



Australian Government
**Australian Communications
and Media Authority**

Australia's regulator for broadcasting, the internet, radiocommunications and telecommunications

www.acma.gov.au

Privacy Guidelines for Broadcasters

Sydney
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Introduction

There is no general right to privacy under Australian law, however there are laws that protect an individual's privacy to a certain extent.¹ Radio and television broadcasters, like other businesses, individuals and government agencies, are subject to these laws. In addition, however, broadcasters have also included separate provisions about privacy in their codes of practice.²

The focus of these guidelines is the privacy provisions of the broadcaster codes of practice.

In the codes applying to commercial radio and television and subscription broadcasting, the privacy provisions relate to news and current affairs programs only. In the case of the ABC, SBS and community sector codes, the privacy provisions relate to all programs.

Complaints about privacy issues

The Australian Communications and Media Authority (ACMA) is responsible for investigating unresolved complaints arising from broadcasting codes of practice. A number of these unresolved complaints relate to alleged intrusions into privacy.

Complaints about breaches of the privacy provisions in the codes of practice are made in the first instance in writing to the broadcaster concerned. Unresolved complaints (where the complainant is dissatisfied with the broadcaster's response or the station has not provided a response within 60 days) can then be referred to ACMA.

Purpose of these guidelines

These guidelines are intended to assist broadcasters and members of the public to better understand the operation of the privacy provisions in the various codes of practice. The guidelines provide an overview of the way in which ACMA will assess complaints by listeners or viewers which allege breaches of the privacy provisions in the codes.

These guidelines were developed by ACMA's predecessor, the Australian Broadcasting Authority (the ABA) in consultation with the broadcasting industry. In developing the guidelines, the ABA had regard to past ABA investigations, case law, and consideration by other authorities and media regulators of key issues arising from complaints about media intrusion into privacy.

In reading these guidelines it is important to note that:

- the guidelines are advisory and do not have any legally binding force
- each complaint will be assessed against the provisions of the relevant code and the facts of the particular case.

¹ Laws touching on privacy issues and the obtaining and publication of information are listed in the 'Advisory Note Privacy' in the Commercial Television Industry Code of Practice 2004 (see appendix 3).

² Extracts relating to privacy from the major broadcasting codes are set out at the end of these guidelines. In the case of the commercial television and radio and community broadcasting sectors, the codes are developed under section 123 of the *Broadcasting Services Act 1992*. ABC and SBS codes of practice are developed pursuant to section 8 of the *Australian Broadcasting Corporation Act 1983*, and section 10 of the *Special Broadcasting Service Act 1991*, respectively.

The general principle

Like the media exemption in the *Privacy Act 1988* (see page 4), the broadcasting codes of practice recognise the need to balance respect for individual privacy with the media's role of informing the public. There is at times tension between the two, with the concept of the public interest being applied to strike the balance.

The core notion found in the various code provisions is that broadcasters should not use material relating to a person's private affairs without that person's consent, unless there is an identifiable public interest reason for the material to be broadcast.

In considering complaints about intrusions into privacy ACMA will consider two main questions:

- did the material relate to a person's private affairs? and
- was its broadcast warranted in the public interest?

WHEN DOES MATERIAL RELATE TO A PERSON'S PRIVATE AFFAIRS?

The answer to this question will not always be straightforward and will depend on the facts of each case. As a general rule, the broadcast of private material occurs:

- when the material relates to a person's private affairs so that its broadcast is likely to cause harm or distress to a reasonable person in the position of the individual and
- when an individual is identifiable from the material broadcast.

'Material relating to a person's private affairs' can include material dealing with the health, personal relationships, financial affairs or private conduct of the individual.

The distinction between public and private conduct is discussed below. Other issues which commonly arise in privacy complaints, such as the use of publicly available information, the issue of consent and the position of public figures, are discussed in subsequent sections.

See appendix 1, Case Studies, for examples of situations in which ABA found that the broadcast of private material occurred.

Public/private conduct

Conduct may be considered private when it is carried on in circumstances that the parties would have had a reasonable expectation that their activity/conversation would be observed or listened to only by themselves.

Conduct carried out in public places (that is, places to which the public has unrestricted access) is generally not considered private.³ However, there may be circumstances when conduct in a public place is considered private, for example when extremely personal and sensitive material is involved.

³ As indicated, the term 'public place' does not refer to ownership but is used to refer to places which members of the public have unrestricted access to. While such places are often publicly owned, for example streets and parks, they may also be privately owned places which the public generally has open access to, such as shopping centres. There are some places where the public/private distinction can be blurred. These are places such as churches, where the public may have fairly free access, but where individuals have a reasonable expectation of privacy, particularly when sensitive conduct is involved.

Publicly available personal information

Information that is readily available to the public would generally not be considered to be material relating to a person's personal or private affairs.

However the broadcast of personal information, such as a person's address or other identifying details, may be considered private, even if such information has some limited public availability. For example, publication of addresses is recognised as a sensitive matter as it can lead to harassment.⁴

Consent

Private material can be used by the media if consent is given by the individual to whom the material relates. If consent is given, that individual has, in effect, waived their right to claim later that there has been a breach of his/her privacy.

An individual's right to privacy would not be waived if consent was obtained by deception, or if an agreement reached in relation to that use (such as a request for anonymity) was not respected. Consent must be informed, and can be express or implied.

What is the position with public figures?

The broadcast of information about public figures is subject to the above guidelines.⁵ If material relating to a public figure is not private material, there will be no intrusion into his/her privacy. If the material is private, the following guidelines are relevant.

While public figures necessarily subject themselves to scrutiny by virtue of their position in society, they do not forfeit their right to privacy altogether. The broadcast of private material about a public figure may be considered reasonable:

- if the person has actively drawn media attention to material that would usually be considered private, and can thus be held to have consented to its broadcast⁶
- if the private material raises questions about the person's fitness for office or capacity to carry out his or her public duties or activities, and is accordingly warranted in the public interest.

WHAT CONSTITUTES PUBLIC INTEREST?

The use of private material without consent may be warranted if there is an identifiable public interest in the material being broadcast.

Not all matters which interest the public are in the public interest. Whether something is of public interest will depend on the circumstances including, for example, whether a matter is capable of affecting the people at large so they might be legitimately interested in, or concerned about, what is going on, or what may happen to them or others.⁷

⁴ The ABA held that the public interest in telling a story which included other private information did not extend to the broadcast of an address. The ABA took the view that broadcast of a person's address 'should only occur where a strong public interest can be identified'.

⁵ The term 'public figure' here refers to people such as politicians, celebrities, and prominent sports or business figures. They can be distinguished from private citizens who are caught up in newsworthy events, such as accidents, natural disasters or other traumatic incidents. Special care needs to be taken to protect the privacy of private citizens in such circumstances.

⁶ However public figures are entitled to 'some space of privacy' in relation to private information which they have not put in the public domain. *Campbell v Mirror Group Newspapers Ltd* [2004]UKHL22.

⁷ Test applied by Lord Denning in *London Artists v Littler* (1969) 2 QB 375.

Examples of public interest matters which may justify an intrusion into an individual's privacy include but are not limited to:

- criminal matters
- public health or safety
- consumer affairs/protection
- matters of politics, government and public administration
- matters relating to the conduct of organisations, such as corporations, businesses and trade unions, which impact on the public
- seriously anti-social conduct which causes harm to others.

Public interest in a story as a whole may not justify use of particular material that intrudes on the privacy of an individual. The broadcast of such material must contribute to the public's knowledge and understanding of the issues involved in the overall subject.⁸

See appendix 1, Case Studies, for examples of how the ABA has applied the public interest test.

The media exemption in the Privacy Act

The National Privacy Principles regulate how organisations in the private sector handle personal information. The National Privacy Principles are contained in the *Privacy Act 1988* (Cwlth).

Section 7B(4) of the Privacy Act provides an exemption for 'acts and practices engaged in by media organisations in the course of journalism'. A media organisation is an organisation whose activities consist of the collection, preparation and dissemination of news, current affairs, information or documentaries.

A media organisation can claim the exemption if it is publicly committed to observing written standards 'which deal with privacy in the context of the activities of a media organisation.' Such standards can be published by the organisation itself or a representative body.

For many individual broadcasting organisations the privacy provisions in the broadcasting codes of practices serve the purposes of the media exemption in the Privacy Act. Some individual organisations have also developed their own standards relating to the handling of personal information in the course of journalism.⁹

In respect of their *non journalistic* activities, media organisations are subject to the National Privacy Principles and reference should be made to each media organisation's privacy policy. Generally speaking this will provide information on how the organisation handles personal information *outside of* its journalistic activities.

The position is broadly similar for the public broadcasters. As Australian Government agencies, SBS and the ABC are subject to the Information Privacy Principles in the Privacy

⁸ Test drawn from case law: *Allworth v John Fairfax Group Pty Ltd*, (1993) 113 FLR 254 at 263, *London Artists v Littler* (1969) 2 QB 375 at 391.

⁹ While ACMA assesses complaints against the relevant code provision, if a broadcaster has also developed separate journalism privacy standards of its own ACMA will also have regard to the content of those standards, where relevant, when considering specific complaints.

Act.¹⁰ SBS and ABC actions or practices in relation to ‘program material and datacasting content’ are exempt from adherence to the Information Privacy Principles.¹¹

¹⁰ The Information Privacy Principles regulate how Commonwealth and ACT government agencies handle personal information.

¹¹ This occurs through the combined effect of section 7(1)2 of the *Privacy Act 1988* and Division 1 of Part II of Schedule 2 to the *Freedom of Information Act 1982*.

APPENDIX 1

Case studies

CASE STUDY 1:

Invasion of privacy with no public interest reason for broadcasting the material (commercial television current affairs program)¹²

The material broadcast

The segment of the current affairs program concerned a woman who took other women into her care and performed ‘exorcisms’ on them in the belief that they had become victims of satanic abuse. It included footage of several ‘exorcisms’ and a number of interviews.

The part of the segment relevant to the issue of privacy involved footage of ‘exorcism’ rituals taking place inside the woman’s home. Most of the footage showed an unidentified woman (the complainant) screaming and shouting and being forcibly restrained by other women as an ‘exorcism’ is performed. The complainant, although not identified by name, was prominently featured in the footage and her face was clearly visible for a number of seconds on six separate occasions.

The ABA’s findings

The ABA agreed that there was an identifiable public interest reason for broadcasting the segment as a whole and the footage that was the subject of the complaint. However, the ABA found that there was no obvious public interest reason to disclose the complainant’s identity by showing her face (the complainant had contacted the licensee before the broadcast expressly requesting that her face not be shown).

The ABA concluded that the invasion of privacy was serious, having regard to the following combination of circumstances:

- the footage was filmed on private property and not in a public area
- the complainant was shown in an extremely personal and sensitive situation
- the complainant was not a public figure and did not willingly or knowingly put herself into the public domain, or place herself in a position to be the subject of public comment
- the sequences showing the complainant are numerous and prolonged and the complainant’s face was clearly visible during these sequences
- the visual identification of the complainant could have been avoided without the segment losing any coherence or meaning and
- it was broadcast against the express wishes of the complainant.

The ABA found that in broadcasting the material, the licensee had breached clause 4.3.5 of the Commercial Television Industry Code of Practice 1999.

¹² ABA investigation report no. 1471, May 2005

CASE STUDY 2:

Invasion of privacy and unfair identification of a person (commercial television current affairs program)¹³

The material broadcast

The segment of the current affairs program was concerned with the practice known as ‘chroming’ (inhaling aerosol spray from a plastic bag) and discussed its dangers and its popularity among teenagers.

The segment featured interviews with children who had been chroming, people who had been dealing with children who had engaged in the practice, and a mother and her daughter, the latter of whom used to chrome. The segment also featured numerous shots of teenagers, some in school uniform, chroming in a public park.

The faces of two young people who had been chroming (identified as ‘14 year old Crystal and 15 year old Steve’) and other young people chroming in the park were clearly visible.

The ABA’s findings

The ABA considered whether the privacy of the individuals who were chroming, and whose faces were shown, was invaded by the broadcast material. The ABA noted that the footage of young people chroming in a park was filmed openly and in a public place, and that activities that are conducted in a public place and in full view of the public are generally not considered to be private affairs or involve an individual’s privacy.

The ABA therefore found that the segment did not invade the privacy of the individuals shown.

However, the ABA noted that the faces of the two young people interviewed were clearly visible and it concluded that they were unfairly identified for the following reasons:

- they were minors (aged 14 and 15)
- they were substance-affected when they were interviewed
- before the segment went to air they had requested that their identities not be disclosed during the program
- identifying them was not necessary as their identities could have been withheld without the segment losing any coherence or meaning and
- their identities could have been easily hidden by ‘pixellating’ their faces and removing references to their names and ages.

The ABA therefore found that the broadcast breached clause 4.3.7 of the Commercial Television Industry Code of Practice 1999.¹⁴

¹³ ABA investigation report no. 1127, July 2002

¹⁴ Note that the revised Commercial Television Industry Code of Practice July 2004 includes provisions relating specifically to children: clause 4.3.5.1 and 4.3.5.2, and the section in the Advisory Note Privacy headed ‘Additional considerations when dealing with children’.

CASE STUDY 3:

Unjustified use of material obtained without consent, and broadcasting material that was an unwarranted and intrusive invasion of privacy (commercial radio current affairs (talkback) program)¹⁵

The material broadcast

A woman caller to the program discussed her husband who, she said, would be known to the presenter because they had been to school together. The caller then named her husband, who the presenter said he recognised.

The caller then provided more details about her husband's private life. She said that he was having an affair and that the presenter would know the mistress too. She then gave the full name of the woman (the complainant).

Over the next few minutes the caller gave more personal information about the complainant, including her marital status and the number of children she had. The presenter interjected with comments about the complainant, including: 'she's a tart' and 'taking your old man off you—that's shocking.' He finished the segment with the words: 'I always thought he was a good bloke and I always thought she was a good lady. Just shows how you can be fooled, eh?'

The ABA's findings

The Commercial Radio Code of Practice does not require a licensee to obtain consent from everyone whose name is mentioned on air. However, the ABA noted that the context for the use of the person's name in a broadcast is important.

The ABA said that most talkback presenters will 'dump' a caller if the caller appears likely to stray into unacceptable terrain, but in this case the presenter had actively encouraged the caller to name the complainant, and then continued to encourage the disclosure of information about the complainant and the complainant's family.

The ABA found that:

- the material naming the complainant and alleging that she was 'the mistress' of the caller's husband and was 'playing up with him', was an invasion of the complainant's privacy, and
- the broadcast of information about the complainant's family, without consent, was an invasion of the complainant's privacy.

The ABA therefore found that in broadcasting the material the licensee breached clause 2.2(e) of the Commercial Radio Code of Practice.

¹⁵ ABA investigation report no. 1254, May 2003

APPENDIX 2

Privacy provisions in the major broadcasting codes of practice

Commercial Television Industry Code of Practice, July 2004

Section 4: News and Current Affairs Programs

Objectives:

- 4.1 This section is intended to ensure that:
 - 4.1.1 news and current affairs programs are presented accurately and fairly;
 - 4.1.2 news and current affairs programs are presented with care, having regard to the likely composition of the viewing audience and, in particular, the presence of children;
 - 4.1.3 news and current affairs take account of personal privacy and of cultural differences in the community;
 - 4.1.4 news is presented impartially.
- 4.3 In broadcasting news and current affairs programs, licensees:
 - 4.3.3 should have appropriate regard to the feelings of relatives and viewers when including images of dead or seriously wounded people. Images of that kind which may seriously distress or seriously offend a substantial number of viewers should be displayed only when there is an identifiable public interest reason for doing so;
 - 4.3.5 must not use material relating to a person's personal or private affairs, or which invades an individual's privacy, other than where there is an identifiable public interest reason for the material to be broadcast;
 - 4.3.5.1 for the purpose of this Clause 4.3.5, licensees must exercise special care before using material relating to a child's personal or private affairs in the broadcast of a report of a sensitive matter concerning the child. The consent of a parent or guardian should be obtained before naming or visually identifying a child in a report on a criminal matter involving a child or a member of a child's immediate family, or a report which discloses sensitive information concerning the health or welfare of a child, unless there are exceptional circumstances or an identifiable public interest reason not to do so;
 - 4.3.5.2 **'child'** means a person under 16 years.
 - 4.3.6 must exercise sensitivity in broadcasting images of or interviews with bereaved relatives and survivors or witnesses of traumatic incidents;
 - 4.3.7 should avoid unfairly identifying a single person or business when commenting on the behaviour of a group of persons or businesses;
 - 4.3.7.1 when commenting on the behaviour of a group of persons or businesses, it is not unfair to correctly identify an individual person or business as part of that group if;
 - 4.3.7.1.1 the licensee can be reasonably satisfied that the individual person or business engages in that behaviour; or

- 4.3.7.1.2 the licensee discloses that the individual person or business does not engage in that behaviour.
- 4.3.8 must take all reasonable steps to ensure that murder or accident victims are not identified directly or, where practicable, indirectly before their immediate families are notified by the authorities;
- 4.3.9 should broadcast reports of suicide or attempted suicide only where there is an identifiable public interest reason to do so, and should exclude any detailed description of the method used. The report must be straightforward and must not include graphic details or images, or glamourise suicide in any way;

See also 'Advisory Note Privacy' at appendix 3.

Commercial Radio Australia Codes of Practice & Guidelines, 23 September 2004

2. News And Current Affairs Programs

2.1 News programs (including news flashes) broadcast by a licensee must:

- (d) not use material relating to a person's personal or private affairs, or which invades an individual's privacy, unless there is a public interest in broadcasting such information.

2.2 In the preparation and presentation of current affairs programs, a licensee must ensure that:

- (e) respect is given to each person's legitimate right to protection from unjustified use of material which is obtained without an individual's consent or other unwarranted and intrusive invasions of privacy.

6. Interviews And Talkback Programs

Purpose

The purpose of this Code is to prevent the unauthorised broadcast of statements by identifiable persons.

6.1 A licensee must not broadcast the words of an identifiable person unless:

- (a) that person has been informed in advance or a reasonable person would be aware that the words may be broadcast; or
- (b) in the case of words which have been recorded without the knowledge of the person, that person has subsequently, but prior to the broadcast, expressed consent to the broadcast of the words.

ABC Code of Practice 2004 (television and radio)

2. General Program Codes

2.5 **Privacy.** The rights of individuals to privacy should be respected in all programs. However, in order to provide information which relates to a person's performance of public duties or about other matters of public interest, intrusions upon privacy may, in some circumstances, be justified.

4. News, Current Affairs and Information Programs

4.6 If reported at all, suicides will be reported in moderate terms and will usually avoid details of method.

4.7 Sensitivity will be exercised in broadcasting images of or interviews with bereaved relatives and survivors or witnesses of traumatic incidents.

ABC Editorial Policies – August 2002

5.1 The Charter of Editorial Practice

(7) Editorial staff will respect legitimate rights to privacy of people featuring in the news.

6. News and Current affairs and information programs comprising both news and information relating to current events

6.4 Interviews

6.4.1 Commonwealth legislation makes it unlawful for anyone to record telephone conversations without the prior consent of the person or persons who are to be recorded. State legislation generally prohibits using a listening device to eavesdrop on private conversations otherwise than by phone. The penalties for illegal recording are severe and include substantial fines and terms of imprisonment. Anyone wishing to record a conversation must first obtain permission of all the parties **before** beginning the recording.

6.4.2 There are rare circumstances in some States in which recordings of private conversations obtained without permission may be justified in the public interest. Circumstances should be checked with Legal Services before proceeding.

6.4.3 In situations such as media conferences, vox pops and other public situations, express permission is not necessary as the intention to record is obvious to all parties and permission can be taken for granted. These situations do not constitute 'private' conversations secretly recorded.

6.9 Hidden cameras

6.9.1 Except in special circumstances the ABC does not use hidden cameras. If hidden cameras are used program makers are not to be subject to undue risk. Any material obtained through the use by the ABC of a hidden camera may not be broadcast without the approval of the Managing Director having regard to editorial principles and on the advice of the relevant divisional Director.

6.9.2 Legal Services must be consulted before using hidden cameras to record or observe a private activity.

6.9.3 It should be noted that the Western Australian and Victorian Parliaments have introduced legislation regulating the use of cameras to record or observe a private activity.

6.9.4 Private activity is defined to mean an activity that is carried on in circumstances that may be taken to indicate that any of the parties to it desire it to be observed only by themselves but does not include an activity carried on in any circumstances in which the parties to it ought reasonably to expect that it may be observed by someone else.

10 Program Standards

10.9 Privacy

- 10.9.1.1** The rights to privacy of individuals including innocent third parties (for example, relatives of those convicted of crimes) should be respected in all ABC programs. However, as the public also has a right to information about public figures relevant to their public duties, intrusions upon privacy may, in some circumstances, be justified. Investigative programs are often concerned with activities or individuals which have an impact on other people. This may justify methods which could otherwise be seen as breaches of privacy.
- 10.9.1.2** The ABC is committed to protecting the privacy of users of ABC Online. Program makers publishing online should be familiar with the ABC's privacy policy, available at <http://abc.net.au/privacy.htm>. This covers the collection, use and disclosure of personal information as well as providing advice to users about how to protect their privacy while interacting with ABC Online.

10.10 Intrusion into Grief

- 10.10.1** The public is sensitive to the coverage of distressed survivors, witnesses or bereaved relatives of victims of attacks, murders, suicides, accidents and disasters. Many see this as a violation of people's privacy at a time when they are most vulnerable.
- 10.10.2** In the initial stages of bereavement or immediately after trauma, people may be in shock and may not be able to make rational choices about being interviewed or judgments about what they are saying. Great sensitivity should be exercised in deciding whether there is a public interest in seeking comments. The people concerned should not be pursued unduly for interviews.
- 10.10.3** Except in special circumstances, children who have recently been victims of, or eyewitnesses to, a tragedy or traumatic experience should not be interviewed or featured.
- 10.10.4** Reactions of relatives when being informed of the death of a family member should not be recorded or used.
- 10.10.5** Except in special circumstances funerals should not be covered if the family has made it clear that the media are unwelcome. Where the funeral is of a public figure, shared coverage by pooling resources with other networks reduces the intrusiveness of several crews. Liaison with police is advisable in circumstances where the funeral is expected to attract wide attention.
- 10.10.6** There is a particular need for care and sensitivity when reporting deaths. Police restrictions on the reporting of deaths should be observed. In all cases, great care must be taken in verifying details of deaths and the ABC must be sensitive to the distress that may be caused if a family learn of the death from the media.
- 10.10.7** Sometimes the successful resolution of a person's grief can be hampered by the repetition of pictures and details of the scene of the tragedy which affected him or her. Stock footage of disasters is often used when following up stories, or when similar events occur. The choice and repetition of recognisable images should be made with consideration for the feelings of victims and relatives who may be viewing.

SBS Codes of Practice

2 General Program Codes and Policies

2.6 Interviews, Talkback and Audience Responses

SBS will not transmit the words of an identifiable person unless:

- that person has been informed in advance that the words may be transmitted; or
- in the case of words which have been recorded without the knowledge of the person, the person has subsequently, but prior to transmission indicated consent to the transmission; or
- the manner of the recording has made it manifestly clear that the material may be broadcast.

2.7 Privacy

The rights of individuals to privacy should be respected in all SBS programs. However, in order to provide information that relates to a person's performance of public duties or about other matters of public interest, intrusions upon privacy may, in some circumstances, be justified.

Subscription Television Broadcasting Codes of Practice, July 2003

2.2 News and Current Affairs Programs

- (b) In broadcasting news and current affairs programs to the extent practicable licensees:
 - (iii) must display sensitivity in broadcasting images of, or interviews with, bereaved relatives and survivors or witnesses of traumatic incidents.
- (c) In broadcasting news and current affairs programs licensees must not use material relating to a person's personal or private affairs, or which invades an individual's privacy, other than where there are identifiable public interest reasons for the material to be broadcast.

Note: The question of intrusion into private domains, such as bereavement or personal tragedy, is one of real difficulty for all providers of news and current affairs programs. It is a matter of balance between what should be reported in the interests of the general public and what, if reported, would cause an individual or group of individuals unnecessary anguish.

Community Broadcasting Code of Practice 2002

2.5 Community broadcasting licensees in observance of privacy laws will:

- (a) respect each person's legitimate right to protection from unjustified use of material, which is obtained without an individual's consent, or other unwarranted and intrusive invasions of privacy;
- (b) not broadcast the words of an identifiable person unless:
 - (i) that person has been informed in advance that the words may be transmitted; or
 - (ii) in the case of words which have been recorded without the knowledge of the person, the person has subsequently, but prior to the transmission, indicated consent to the transmission of the words; or
 - (iii) the manner of the recording has made it manifestly clear that the material may be broadcast.

APPENDIX 3

ADVISORY NOTE: PRIVACY¹⁶

The media in Australia have a unique and important role in keeping the Australian public informed. In performing this important role, a balance must be struck between the public's 'right to know' and respect for individual privacy.

The Code of Practice requires stations to strike this balance by only using material relating to a person's personal or private affairs, or which invades an individual's privacy, where there is an identifiable public interest reason for the material to be broadcast.

The Code has additional requirements to cover specific circumstances, and there is a range of other laws that provide legal protection for privacy.

This Advisory Note is intended to help reporters, editors and producers to understand the context in which decisions relating to privacy issues must be made. Specific legal advice should be sought wherever necessary to ensure legal requirements are observed.

Codes

Code of practice

The key requirement of the code of practice concerning use of material relating to a person's personal or private affairs is contained in clause 4.3.5:

- stations must not use material relating to a person's personal or private affairs, or which invades an individual's privacy, other than where there is an identifiable public interest reason for the material to be broadcast.

The broadcast of material relating to a person's personal or private affairs may be warranted where the broader public interest is served by the disclosure of the material. When making this judgment stations need to consider the public interest in the broadcast of the particular material. Public interest in a story as a whole, may not justify use of particular material that intrudes on the privacy of an individual.

Particular care should be taken in relation to people in vulnerable circumstances. Provisions of the code which relate directly to privacy considerations in such circumstances are:

Images of dead or seriously wounded people

- clause 4.3.3: stations should have appropriate regard to the feelings of relatives and viewers when including images of dead or seriously wounded people. Images of that kind which may seriously distress or seriously offend a substantial number of viewers should be displayed only when there is an identifiable public interest reason for doing so;

Bereaved relatives/survivors

- clause 4.3.6: stations must exercise sensitivity in broadcasting images of or interviews with bereaved relatives and survivors or witnesses of traumatic incidents;

Identification of individuals

- clause 4.3.7: stations should avoid unfairly identifying a single person or business when commenting on the behaviour of a group of persons or businesses;

¹⁶ Advisory Note to the Commercial Television Industry Code of Practice, July 2004

- 4.3.7.1: when commenting on the behaviour of a group of persons or businesses, it is not unfair to correctly identify an individual person or business as part of that group if;
- 4.3.7.1.1 the licensee can be reasonably satisfied that the individual person or business engages in that behaviour; or
- 4.3.7.1.2 the licensee discloses that the individual person or business does not engage in that behaviour.

Murder and accident victims

- clause 4.3.8: stations must take all reasonable steps to ensure that murder and accident victims are not identified directly or, where practicable, indirectly before their immediate families are notified by the authorities;

Suicide

- clause 4.3.9: stations should broadcast reports of suicide or attempted suicide only where there is an identifiable public interest reason to do so, and should exclude any detailed description of the method used. The report must be straightforward and must not include graphic details or images, or glamourise suicide in any way;

Standards for the Handling of Personal Information

Journalists should observe standards for handling of personal information required by their station.

Code of Ethics of the Australian Journalists' Association Section of the Media Entertainment and Arts Alliance

The current Journalists' Code of Ethics contains a number of provisions relating to privacy. These provisions are binding on journalists who are members of the MEAA.

Legal framework

Common Law

While there is no common law right to privacy as such, the following areas of common law nevertheless operate to protect privacy and restrict the obtaining and publication of information:

- trespass
- nuisance
- confidential information
- defamation
- malicious falsehood
- contempt.

In the event of any doubt in relation to any of these matters, legal advice should be sought.

Reporters, editors and producers should seek legal advice wherever necessary to ensure these legal protections and restrictions are observed.

Legislation

The following Commonwealth and State Acts govern access to people, or the publication of information relating to individual privacy. This list is intended to provide reporters, editors and producers with an idea of the range of legislation in this field. It may not be exhaustive and specific legal advice should be sought where appropriate.

- **Legislation protecting use of ‘personal information’** – *Privacy Act 1988* (Cwlth); *Privacy and Personal Information Protection Act 1998* (NSW); *Information Privacy Act 2000* (Vic)
- **Criminal trespass legislation** – *Public Order (Protection of Persons and Property) Act 1971* (Cwlth); *Inclosed Lands Protection Act 1901* (NSW); *Trespass Act 1987* (NT); *Invasion of Privacy Act 1971* (Qld); *Summary Offences Act 1953* (SA); *Police Offences Act 1935* (Tas); *Summary Offences Act 1966* (Vic)
- **Legislative restrictions on the reporting of matters affecting or involving children** – *Family Law Act 1975* (Cwlth), s.121; *Children and Young Persons (Care and Protection) Act 1988* (NSW); *Children and Young People’s Act 1999* (ACT); *Youth Court Act 1993* (SA); *Guardianship and Administration Act 1986* (Vic); *Children (Care and Protection) Act 1987* (NSW); *Children (Criminal Proceedings) Act 1987* (NSW); *Guardianship Act 1987* (NSW); *Mental Health Act 1990* (NSW); *Juvenile Justice Act 1983* (NT); *Child Protection Act 1999* (Qld); *Children’s Court Act 1992* (Qld); *Juvenile Justice Act 1992* (Qld); *Children’s Protection Act 1993* (SA); *Mental Health Act 1993* (SA); *Child Welfare Act 1960* (Tas); *Children and Young Persons Act 1989* (Vic); *Crimes (Family Violence) Act 1987* (Vic); *Victorian Civil and Administrative Tribunal Act 1998* (Vic); *Children’s Court of Western Australia Act 1988* (WA); *Criminal Code* (WA), s.635A
- **Legislative restrictions on the reporting of matters affecting or involving adoptions** – *Adoption Act 1993* (ACT); *Adoption Act 2000* (NSW); *Adoption of Children Act 1994* (NT); **Adoption of Children Act 1964** (Qld); *Adoption Act 1988* (SA); *Adoption Act 1988* (Tas); *Adoption Act 1984* (Vic); *Adoption Act 1994* (WA)
- **Legislative restrictions on the reporting of matters affecting or involving coronial inquiries** – *Evidence Act 1971* (ACT); *Coroners Act 1980* (NSW); *Coroners Act 1993* (NT); *Evidence Act 1939* (NT); *Coroners Act 1958* (Qld); *Coroners Act 1985* (Vic); *Coroners Act 1996* (WA)
- **Legislative restrictions on the reporting of matters affecting or involving sexual offences** – *Evidence Act 1971* (ACT); *Crimes Act 1900* (NSW); *Evidence Act 1939* (NT); *Criminal Law (Sexual Offences) Act 1978* (Qld); *Evidence Act 1929* (SA); *Summary Offences Act 1953* (SA); *Evidence Act 2001* (Tas); *Judicial Proceedings Reports Act 1958* (Vic); *Supreme Court Act 1986* (Vic); *County Court Act 1958* (Vic); *Magistrates Court Act 1989* (Vic); *Evidence Act 1906* (WA)
- **Legislative restrictions on the reporting of matters affecting or involving jurors** – *Jury Act 1977* (NSW); *Juries Act 2000* (Vic); *Juries Act 1957* (WA); *Juries Act 1967* (ACT); *Juries Act* (NT); *Juries Act 1995* (Qld)
- **Legislative restrictions on the reporting of matters affecting or involving communication with prisoners and other detained persons** – *Correctional Centres Act 1952* (NSW); *Children (Detention Centres) Act 1987* (NSW); *Prisons (Correctional Services) Act 1980* (NT); *Corrective Services Act 2000* (Qld); *Juvenile Justice Act 1992* (Qld); *Correctional Services Act 1982* (SA); *Child Welfare Act 1960* (Tas); *Corrections Act 1986* (Vic); *Children and Young Persons Act 1989* (Vic); *Prisons Act 1981* (WA); *Child Welfare Act 1947* (WA)
- **Anti-discrimination and vilification legislation** – *Racial Discrimination Act 1975* (Cwlth) and equivalent legislation in each State and Territory

- **Specific statutory provisions empowering courts and tribunals to make suppression orders prohibiting or restricting reporting of court proceedings**
- **Specific provisions which restrict the reporting of particular events or matters**, for example, *Australian Security Intelligence Organisation Act 1979*, s.92(1), *Crimes Act 1914* (Cwlth), ss. 3, 79 and 80, *Independent Commission Against Corruption Act 1988* (NSW), ss. 31 and 112
- **Listening devices/telecommunications interception legislation** – *Listening Devices Act 1984* (NSW); *Invasion of Privacy Act 1971* (Qld); *Surveillance Devices Act 1999* (Vic); *Surveillance Devices Act 1991* (WA); *Listening Devices Act 1972* (SA); *Listening Devices Act 1991* (Tas); *Listening Devices Act 1992* (ACT); *Telecommunications (Interception) Act 1979* (Cwlth); *Surveillance Devices Act 2000* (NT)
- **Family law legislation** – *Family Law Act 1975* (Cwlth).

Additional considerations when dealing with children

It is important that children have opportunities to participate actively in the media. Many children want to have their say and the way children view an issue or situation can provide valuable insights into, and bring public attention to, issues affecting children. Indeed, in many circumstances, part of a story could be lost or distorted if children are not interviewed.

The requirements of the codes legal framework set out above apply equally, and in some cases specifically, to children.

In addition, clause 4.3.5.1 of the code requires, that for the purposes of clause 4.3.5 (the key requirement of the code concerning use of material relating to a person's personal or private affairs), licensees must:

- 4.3.5.1 ... exercise special care before using material relating to a child's personal or private affairs in the broadcast of a report of a sensitive matter concerning the child. The consent of a parent or guardian should be obtained before naming or visually identifying a child in a report on a criminal matter involving a child or a member of a child's immediate family, or a report which discloses sensitive information concerning the health or welfare of a child, unless there are exceptional circumstances or an identifiable public interest reason not to do so;
- 4.3.5.2 'child' means a person under 16 years.

Journalists are encouraged to be aware of the requirements relating to their area of reporting and to seek legal advice where appropriate. Children should not be identified in crime or court reports without legal advice.

In addition to abiding by legal restrictions, journalists should be mindful that children often lack the experience and knowledge of adults and may feel intimidated by media attention.