, 16 September 2011, 29.

this matter. Statements were made like those of *The Australian's* Economics Editor, Michael Stutchbury in July 2011, criticising the expressed opinions on legal reform made by the then Australian Minister for Justice, Brendan O'Connor, to the effect that there might be a need for a general privacy remedy before the courts. These, Mr. Stutchbury declared, constituted "extremist rights agenda" talk. They involved potential work for "lawyer controlled courts". But, through a serious case of bad timing, such denunciations looked empty and unconvincing when measured against the emerging news of serious wrongdoing that cried out for redress.[21].

In Britain, the Prime Minister (David Cameron) admitted that politicians had, over the previous decade, become "too close" including presumably himself, to bosses in charge of *News of the World*. He conceded that this was not a good thing[22]. A few journalists who had endeavoured, in the political hothouse, to adhere to standards and principles in dealing with private facts about individuals, summoned up the courage to speak out. They did so plainly and bluntly concerning the erosion of respect for privacy that had particularly marked the past couple of decades, both in Australia and in the United Kingdom.

Writing in Australia, journalist and author, Phillip Knightley, attempted to explain, from his viewpoint, the serious slippage in publishing standards[23]:

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[21] Discussed A. Fletcher, "A Right to Privacy in Australia?" in *Rapporteur* (Castan Centre for Human Rights Law), November 2011, 4.

[22] *Ibid.*

[23] P. Knightley, "Who Runs Britain? The Politicians or the Journalists?", St. James Ethics Centre, *Living Ethics*, (Issue No.85) [Spring 2011] 4 at 5.

> *"But how could [journalists] possibly defend their behaviour towards Britain's first surrogate mother, Kim Cotton? She was paid £6500 to bear a childless couple's baby and twice that amount to tell her story to the Daily Star. That unleashed a storm of media criticism. Stories about her were invented, others distorted. Some were terribly cruel. When she had to have a hysterectomy, News of the World headlined its story "Kim Loses Her Money Box".*

In a later BBC radio programme, Kim Cotton confronted each of the journalists who had written about her so harshly 25 years ago and asked them why they had done it. She failed to get a proper answer. Writing about the programme, a former BBC editor, Kevin Marsh, concluded:

> *'The journalists who had trashed her just didn't get it, couldn't see how their remorseless, unfeeling pursuit looked to people who weren't journalists; those who wondered how on earth these people could think what they were doing was within the bounds of common human decency'."*

It was suggested for a while that these excesses were merely features of British tabloids and not a problem for media in Australia. This was not correct. The problems stretched far beyond Britain. Australia was by no means exempt. The creation of the 'celebrity journalist'; the seemingly deliberate confusion in much journalism today between fact and journalistic comment; the gratuitous sprinkling of judgmental adjectives ('disgraced') through purported "news" stories; and the conduct of relentless personal campaigns against individuals is a feature now of much contemporary Australian media; not only in the print media and not only in tabloids. Ask Larissa Behrendt, Tim Flannery, Robert Manne,

Gillian Triggs and others. There is an evident and all too apparent decline in previous journalistic standards. I am not referring to the "golden years" of the 1930s when the *Victoria Park* decision was given. The Australian public are not stupid. They know and recognise the drop in standards. In my view, they therefore expect a decisive response from the federal government and Parliament.

That is doubtless why in 2011 the Federal Minister, Brendan O'Connor, stated his intention to seek public views on the introduction of a statutory right to privacy in Australia. That is also why, in September 2011, the government released an issues paper, *A Commonwealth Cause of Action for Serious Invasion of Privacy*[24]. It called for responses. But again nothing happened.

A still further inquiry was eventually launched by the ALRC. Once again it entered the jaws of media dangers. Once again it proposed a carefully defined statutory cause of action.[25] This was carefully calibrated to give people, wrongly hurt by serious invasions of privacy, a remedy for this precious right recognised in our community's values and in the universal charters of human rights that Australia says it supports. It also suggested that the federal Privacy Commissioner should secure increased powers to investigate complaints about serious invasions of privacy. But the federal Government changed. Once again our political leaders retreated in the face of media fire and brimstone. This is a sorry tale. But we are still a federation. States have their own separate responsibilities and powers. New South Wales was a leader in privacy

[24] Australian Government, Department of the Prime Minister and Cabinet, Issues Paper, *A Commonwealth Statutory Cause of Action for Serious Invasions of Privacy* (September 2011).
[25] Australian Law Reform Commission, *Serious Invasions of Privacy in the Digital Era*, Final Report ALRC 123 (June 2014), Rec 4-1.

protection in setting up the Office of the Privacy Commissioner in 1975. It was therefore no surprise that a strong reaction to the federal parliamentary inertia arose in the New South Wales Parliament.

*WHY PRIVACY?*

Ultimately, in a rule of law society like Australia, the operation of the balance between the human right to free expression and press freedom (on the one hand) and privacy (on the other) is ordinarily the responsibility of the legislature. The last word in the drawing of lines and applying them in particular cases, belongs to the courts. The fact that there will occasionally be uncertainties and that times may change civic and judicial attitudes to free expression and to privacy is no reason to withhold entirely the protection of the law that appears to be guaranteed in the *International Covenant and Civil and Political Rights* which Australia has ratified.

To withhold such protections from the law does not mean that lines are not drawn or that legal principles do not exist. It simply means that, in the equation of competing freedoms, the expression of, and defences for, the right to *privacy* are left substantially in the hands of those with economic, political or other power to invade it. This is the position in which we now find ourselves in contemporary Australia. Media and other publishers become judge and jury of their own suggested abuses. They decide whether any correction or redress for breaches of privacy will be granted. The law is effectively silent for those who want to challenge such self-interested decisions. Given the large economic, political and social power of the media, this withdrawal of the community and its laws from the provision of rules and redress is, to say the least, unusual. In my view, it is unacceptable. The time has come to repair

the deficit. A New South Wales Parliamentary Committee has now decided to do so. It is not really surprising that they have urged legislative action.

Why do individuals feel a need for a protected zone of privacy? The measure of the hostility to it in some journalist circles was recently disclosed to the British inquiry into media phone hacking. The former deputy editor of the now disbanded *The News of the World*, Paul McMullan, expressed his view thus[26]:

"*Privacy is for pedos [paedophiles]*

McMullan said he had little sympathy for "celebrities" such as Hugh Grant, who have complained about media intrusion.

> *"Privacy is the space bad people need to do bad things in. Privacy is evil. Privacy is for pedos. Fundamentally nobody else needs it," said McMullan, who was one of several journalists giving evidence in London today.*
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> *McMullan said reporters at the paper routinely hacked people's voicemails and did so for their editors and because it was in the public interest."*

This attitude should be emphatically rejected. Privacy is valued in Australia because human experience has shown the need to protect not only the physical space around an individual, and the home and relations with the closest family and friends of that individual, but also

[26] *MX News*, 30 November 2011, p10; *Sydney Morning Herald*, 1 December 2011, p3.

projection of the full personality, dreams, desires and fears of the individual in relation to chosen others. This projection extends to intimate relationships essential to fulfilment as a human being: such as relationships with family and close friends, including with sexual, intellectual, artistic and cultural partners. The choice of such a circle and the control by the individuals concerned over manifestations of love, friendship and other relationships are integral to the fulfilment of human existence. An individual enjoys not only a public life, but also a private existence. Save for any exceptions that are provided by law (to protect other people or, where essential, to protect the community) the choices to be made in the revelation of such private facts are usually for the individual concerned. They are not the playthings of media interests in the pursuit of profits or power. In so far as others take control of these attributes of a person's individuality they impose their power upon the privacy of an individual who is entitled to enjoy that right. When this happens without proper justification, it should be the business of law to uphold the right to privacy and to provide remedies for its invasion.

Sometimes, it is true, there will be uncertainty. These will be disputes as to where the line between the private and the public zone is drawn. But a line exists. The law should define, respect, enforce and protect it. The law should provide remedies for abuse and defences for claims of justification and lawful entitlement to invade the privacy of another. At the moment, in Australia, we do not have such general protections and remedies. Yet we have not developed specific and limited remedies. This is why the New South Wales Parliamentary Committee has now recommended a dual track remedy – a civil wrong enforceable in the courts. And some fresh administrative responsibilities for the Privacy Commissioner to act in a low cost way to provide remedies that are

cheap and accessible to our citizens where they feel seriously aggrieved by invasions of their privacy.

*WHY ACTION IN NEW SOUTH WALES?*

It is possible that, once again, nothing will come of the recent report of the New South Wales Parliamentary Committee. The history of repeated rejections of earlier proposals would make that outcome unsurprising to anyone who has studied the record of law reform over the past 40 years. So why do I feel more confident in suggesting that something, at last, will happen? There are 10 reasons:

1. Those who have put forward once again the proposal for a carefully defined legal right to privacy were fully aware of the rejections of the past. Had they been timorous, this would probably have persuaded them from advocating the creation of the remedy once again. Yet they did so. That so many institutional law reform bodies (and now the New South Wales Parliamentary Committee) have taken up the cause, says a lot about the strength of that cause. It simply refuses to go away. It will not go away until appropriate reform has been enacted.

2. The New South Wales Parliamentary Committee contained strong and respected members from across party diversions. On other issues, as befits a democracy, they have strong and sincere differences. But on this matter, members from the Liberal Party, the ALP, the Greens and the Nationals have reached accord. They came together and agreed. This illustrates the depth and breadth of the privacy value across the political spectrum.

3. The report, if I may say so, is a powerful document. It is well written. It is clear-sighted about the past. It is principled in its approach to its mandate. It reaches conclusions that are powerful and convincing. In reaching its conclusions, the Committee had the assistance of a number of experienced and outstanding citizens, including the New South Wales Privacy Commissioner, Dr Elizabeth Coombs. It also had assistance from probably the most informed and influential academic on privacy law in Australia, Professor Barbara McDonald of the University of Sydney. There were other witnesses who enjoy great public confidence in the State and in Australia, including Professor Rosalind Croucher, President of the ALRC.

4. The Committee members were mindful of the need to supplement a remedy provided in the courts with accessible, more informal and low cost administrative procedures tailored to the special need of complainants to avoid exacerbating privacy concerns by publicity that may inevitably attach to court remedies. In doing this, the Committee followed an established pattern that has now emerged in statutory remedies for wrongs in administrative law, superannuation law, migration, tax and other fields of law in Australia. Court remedies as well as administrative remedies, now commonly exist with their respective advantages and disadvantages to be considered by the parties.

5. Because the remedies in the New South Wales Parliamentary report are proposed in the alternative, the existence of courtroom

access upholds the rule of law. It also permits courts to set the standards, define the legal approaches and give guidance to administrators in tackling powerful and sometimes hostile adversaries. Courts are fully independent. They will not buckle to the interests of anyone, whoever they may be. Having court remedies are vital to effective administrative remedies. We all know that administrations can be starved of funds to do an effective job. That is much more difficult in the case of courts. That is why having the two remedies together is final. They reinforce each other. Courts are essential to deal with powerful, opiniated and recalcitrant privacy offencers.

6. New South Wales led the way in Australia towards privacy remedies. The first full-time administrative remedy was enacted in New South Wales by the creation of the Privacy Committee in 1975. It was fulfilled by a gifted and talented appointee, Bill Orme as first Executive Member. His recent death reminds us of his energetic and faithful service for the protection of privacy. But it also recalls the initiative 40 years ago in tackling opinionated opponents directly and resolutely and providing remedies to the people who allege serious invasions of their privacy and want to secure legal redress for that wrong.

7. Privacy is undoubtedly a value that most Australians cherish. Many are astonished when they hear how little protection is accorded to it by our laws. The desire for privacy emanates ultimately from the dignity that belongs to every human being. Whilst modern governance and new technology inevitably intrude somewhat into the residual concept of privacy, the fundamental

core value remains. It must be protected against serious invasions, whether they come from individuals, corporations or government – from new technology or old fashioned snooping and unjustifiable invasions. If we believe in the dignity of the individual, we need to provide the individual with legal means to uphold the defences to privacy at least in cases of serious invasions. The zone of respect that privacy demands is critical to the survival as we know it of the individual, family and civic role of the citizen. There needs to be a standard that can give support to this deeply felt cultural value of privacy shared by most Australians.

8. Fears and complaints about meritless litigation and lawyers' ambitions to be rejected. The time, inconvenience and potential costs of pursuing court remedies will discourage all but the few who are prepared to defend their own privacy, and thereby to uphold the standards that will defend the privacy of others.

9. The federal system in Australia permits experiments in lawmaking. This is how many areas of law reform were advanced in Australia's past. They include the introduction of the State Ombudsman and remedies for consumer protection, environmental protection and reform of discriminatory laws against women, gays and other minorities. We need to reignite innovation in State law. Privacy is a natural area in which New South Wales could give the lead, given that it did so with privacy in 1975. Now it should take further steps, precisely as the Privacy Commissioner has urged.

10. Above all, leaving privacy to the whittled away by new technology and by increasing legal exceptions confirms the urgent need to reinforce the public champions for this value. The support of First State Super on this occasion is very encouraging. Responsible business organisations will support the moves for change. They know it is important to citizens as customers and members. Proper privacy protection is good for business. Privacy is a universal value that is stated in all human rights instruments, starting with Eleanor Roosevelt's *Universal Declaration of Human Rights* in 1948. The time has come for Australia to provide fresh remedies. Otherwise, not so long from now, we will wake up one day to find privacy, as a value in our society, has been effectively eroded because our lawmakers were inattentive, indifferent or fearful of the privacy invaders who demand that they remain judges in their own cause.

The step urged by the New South Wales Parliamentary Committee to afford a new remedy for serious invasions of privacy in New South Wales is a wise and modest one. It is long overdue. Action by the courts and others cannot be anticipated, certainly in the short term. Privacy is a basic human right of the people. For serious invasions of that right there should be an effective and well defined remedy. The New South Wales Parliamentary Committee has now pointed the way to reform. I hope that in Parliament will, at last, embrace the necessary reform and halt the slide into invasions of privacy for which the law is silent and ineffective.

There could be no more appropriate way to remember and extend the path-breaking work of the late Bill Orme, the first privacy guardian of

New South Wales, than to resolve to afford new remedies, fit for purpose and suitable to the increased contemporary challenges to privacy in New South Wales and Australia.

There could be no way for us to ensure that privacy awareness extends beyond this special week in May 2016 into the weeks and years ahead, with the State of New South Wales leading the way in answering a challenge that has proved too difficult for too many others to act upon. New South Wales led the way in 1975. It is time for it to do so again in 2016.