

Protecting Privacy / Commonwealth Tort Under the Privacy Act 1988

Historically, protecting your privacy in Australia could be quite difficult. In a strata context, you might be able to make and enforce a by-law restricting some abuses, e.g. misuse of CCTV. Otherwise, you might be able to convince police to take action, e.g. in the case of misuse of a surveillance device. Alternatively, you might be able to re-purpose another type of action, e.g. copyright if private documents are released or defamation if the privacy breach involves defamatory statements.

What are the changes to the Privacy Act 1988?

Changes to the Privacy Act 1988 which commenced last year may make things much easier, where there has been a serious privacy breach. Specifically, Section 94A and Schedule 2 of the act create a new Commonwealth privacy tort, i.e. a cause of action against someone who has committed a serious privacy breach in specified circumstances. This has the following areas of impact:

- Anti-intrusion impact, one limb of the tort involving "the defendant invaded the plaintiff's privacy by... intruding upon the plaintiff's seclusion". This could have application in a strata context, e.g. CCTV, drones and stalking.
- Anti-publication impact, the other limb of the tort involving "the defendant invaded the plaintiff's privacy by... misusing information that relates to the plaintiff". This would be more focused on internet activity.
- Operational impact, i.e. the need for owners corporations and businesses to review policies to ensure that officers and staff are not exposing them to liability.

Further:

- This action does not require proof of actual damage or loss.
- This is not subject to the same application requirements as the remainder of the Privacy Act, i.e. it deals with individuals, without applying a turnover threshold.

That said, this is subject to some significant limitations. In particular:

- In order to be successful in such an action, one will need to demonstrate a serious privacy breach.
- It may be necessary to commence legal proceedings and see them through to their conclusion.

- There are significant defences (e.g. for journalists) and time limits.

We have considerable experience with these issues and would be pleased to provide you with whatever assistance you may require.

Alternatively, if you are having issues with other owners/occupiers within your scheme, you may find the following articles useful:

- [Is an argument between neighbours worth \\$120,000?](#)
- [Defamation and Strata Title – What to do when things get heated](#)

Key takeaways

- The Privacy Act 1988 now includes a Commonwealth privacy tort for serious privacy breaches.
- This new tort allows individuals to take legal action without needing to prove actual damage.
- Owners corporations must review their policies to avoid potential liabilities related to privacy breaches.
- The tort covers both anti-intrusion and anti-publication impacts relevant to strata living.
- Significant limitations and defences exist, including time limits and specific requirements for proving a breach.

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