

Mandate of the Special Rapporteur on the right to privacy

REFERENCE:
AL AUS 3/2018

4 July 2018

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the right to privacy, pursuant to Human Rights Council resolution 37/2.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning **the alleged violation of the right to privacy of Ms. Briana Rose¹ and the legislative gap in the protection of privacy in Australia**. Ms. Rose was the subject of my previous communication submitted on 14 August 2017, AL AUS 4/2017.

According to the information received:

Your Excellency's Government response of 13 October 2017 stated that the State of New South Wales had introduced criminal legislation to address the non-consensual recording and distribution of intimate images. I regret to advise that the provisions of this legislation do not provide remedies to Ms. Rose.

As set out in my original correspondence, that Australia's privacy law does not protect Ms. Rose's right to privacy in the situation she encountered and nor does New South Wales privacy law - now or then. These were matters acknowledged by the then Australian Privacy Commissioner and the immediate past New South Wales Privacy Commissioner.

The experience of Ms. Rose was reviewed by the New South Wales Parliamentary Committee Inquiry into Serious Invasions of Privacy. The Inquiry report was released on 3 March 2016 and recommended the introduction of a civil action to provide remedies to victims of serious privacy violations.² This report joined the many existing reports from the Australian and State Law Reform Commissions recommending this long overdue reform – recommendations which have not been acted upon.

The outcomes that Ms. Rose seeks are for “Australian and State Governments to treat victims with great care. To understand the serious harm that can occur by inaction. To give us remedies ...”.³ I note that it appears that the encouraging developments announced in the communique of the Law, Crime and Community Safety Council, 21 October 2016, have not progressed.

¹ The name of the victim has been changed at her request.

² <https://www.parliament.nsw.gov.au/committees/DBAssets/InquiryReport/ReportAcrobat/6043/Report%20no%2057%20Remedies%20for%20the%20serious%20invasion%20of%20.pdf>

³ Email communication to the Special Rapporteur on the right to privacy of 05/03/2017 05:25 hours.

Based on the above, I would consequently be grateful if your Excellency's Government could please provide an answer to the questions raised in relation Ms. Rose's right to privacy, which were included in my communication on 14 August/2017 (AL AUS 4/2017):

1. Please provide any information and/or comment(s) you may have on Australia's progress on introducing a statutory tort of action of serious invasion of privacy (whether at either Federal or State level).
2. Please provide information on the measures taken by your Excellency's Government to protect Ms. Rose's right to privacy and to provide her a remedy for the violations she experienced – privacy violations which have been acknowledged at Federal and State levels.

In the absence of a substantive response to the matters raised initially in my communication on 14 August 2017 (AL AUS 4/2017), I would like to express **my very serious concern that Ms. Briana Rose has not been provided any remedy or reparation** for the violation of her right to privacy despite her having exhausted all available remedies.

I would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of my highest consideration.

Joseph Cannataci
Special Rapporteur on the right to privacy