



**Submission by
Free TV Australia**

Standing Committee on Law and Justice

*Inquiry into remedies for the serious
invasion of privacy in New South Wales*

21 September 2015

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EXECUTIVE SUMMARY

- Free TV does not support a statutory cause of action for serious invasions of privacy for the reasons identified below.
- A statutory cause of action is unnecessary as there is no identified gap in the existing privacy law framework. The current framework of legislative, common law and regulatory protections is extensive, effective in protecting individuals and is operating well.
- There is no demonstrated need for such a cause of action to be introduced. The number of privacy complaints in respect of commercial free-to-air television broadcasters is very low and declining.
- While there are no identifiable benefits to be achieved from introducing such a statutory cause of action, there are a number of serious risks. A statutory cause of action for serious invasions of privacy would:
 - lead to increased and undue complexity and uncertainty of privacy laws;
 - potentially lead to a range of unintended consequences for individuals in an evolving technological and social context and have a stifling effect on innovation; and
 - place an unjustified regulatory burden on Free TV members, including exposure to complex and costly litigation.
- The current evolving technological and social context makes it extremely difficult, from a public policy perspective, to codify what should constitute a serious invasion of privacy.
- Existing remedies for serious invasions of privacy, including breach of confidence, are adequate. The development of the equitable action of breach of confidence and the awarding of damages for emotional distress in appropriate cases, should be left to develop at common law.

Introduction

Free TV Australia (**Free TV**) is the peak industry body representing Australia's commercial free-to-air television broadcasting licensees. Free TV Australia welcomes the opportunity to respond to the Legislative Council's inquiry conducted by the Law and Justice Committee, *'Remedies for the serious invasion of privacy in New South Wales'*.

We note that the arguments outlined in this submission are substantially similar to those made to the Australian Law Reform Commission's inquiry *'Serious invasions of privacy in the digital era'* and the South Australia Law Reform Institute's inquiry, *'Too much information – A statutory cause of action for serious invasion of privacy'*.

Free TV is opposed to a statutory cause of action for privacy. The existing privacy law framework is extensive and already imposes a significant regulatory burden on broadcasters. There is no demonstrated gap in the existing framework, and no evidence of any problem that justifies the introduction of a statutory cause of action.

While it is hard to see what if any benefit a statutory cause of action would provide, there are serious risks with introducing such a cause of action. The free flow of information through the media is fundamentally important, not only to Free TV members, but to a free and open society.

Free TV is concerned that if a right to protect individuals' expectation of privacy is codified through the introduction of a statutory cause of action for serious invasion of privacy, the net effect will be that undue weight will be placed on privacy at the expense of other important rights and freedoms, including the freedom of speech. In the context of the current regulatory framework, the introduction of a statutory cause of action would simply encroach upon freedom of speech, to a greater or lesser degree, depending on how it is framed.

Additionally, the introduction of an additional layer of regulation in the area of privacy law is contrary to good regulatory practice, and would have the effect of increasing regulatory costs for broadcasters, in an area of law where there is already an excessive amount of regulation, and in circumstances where there is no evidence of any problem, or of any benefit to the community.

Should a Statutory Cause of Action be introduced?

As stated above, Free TV is opposed to a statutory cause of action. Free TV remains of the view that there is no public policy or evidential basis for the introduction of a statutory cause of action.

1. Current protections are extensive

Free TV recognises that it is fundamentally important to strike an appropriate balance between the public's 'right to know' and respect for individual privacy. The existing privacy regime applicable to broadcasters provides a strong level of privacy protection for individuals.

Free TV members are subject to a comprehensive set of privacy laws, some of which apply to organisations generally, some of which place specific limits on how broadcasters specifically can use material relating to a person's personal or private affairs, and some of which is contained in legislation regulating a diverse range of areas

of law, across a range of jurisdictions, and often not in a consistent or easily decipherable manner. These laws include Commonwealth legislation, State legislation, the common law, as well as industry codes of practice, including in particular, the Commercial Television Industry Code of Practice (“**the Code**”), and the ACMA’s Privacy Guidelines for broadcasters (“**the Guidelines**”) (which supplement the Code). An extract from the current Code, summarising the privacy law framework applicable to broadcasters, is contained in Appendix A.

The Code strikes the balance between the public’s ‘right to know’ and respect for individual privacy by prohibiting the broadcast of material which relates to a person’s personal or private affairs, or which invades an individual’s privacy, unless there is an identifiable public interest reason for the material to be broadcast (clause 4.3.5).

The Guidelines supplement the Code and provide further and more specific guidance to broadcasters in relation to their privacy obligations under the Code. The Guidelines deal with issues such as:

- the distinction between public and private conduct;
- the treatment of publicly available personal information;
- intrusion upon seclusion;
- consent;
- the position with respect to public figures; and
- when the public interest may be served by disclosure of material.¹

The Code, together with the Guidelines, place a number of specific privacy related restrictions and requirements on broadcasters. For example, the Code prevents broadcasters from unfairly identifying a single person or business when commenting on the behaviour of a group of persons or businesses (clause 4.3.7).

The Code provides that particular care should be taken in relation to the privacy of persons in vulnerable circumstances (see clauses 4.3.3 - 4.3.9). The Guidelines also make clear that the ACMA takes a broad view of persons who may be considered to be vulnerable, and provides that:

“A person’s vulnerability may be intrinsic (for example, where a person has a mental illness or difficulty communicating in English) or it may be situational (for example, where a person is bereaved or has been involved in a distressing event).”²

The Guidelines also make clear that the ACMA will take a broad view of what constitutes intrusion upon seclusion.³

The process for making complaints to the ACMA in relation to breaches of the Code and the Guidelines is thorough, free for complainants and can lead to serious consequences for broadcasters, including significant financial penalties, and

¹ ACMA, *Privacy guidelines for broadcasters*, December 2011. The Guidelines are available on the ACMA website at:

http://www.acma.gov.au/webwr/_assets/main/lib100084/privacy_guidelines-dec2011.pdf

² ACMA, *Privacy Guidelines for Broadcasters*, at 4-5.

³ ACMA, *Privacy guidelines for broadcasters*, December 2011, at 4. The Guidelines provide, amongst other things, that intrusion upon seclusion may include everyday activities; can occur in public spaces; and sexual activities will usually be included.

suspension or cancellation of the relevant broadcasting licence. The process is detailed further in the Guidelines and on the ACMA website.⁴

The Code is subject to review every three years. In accordance with s 123 of the *Broadcasting Services Act 1992*, the Code cannot be registered unless:

- The Code provides appropriate safeguards for the matters it covers; and
- There has been adequate public consultation on the Code.

A review of the Code is underway and that review will specifically consider privacy issues and the ethical standards of broadcasters, in the context of ensuring that adequate measures are in place, via the Code, to protect the public against what are considered to be unreasonable privacy intrusions.⁵

This dense regulatory framework is a significant regulatory burden on broadcasters. However, while being complex and arduous for Free TV members to monitor and implement on a continual basis, is very effective in ensuring that the privacy rights of individuals are protected. The vast amount of legislation discussed above is a sufficient basis to protect an individual's privacy and further legislation is unnecessary.

2. There is no demonstrated need

Free TV agrees with the views of the NSWLRC in its Consultation Paper No 1 *Invasion of Privacy*, May 2007, that:

'An argument for the introduction of a statutory cause of action for invasions of privacy... must be based on the inadequacy of the protection currently afforded privacy by statute and common law'.

No such inadequacy has been demonstrated. The current privacy framework is extensive and provides strong protection for individuals while at the same time ensuring that freedom of expression is not unnecessarily curtailed.

In the context of the existing extensive regulatory framework, an additional statutory cause of action will only serve to impose additional regulatory obligations on broadcasters. It will act as an unnecessary impediment to broadcasters' business practices, contrary to principles of good regulatory practice and evidence-based policy making. It will encourage individuals to pursue litigation, with the main goal being personal financial benefit, in circumstances where there are already both criminal and civil avenues for redress available (NB we discuss the adequacy of existing remedies further below). It is also noteworthy that a statutory cause of action such as the one proposed will only benefit the small number of plaintiffs that can access sufficient funds to resource such litigation, which is likely to be lengthy and expensive.

3. Serious invasions of privacy are infrequent

Free TV's views above that (1) the existing framework provides strong privacy protection to individuals and (2) that no gap in the existing legislative framework has been demonstrated, is further supported by the statistical evidence available to Free TV.

⁴ ACMA, *Privacy guidelines for broadcasters*, December 2011, Figure 1 *Steps to determining a breach of the code privacy provisions*, at 3. Information about how to make complaints is available on the ACMA website at: <http://www.acma.gov.au/theACMA/About/The-ACMA-story/Regulating/how-to-make-a-report-or-complaint>

⁵ ACMA, *Contemporary Community Safeguards Inquiry*, Issues Paper, June 2013, at 53-57.

In Free TV's 2011 submission to the Department of the Prime Minister and Cabinet, our submission indicated that its figures showed that from 2006 - 2011; privacy complaints represented just 3.3% of complaints overall received by broadcasters.

Since 2011, not only have these figures further declined, but they have done so by a substantial amount:

- From 2008 to 2013 privacy complaints represented 3.2% of overall complaints received; and
- From 2011 to 2013, privacy complaints represented just 1.8% of overall complaints received by broadcasters.⁶

In 2014 privacy complaints represented 1.68% of overall complaints received.⁷ Additionally, the 2012-13 Annual Report of the ACMA showed that, while there were a total of 2178 enquiries and written complaints about commercial, national and community broadcasters during 2012-13, there were only 2 breach findings relating to privacy by commercial television broadcasters, and only 3 non-breach findings. In 2013-14, there were no breach findings relating to privacy, and 5 non-breach findings.

In the foreword to the 2011 Issues Paper "A Commonwealth Statutory Case of Action for Serious Invasion of Privacy", produced by the Department of Prime Minister and Cabinet, the Hon Brendan O'Connor noted, "serious invasions of privacy are infrequent".

The evidence therefore supports Free TV's submission that there is no gap in the existing legal framework which supports the introduction of an additional layer of privacy protection in the form of a statutory cause of action.

4. A consistent national approach to privacy law

Free TV is in favour of a national, consistent, and clear approach to law-making and regulation. Free TV is not in favour of introducing additional and potentially inconsistent layers of regulations and laws that complicate the privacy law framework.

A key purpose of the new data privacy framework that came into effect in March 2014 (as a result of the *Privacy Amendment (Enhancing Privacy Protection) Act 2012*), was to provide a consistent national approach to privacy laws and regulation. Introducing a statutory cause of action at the State level in the absence of any consideration of legal developments at the Commonwealth level is out of step with this approach.

There are a number of developments currently underway nationally which impact on the question of whether a statutory cause of action is necessary or appropriate at the State level.

Firstly, the ALRC's report, *Serious Invasions of Privacy in the Digital Era*, was tabled in Parliament on 3 September 2014 in relation to whether a statutory cause of action is appropriate at the Commonwealth level.

Secondly, the amendments arising out of the *Privacy Amendment (Enhancing Privacy Protection) Act 2012*, which include the new Australian Privacy Principles, should be given a chance to operate and properly assessed before any further privacy laws are considered. The new amendments came into effect in March 2014 and included, amongst other things; new and harmonised privacy principles, and increased powers for the Information Commissioner to regulate the handling of personal information, for

⁶ Statistics compiled by Free TV Australia based on complaints received per calendar year.

⁷ Ibid.

example, by seeking civil penalties in the case of serious or repeated breaches of privacy.

Thirdly, the privacy provisions which apply to broadcasters under the Code and the Guidelines are currently under review and are subject to review every few years to ensure it is aligned with the appropriate community safeguards and required regulation.⁸

Any consideration of a State statutory cause of action should be in the context of and consistent with these national privacy law developments.

As stated above in this submission, Free TV is not aware of any evidence that suggests that the current privacy law framework is not operating effectively (and in fact, the evidence available suggests that it is working well). Therefore, inadequacies in the new privacy framework should first be identified, and it is difficult to identify inadequacies in the existing framework when key parts of that framework are uncertain and have not yet come into operation.

5. No 'counterbalancing' statutory right of freedom of communication currently exists

Unlike other jurisdictions, Australia does not have a 'counterbalancing' statutory right of freedom of communication or freedom of the media to seek out and disseminate information of public concern.

Free TV emphasises its previous submission to the Department of Prime Minister and Cabinet in relation to the fundamental importance of freedom of communication in a democratic society:

'The free flow of information through the media is fundamentally important to a free and open society. In Free TV's view, in order to exercise their democratic rights, Australians need to be able to form opinions freely and to be able to access information about matters of public concern, including about the government. The media plays an important role in this.'

A 'counterbalance' in the form of a right to privacy is not necessary in circumstances where no statutory right of freedom of communication exists. Any statutory cause of action would not operate to 'harmonise' Australian laws with those of the UK or the US, which operate in the context of a bill of rights (in the case of the UK) and constitutional freedoms (in the case of the US), and which are strongly upheld in those jurisdictions.

In Australia in the current landscape, a statutory cause of action would simply add an additional layer of regulation and complexity, in circumstances where there is no gap or demonstrated need in the existing legal framework, and where no counterbalancing right of communication exists.

6. Need to ensure privacy laws are relevant in the evolving technological and social context

Recent and evolving technologies do not require an additional layer of privacy protection in the form of a statutory cause of action for serious invasions of privacy.

⁸ The ACMA is currently undertaking its *Community Safeguards Inquiry*, see <http://www.acma.gov.au/Citizen/Consumer-info/Rights-and-safeguards/Community-safeguards-inquiry>. The outcome of this inquiry will inform a review of the Code, which is imminent.

Existing laws including the Privacy Act and the Code are drafted in a manner that is technology-neutral. The same laws apply to all technologies so that the law does not require re-drafting with every technological development.

Furthermore, while developments in technology mean that information can be disseminated to more people more quickly, those technological developments have not provided broadcasters with any increased ability to misuse private information. Broadcasters continue to apply great diligence in protecting individuals' privacy in the course of their operations, across all platforms and technologies. As indicated above, the very low number of privacy complaints brought against broadcasters evidences the diligence that is exercised. Free TV notes however that the resources required to do this continues to increase.

In the context of an evolving technological and social media environment, individuals' expectations of privacy are changing and are also highly variable from individual to individual (and particularly across generations). This new environment makes it extremely difficult, from a public policy perspective, to codify what should constitute a serious invasion of privacy. It also consequently makes it very difficult for organisations to decipher what kind of conduct is being proscribed. In this sense, an over-arching statutory cause of action will not necessarily 'fit' the current social context, given that it is becoming decreasingly possible to ascertain what a particular person's reasonable expectations of privacy might be.

Free TV notes the example that it gave in its previous submission to the Department of Prime Minister and Cabinet:

"For example, if a person takes a video at a friend's birthday party and posts it on a social networking site, even if the content of the video and the effect of its dissemination are sufficient to make out the cause of action (which in most circumstances is unlikely), do individuals expect their conduct to be regulated in this way? Are individuals prepared to give up the freedom they have to engage in this type of conduct in their day-to-day lives because of fear that it may be illegal in order to have a statutory action for invasion of privacy only a small number of individuals are ever likely to rely on?"

The current social media environment supports individual choice by giving consumers the ability to choose how they engage with social media, and what and with whom they communicate. Over-regulation or inappropriate regulation in the area of privacy will stifle these kinds of activities and act as a deterrent to engaging in this new environment.

Risks with introducing a statutory cause of action at this time

1. The impact on freedom of communication

As indicated above, and in Free TV's submission to the Department of Prime Minister and Cabinet, a new cause of action for serious invasions of privacy will have an unjustified adverse effect on the freedom of the media to seek out and disseminate information of public concern, and will place undue weight on an individual's right to privacy at the expense of freedom of communication.

2. The undue complexity caused by the overlap of laws

As illustrated above, the privacy framework applicable to broadcasters is extensive and complex.

Free TV is of the view that introducing further privacy legislation, particularly in the absence of thorough consideration of how such legislation would interact with existing legislation, would confuse and unnecessarily complicate the current privacy framework.

This increased complexity would introduce additional uncertainty and therefore increase the regulatory burden on broadcasters in circumstances where there is no evidence of any benefit of such an additional regulatory burden.

3. Unintended consequences

Free TV is concerned that the introduction of a new cause of action for serious invasions of privacy may also have other unintended detrimental consequences. Technologies and social norms are developing and issues related to how a statutory cause of action would apply have not been properly considered.

For example, Free TV in its submission to the Department of Prime Minister and Cabinet provided the following example:

For example, to the extent there is concern that information disseminated via a social networking site or video-sharing site could infringe an individual's reasonable expectation of privacy, will the individual who posted the material, or the site, be liable? If a posting becomes 'viral' over time, will the original poster (who just posted it to a social networking site that only a limited number of people could see), or the person who subsequently posted it on a publicly available video-sharing site where it became 'viral', be liable?

A further question which could be added to this example is: How will an individual's choices in relation to what, how and when they shared the private information, in the context of complicated privacy settings, any applicable terms and conditions, and choices in social media engagement and the extent of that engagement, impact on these types of questions?

As mentioned above, a further unintended consequence of an overlapping layer of privacy protection is likely to be that such a cause of action will, in practice, only be available to those individuals who are sufficiently financially well-off or can otherwise access legal resources, to pursue lengthy and expensive litigation, for further financial benefit and regardless of any loss suffered.

4. Economic consequences

Increasing the regulatory burden on broadcasters by introducing a statutory cause of action for serious invasion of privacy will have a number of detrimental economic consequences. It will:

- Lead to an increase in the number of court actions, and in practice will mean that Free TV members and other organisations will have to make sure that they are insured for such actions;
- Increase the regulatory burden on organisations;
- Require organisations to increase their investment in protecting against such actions by way of reviewing current practices, staff training etc;
- Require Free TV members and others to invest significant resources in defending such actions if they are brought;
- Lead to an increase in frivolous or speculative actions;

- Act as a disincentive to organisations to fully utilise new communications tools such as social media sites;
- Act as a disincentive to social media sites to innovate.

Adequacy of existing remedies for serious invasions of privacy

As outlined above, there is no identified gap in the existing privacy law framework.

The framework is extensive, effective in protecting individuals and is working well, and existing remedies are adequate.

1. Equitable action of breach of confidence

Free TV does not support any broadening of the scope of breach of confidence remedies for serious invasions of privacy.

While very few cases of this nature have gone before the courts, the Australian development of equitable actions for breach of confidence was recognised by the Victoria Supreme Court of Appeal in *Giller v Procopets*⁹ and was recently affirmed by the WA Supreme Court in the decision of *Wilson v Ferguson*.¹⁰

In both cases, the cause of action was used to provide for monetary compensation for misuse of personal information.

The scenario in *Wilson v Ferguson* concerned precisely the set of circumstances foreshadowed by the Media Release to this inquiry and confirmed that the courts are open to awarding compensation for emotional distress in appropriate cases.

In this context, Free TV is of the view that equitable actions for breach of confidence should be left to develop at common law on a case by case basis and the introduction of legislation is unnecessary.

⁹ *Giller v Procopets*, (2008) 24 VR 1

¹⁰ *Wilson v Ferguson* [2015] WASC 15

Appendix A – Advisory Note, Privacy¹¹

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)*
- **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 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*

¹¹ *Commercial Television Industry Code of Practice* (2010), Extract from the Advisory Note on Privacy, at 72-74.

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 (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), Crimes Act 1914 (Cth), 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 (Cth); Surveillance Devices Act 2000 (NT)*
- **Family law legislation** – *Family Law Act 1975 (Cth).*

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.