

ADVISORY NOTE

PRIVACY

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.

Commercial Television Industry 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 3.5.1:

In broadcasting a news Program or Current Affairs Program, a Licensee must not broadcast material relating to a person's personal or private affairs or which invades a person's privacy, unless:

- a) there is a public interest reason for the material to be broadcast; or*
- b) the person has provided implicit or explicit consent for the material to be broadcast (or in the case of a person under 16, a parent or guardian has given implicit or explicit consent).*

Complaints under this section may only be made by a person affected, or their representative.

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.

Further guidance on these issues is provided by the ACMA's *Privacy Guidelines for Broadcasters*¹.

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.

Clause 3.5.2 of the Code requires, that for the purposes of clause 3.5.1 (the key requirement of the Code concerning use of material relating to a person's personal or private affairs), licensees must:

...exercise special care before broadcasting material relating to a child's personal or private affairs in a report of a sensitive matter concerning the child.

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.

¹ The ACMA's Privacy Guidelines can be found at <http://www.acma.gov.au>

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.

Additional Considerations - General

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

Images of dead or seriously wounded people

- Clause 3.2.1(e): have regard to the feelings of relatives and viewers when including images of dead bodies or people who are seriously wounded, taking into account the relevant public interest;

Bereaved relatives/survivors

- Clause 3.2.1(d): exercise sensitivity in broadcasting images of or interviews with bereaved relatives or people who have witnessed or survived a traumatic incident;

Suicide

- Clause 3.2.1(c): not broadcast reports of suicide or attempted suicide unless there is a public interest reason to do so, and exclude any detailed description of the method used, and exclude graphic details or images;

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 (Cth); Privacy and Personal Information Protection Act 1998 (NSW); Information Privacy Act 2000 (Vic); Information Privacy Act 2009 (Qld); Premier and Cabinet Circular No 12 (SA); Personal Information Protection Act 2004 (Tas); Information Act 2002 (NT).*
- **Criminal trespass legislation** – *Public Order (Protection of Persons and Property) Act 1971 (Cth); 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 (Cth), s.121; Children and Young Persons (Care and Protection) Act 1998 (NSW); Children and Young People Act 2008 (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 2007 (NSW); Youth Justice Act 2005 (NT); Child Protection Act 1999 (Qld); Children’s Court Act 1992 (Qld); Youth Justice Act 1992 (Qld); Children’s Protection Act 1993 (SA); Mental Health Act 2009 (SA); Youth Justice Act 1997 (Tas); Magistrates Court (Children’s Division) Act 1998 (Tas); Children, Young Persons and Their Families Act 1997 (Tas); Children, Youth and Families Act 2005 (Vic); Family Violence Protection Act 2008 (Vic); Victorian Civil and Administrative Tribunal Act 1998 (Vic); Children’s Court of Western Australia Act 1988 (WA); Criminal Procedure Act 2004 (WA); Young Offenders Act 1993 (SA); Domestic and Family Violence Protection Act 2012 (Qld); Evidence Act 1977 (Qld), Queensland Civil and Administrative Tribunal Act 2009 (Qld)*
- **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 Act 2009 (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** – *Coroners Act 1997 (ACT); Coroners Regulations 1994 (ACT); Coroners Act 2009 (NSW); Coroners Regulation 2010 (NSW); Coroners Act (NT); Coroners Regulations (NT); Coroners Act 2003 (Qld); Coroners Act 2008 (Vic); Coroners Regulations 2009 (Vic); Coroners Court Rules 2009 (Vic); Coroners Act 1996 (WA); Coroners Regulation 1997 (WA); Coroners Act 2003 (SA); Coroners Regulations 2005 (SA); Coroners Act 1995 (Tas); Coroners Rules 2006 (Tas)*
- **Legislative restrictions on the reporting of matters affecting or involving sexual offences** – *Evidence (Miscellaneous Provisions) Act 1991 (ACT); Crimes Act 1900 (NSW); Children (Criminal Proceedings) Act 1987 (NSW); Sexual Offences (Evidence and Procedure) Act (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 mental health proceedings** - *Mental Health Act 2007 (NSW); Mental Health (Forensic Provisions) Act 1990 (NSW); Mental Health Act 2000 (Qld); Mental Health Act 1996 (Tas); Criminal Justice (Mental Impairment) Act 1999 (Tas); Mental Health Act 1986 (Vic); Sentencing Act 1991 (Vic); Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (Vic); Mental Health Act 1996 (WA); Criminal Law (Mentally Impaired Accused) Act 1996 (WA); Mental Health Act 2009 (SA); Criminal Law Consolidation Act 1935 (SA); Mental Health & Related Services Act 1998 (NT); Criminal Code Act (NT); Mental Health (Treatment & Care) Act 1994 (ACT); Crimes Act 1900 (ACT); Crimes Act 1914 (Cth)*
- **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)*

Legislation (continued)

- **Legislative restrictions on the reporting of matters affecting or involving communication with prisoners and other detained persons** – *Summary Offences Act 1987 (NSW); Children (Detention Centres) Act 1987 (NSW); Correctional Services Act 2014 (NT); Youth Justice Act 2005 (NT); Corrective Services Act 2000 (Qld); Youth Justice Act 1992 (Qld); Correctional Services Act 1982 (SA); Correctional Services Regulations 2001 (SA); Family and Community Services Act 1972 (SA); Corrections Act 1997 (Tas); Youth Justice Act 1997 (Tas); Corrections Act 1986 (Vic); Children, Youth and Families Act 2005 (Vic); Prisons Act 1981 (WA); Young Offenders Act 1994 (WA)*
- **Legislative restrictions on the reporting of matters relating to Apprehended Violence Orders or Apprehended Domestic Violence Orders** - *Crimes (Domestic and Personal Violence) Act 2007 (NSW); Family Violence Protection Act 2008 (Vic); Domestic and family Violence Protection Act 2012 (Qld); Domestic and Family Violence Protection Regulation 2012 (Cth); Domestic and Family Violence Act 2007 (NT); Family Court Act 1997 (WA); Restraining Orders Act 1997 (WA); Family Violence Act 2004 (Tas); Domestic Violence and Protection Orders Act 2008 (ACT)*
- **Legislative restrictions on the reporting of health information** - *Personally Controlled Electronic Health Records Act 2012 (Cth); Healthcare Identifiers Act 2010 (Cth); Health Records and Information Privacy Act 2002 (NSW); Health Administration Act 1982 (NSW); Public Health Act 2010 (NSW); Information Privacy Act 2009 (Qld); Health Records Act 2001 (Vic); Health Records (Privacy and Access) Act 1997 (ACT); Information Act (NT); Public Health Act 1997 (Tas)*
- **Anti-discrimination and vilification legislation** – *Racial Discrimination Act 1975 (Cth) 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), s 35P, Crimes Act 1914 (Cth), ss 3, 79 and 80, Independent Commission Against Corruption Act 1988 (NSW), ss 31 and 112; Australian Border Force Act 2015 (Cth), s 42; Terrorism (Police Powers) Act 2002 (NSW), ss 26P, 26(3) and 26(4) (and other similar state and territory legislation); National Security Information (Criminal and Civil Proceedings Act 2004 (Cth), ss 29 and 38I, Crimes (Child Sex Offenders) Act 2005 (ACT)*
- **Listening devices/telecommunications interception legislation** – *Surveillance Devices Act 2007 (NSW); Invasion of Privacy Act 1971 (QLD); Surveillance Devices Act 1999 (VIC); Surveillance Devices Act 1998 (WA); Listening and Surveillance Devices Act 1972 (SA); Listening Devices Act 1991 (TAS); Listening Devices Act 1992 (ACT); Telecommunications (Interception and Access) Act 1979 (Cth); Telecommunications Act 1997 (Cth); Surveillance Devices Act 2004 (Cth); Surveillance Devices Act 2007 (NT); Surveillance Devices (Workplace Privacy) Act 2006 (Vic); Workplace Privacy Act 2011 (ACT).*
- **Family law legislation** – *Family Law Act 1975 (Cth).*