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Submission to the Law Commission on Review of Privacy Law

Introduction

The National Council of Women of New Zealand (NCWNZ) is an umbrella organisation representing 42 Nationally Organised Societies. It has 26 branches throughout the country attended by representatives of these societies and some 150 other affiliated societies as well as individual members. The council's functions are to serve women, the family and the community at local, national and international levels through research, study, discussion and action.

NCWNZ welcomes the opportunity to consider this Issues Paper on a Review of the Privacy Law. NCWNZ has general policy supporting privacy and confidentiality (Resolutions 2.7) which refers to a number of the issues raised in the Review.

The response has been prepared by the Public Issues Standing Committee following consultation with members. A few of the questions from the large number in the Issues Paper which were considered most relevant to NCWNZ were circulated to members. It was also recommended that they view the whole document on the website.

Question 7: In what circumstances can there be a reasonable expectation of privacy in relation to things which happen in a public place?

- NCWNZ is concerned about publication of photographs taken in public places for the media or on the internet. On the whole permission should be sought for this, unless the photograph is of a crowd.
- When individuals are going about their daily activities in public they should expect reasonable privacy. Anything that could reflect badly on an individual or cause embarrassment should be precluded from publication provided that the action is legal such as photographs of victims in car accidents and the aftermath of shootings.
- If a person has broken the law and is subsequently photographed by a newspaper photographer or stationary video camera, permission should be asked of the police before publishing. Photographs could be published if they help identify misbehaviour such as drunkenness, theft or assault.
- Photographs of families grieving at funerals can be inappropriate in some cases. Families should be protected from public intrusion.

Question 8: To what extent is the degree of privacy that public figures can reasonably expect less than that of the general population? Does any reduced expectation of privacy on the part of public figures also apply to their families?

- Considerably less privacy can be expected by public figures especially if they are in a paid public position, but this does not apply to their families unless they give permission.
- Celebrities who seek publicity cannot expect the same degree of privacy as the general public, but this should only apply to public places, not intrusion into homes.

Question 20: Should corporate or other artificial persons be able to bring an action for invasion of privacy?

- The majority response to this was no or probably not. Too many corporations (including local and central government) use privacy laws or commercial sensitivity to prevent public scrutiny of their activities.
- Such corporate or artificial persons would have to prove that the invasion of privacy could harm individuals or the viability of the business but there should be exemptions where wrong doing is suspected on the basis of sound evidence.

Question 30: Are there particular surveillance technologies you are concerned about?

- Covert surveillance by means of mobile phones in changing-rooms, lifts, and toilets, and other surveillance technology of which people are not aware.
- There is concern about surveillance by Echelon, the GCSB and SIS possibly with the ability to tap into telephones and email. This could be open to abuse and needs to be very strictly monitored.
- Wire tapping and electronic eaves-dropping is a concern unless there is very strong evidence of illegal activity such as drug dealing, money laundering or the planning of criminal activity.

Question 36: Should certain acts of surveillance be considered to constitute harassment on their own, without any requirement for any further specific act directed at the applicant to occur, for the purposes of seeking a restraining order or bringing a criminal charge under the Harassment Act 1997?

- Not if they are used especially to address family violence.
- The surveillance should be controlled. Police powers should be limited to their awareness of significant need relating to a criminal act.
- Innocent families can be harassed, mainly by the media because a family member has been killed or kidnapped.
- Some members of a gang who are now leading apparently reformed lives are still under fairly constant surveillance by the police.
- Members of the public should be able to carry out lawful and peaceful protest and question authorities without fear of harassment as a result of surveillance.
- Paparazzi crowding someone or provoking a reaction could be considered harassment.

Question 45: Should a new offence be created to target the covert use of tracking devices to determine peoples' location?

- The majority response is yes. The use of tracking devices needs to be tightly monitored. Several responded that we do not need more laws but need to close some loopholes in the present law.

Question 52: Should there be limitations on surveillance of public spaces, carried out by both public and non-public agencies?

- There was a mixed response to this question. It would depend on the purpose of the surveillance. Limitations of surveillance would have to be to surveillance of places by groups or their members which could be part of criminal activity, e.g. surveillance of security vans delivering money to banks etc.
- Non-public agencies should be limited to around their own premises. There should be limitations on non-public agencies that have not been contracted by a public agency for surveillance.
- Safety of streets is very important for people who have to be out at night. Police need to be able to have surveillance cameras and shops and banks need them in case of robberies.
- With the increasing violence and crime in public places, especially malls, all surveillance is good.
- How surveillance is used should be monitored. It shouldn't be in places where you would expect privacy, for example inside toilet cubicles.
- Surveillance should be specified according to what purpose is acceptable e.g. public safety/ investigating theft.

Question 72: Should the media be subject to any greater or lesser legal restriction concerning surveillance and other intrusions, than other member's of the public? To what extent should the media be exempted from the laws dealing with surveillance and other intrusions?

- In general the media should be restricted to greater legal restrictions because of the extent of the damage they can do to innocent people.
- They should not be able to use surveillance on private property or when people are going about their lawful business in public places, in the hope of catching something to grab headlines.
- The media have a part to play in informing the public but they should not be able to create a case by innuendo and suggestion. The laws of slander should be applied rigorously.
- On the other hand one job of the media is to shed light on important issues through good investigative journalism cf. the Erebus disaster.
- Some responded that the same restrictions should apply to the media as to everyone else.

- One respondent commented that there should be fewer restrictions as long as the media are fully accredited. There is a lot we wouldn't know if it were not for the media; things we should know.

Question 79: Should there be a code governing workplace surveillance or workplace privacy generally? If so what areas should it cover?

- Yes, there is general agreement among NCWNZ members that there should be a code but employees should know there is surveillance and should not feel they are being spied on. It could be a factor in workplace safety and public safety.
- Surveillance could be useful to cover identification of culprits in cases of theft, work bullying and other dishonest work practices but should not be used in areas relating to staff rooms and other rooms where staff expect privacy, such as toilets.

Question 80: Should private investigators be subject to any greater legal restrictions than other members of the public in order to protect privacy?

- No, but there should be careful monitoring of them.
- Private investigators should be registered and have their own profession code of ethics and practice.

NCWNZ fully supports the Review of the Privacy Act 1993 because of advances in technology since 1993, which make invasion of privacy much easier to perpetrate and which threaten an individual's right to respect and freedom from fear. These suggestions are made bearing in mind the complexity of the issue of privacy rights versus the public's right to information. Consequently NCWNZ hopes that the Privacy Act will be subject to future ongoing reviews and thanks the Commission for this opportunity to comment.

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