



HUMAN RIGHTS &
DISCRIMINATION COMMISSIONER
ACT Human Rights Commission

Factsheet

Right to Privacy and Reputation (s.12)

Section 12 of the *Human Rights Act 2004* says that:

Everyone has the right—

- (a) Not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily; and
- (b) Not to have his or her reputation unlawfully attacked.

Note: Under the Act, all rights may be subject to reasonable limits (section 28). The nature of the right is relevant when considering what is reasonable.

This factsheet is not intended to be a substitute for legal advice.

Scope of the Right

The right to privacy under section 12 of the *HRA* protects people in the ACT from ‘unlawful’ interference with their privacy – this means that no interference can take place except in cases authorised by law. Under international law, the right to privacy has been interpreted as applying in a variety of different circumstances. It has been defined widely as ‘the right to be left alone’ (the right to live free from interference), and so includes the right to autonomy.

The term ‘arbitrary interference’ in the right to privacy can extend to lawful interference. Arbitrary interference in someone’s private or family life is interference that may be lawful, but is unreasonable, unnecessary and the degree of interference is not proportionate to the need. The inclusion of the concept of arbitrariness in the right to privacy ensures that even lawful interference should be in accordance with the provisions, aims and objectives of the *HRA* and should be reasonable in the particular circumstances.

The term ‘family’ in the right to privacy should be given a broad interpretation to include all people who make up a family unit, reflecting the meaning of ‘family’ in Australian society. For example, a ‘family’ could include a situation where children are living with their grandparents rather than their parents, or with a legal guardian, or a foster family. The term ‘family’ could also include extended family in some circumstances: for example, where there are kinship ties to extended family, or where someone’s culture or ethnicity gives their extended family unit particular significance for them. See the ACT HRC Factsheet on the “Right to Protection of the Family and Children (s.11)” for more information.

Examples

The diversity of international cases about privacy, family life and reputation demonstrates the breadth of these rights. Examples include:

- *Toonen v Australia*, a prominent case in which the UN Human Rights Committee held that the criminalisation of homosexuality under Tasmanian law was an unlawful incursion on a person’s right to privacy under the ICCPR (UN Doc CCPR/C/50/D/488/1992)
- *Sayadi & Vinck v Belgium*, in which the UN Human Rights Committee found that Belgium’s listing of two innocent people on the Security Council terrorist watch list constituted an unjustified attack on their honour and/or reputation (CCPR/C/94/D/1472/2006).

However, as always the right to privacy is subject to reasonable limits. In *R v Cringle* [2013] ACTSC 34 (5 March 2013), the ACT Supreme Court held that legislation providing for search and seizure of materials found in a person's cell at a Correctional Centre do not violate s 12. The Court held that prisoners or remandees form a discrete sub-set of the population for whom it is necessary to make particular rules. The rules were not arbitrary but were designed to maintain safety and discipline within correction centres.

Examples of when this right could be relevant in practice

The actions of public authorities can both promote and limit rights. Section 12 could be engaged by activities that:

- Involve surveillance of persons for any purpose (such as closed-circuit television, CCTV);
- Involve collection, storage, use or publication of personal information and how that information is accessed, used or disclosed;
- Regulate information held on a public register;
- Restrict access by people to their own personal information;
- Provide for sharing of personal information across or within agencies;
- Involve powers of entry, search, seizure, confiscation or forfeiture;
- Allow publication of personal information (for example, results of surveillance, medical tests, electoral roll);
- Provide for a compulsory physical intervention on a person such as a DNA, blood, breath or urine test; forced gynaecological or other medical examination; or corporal punishment;
- Provide for treatment or testing of a patient without his or her consent;
- Involve a professional duty of confidentiality;
- Change or create any confidentiality or secrecy provisions relating to personal information;
- Provide for mandatory disclosure or reporting of information (including disclosure of convictions, injury or illness), or by professionals reporting abuse, for example, doctors regarding patients or teachers regarding students;
- Regulate a person's name, private sexual behaviour, sexual orientation or gender identification;
- Involve the interception, censorship, monitoring or other regulation of postal articles and all other communications;
- Relate to handling personal information for research or statistics;
- Recognise or fail to give legal recognition to close or enduring personal relationships;
- Provide for the removal of children from a family unit or a family intervention order;
- Regulate tenancy or eviction;
- Regulate a state-run care facility or mental health service;
- Regulate standards, consultation and procedures operating in respect of public housing;
- Authorise compulsory acquisition of a home or regulate planning or environmental matters that may affect a person's home.



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