

Privacy - A Fact Sheet

What is the right to privacy?

The right to privacy is one's right to keep a domain around oneself, which includes all those things that are part of that person, such as one's body, home, property, thoughts, feelings, secrets and identity.

The right to privacy gives one the ability to choose which parts in this domain can be accessed by others, and to control the extent, manner and timing of the use of those parts one chooses to disclose.

Under common law (case law) the right to privacy is the right of a person to live in a manner that is reasonably secluded from public scrutiny, whether the scrutiny comes from a neighbour's prying eyes, an eavesdropping device or a photographer's intrusive camera.

Is there right to privacy law in Australia?

There is no clearly recognised tort (a wrong that causes another a loss or harm) of invasion of privacy or similar remedy available to people who feel their right to privacy has been violated.

However privacy is protected in limited ways by the Australian common law and a range of Commonwealth, state and territorial laws, and administrative arrangements.

What is privacy?

There is no statutory of privacy in Australia. The Law Reform Commission (ALRC) considered the privacy stating: "It has been suggested that privacy can be divided into a number of separate, but related, concepts:

- Information privacy, which involves the establishment of rules governing the collection and handling of personal data such as credit information, and medical and government records. It is also known as 'data protection';

- Bodily privacy, which concerns the protection of people's physical selves against invasive procedures such as genetic tests, drug testing and cavity searches;
- Privacy of communications, which covers the security and privacy of mail, telephones, e-mail and other forms of communication; and
- Territorial privacy, which concerns the setting of limits on intrusion into the domestic and other environments such as the workplace or public space. This includes searches, video surveillance and identity checks.

What legislation protects privacy in Western Australia?

Legislation providing some limited privacy protection can be found in the following:

- *Freedom of Information Act 1992 (WA)*. This Act provides for access to documents and the amendment of 'personal information' in a document held by an agency that is inaccurate, incomplete, out-of-date or misleading.
- *State Records Act 2000 (WA)*. This Act affords some limited protection of privacy. For example, no access is permitted to medical information about a person unless the person consents, or the information is in a form that neither discloses nor would allow the identity of the person to be ascertained.
- *Associations Incorporation Act 2015 (WA)*. This Act enables a member to access the members' register. Personal information must be kept private and confidential. This information may not be used for any unlawful purpose or without the person's consent, unless the disclosure is required or authorised under law.

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- *Surveillance Devices Act 1998 (WA)*. In WA, it is against the law to use a device to record or monitor the private conversation of another without their consent. It is also against the law to use a device to film or observe a private activity without consent of the participants of that activity. These laws apply regardless of whether or not you are a part of the conversation or activity. In WA it is illegal to publish a conversation or activity that has been secretly recorded with a device or to send that recording to others without the consent of all parties involved in the conversation or activity.
- *Telecommunications (Interception and Access) Western Australia Act 1996 (WA)*.

What if my personal information has been mishandled by a government department or agency?

The Privacy Commissioner within of the Australian Information Commissioner deals with complaints about the handling of your personal information by Commonwealth, ACT and Norfolk Island government agencies, and private sector organisations covered by the **Privacy Act 1988 (Cth)**.

What is covered by the Privacy Act 1988 (Cth)?

The *Privacy Act 1988 (Cth)* sets out how your personal information is handled - its collection, usage, storage and disclosure.

How can I make a complaint under the Privacy Act 1988 (Cth)?

You can make a privacy complaint online or by writing to the Office of the Australian Information Commissioner.

How can I check personal information held by federal, state or local government agencies and apply for changes to inaccurate personal information they retain?

Under the *Freedom of Information Act 1992 (WA)* and the *Freedom of Information Act 1982 (Cth)* you have rights to look at files from government departments or agencies. You can also check if the records about you are accurate, and apply for amendments of inaccurate information.

How do I access those documents?

You need to identify which documents you want and give as much information as you can about the documents you require or of the information you want to change. Contact the department's or agency's Freedom of Information officer directly if they have one. Some will have their own freedom of information (FOI) application forms, for others a letter will do.

Are there any documents I cannot obtain?

Yes. The Acts identify certain types of documents which you may not be able to see (called exempt documents) and the Act sets out reasons why you may not be given access.

What can I do if I am not happy about a freedom of information response?

If you are not happy with the decision at internal review you can lodge a complaint with the WA Information Commissioner (if your complaint is about a state agency) or Australian Information Commissioner for complaints about Commonwealth agencies.

Is there telecommunication privacy?

Yes, the *Telecommunications (Interception and Access) Amendment (Data Retention) Act 2015* provides this protection.

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The Act requires telecommunication service providers to retain for two years telecommunications data (not content) as prescribed and:

- It provides for a review by the Parliamentary Joint Committee on Intelligence and Security of the mandatory data retention scheme no more than three years after the end of its implementation phase;
- It limits the range of agencies that are able to access telecommunications data and stored communications;
- It provides for record-keeping and reporting the use of, and access to, telecommunications data; and
- It requires the Commonwealth Ombudsman to inspect and oversight these records for compliance and the *Telecommunications Act 1997 (Cth)* enables consequential amendments to be made.

Can I do something if I see a picture of myself being used online without my permission?

There are no specific laws within Australia preventing someone taking your photo or video in a public place and then posting it online. You can ask the person who is distributing your photo to take it down. For example, if you find a photo of yourself on a social networking site such as Facebook, you can ask the person who posted the picture to remove it. You can write directly to the social networking site or network administrator asking them to remove the post, image or video.

Useful contacts:

Facebook: <https://www.facebook.com/help/181495968648557/>

Twitter: <https://support.twitter.com/articles/20069937#>

YouTube: <https://support.google.com/youtube/answer/142443>

Instagram: <https://help.instagram.com/192435014247952>

What if sexualised photographs of myself are posted online?

Sometimes people consent to having sexualised pictures taken but not to have the pictures distributed, for example, putting them on Facebook. If someone has distributed sexualised pictures of you without your consent there are a number of things you can do. You can ask the person and other recipients to remove the pictures. You can also ask the website administrator to remove the images. It may be appropriate to report the incident to your local police or Crime Stoppers WA on 1800 333 000 if you think a crime may have been committed.

Use the **eSafety Commissioner's** website to report the sharing of intimate images without your consent. At the same website you can get information about support and where to get legal advice.

What if my image is used for advertising purposes?

The Australian Consumer Law prevents a company publishing an image or video of you promoting something without your permission. If someone wants your permission to publish your image for this purpose, you will usually be asked to sign a waiver.

What if an image of me doing something private is taken or used?

If the image is of someone under the age of 16 and someone has taken a nude photo or video of that person, or a photo or video of that person doing something sexual this can be considered a crime.

It is a crime to involve children under 16 in creating sexual photos or videos and it is also a crime to create or publish these photos or videos or send them to others.

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It is also a crime to use the internet to record someone or share images or videos of that person without their permission if the material shared would be regarded as harassing or offensive. Publishing an image of someone doing something private could also be considered defamation.

What is identity theft?

Identity theft is an act to produce, supply or obtain data or a device (such as a mobile phone or computer) with the intention of using another person's information as your own. This is an offence.

What if someone reveals secret information about myself?

If you have provided information to someone and it is obvious that the information is to be kept a secret as it is of confidential nature, a breach of this may result in an offence for which you will have remedies.

If I am a victim of family violence is there any protection of my privacy?

Under the *Restraining Order Act 1997 (WA)* some behaviour which constitutes family violence and provides grounds for an application for a violence restraining order includes:

- Stalking or cyber-stalking a family member;
- Distributing or publishing, or threatening to Distribute or publish, intimate personal images of a family member; and
- Causing a child to be exposed to the type of behaviour referred to above.

Note: A person who procures another person to commit family violence is taken to have also committed family violence.

Some examples which illustrate that there is no right to privacy law in Australia:

Trespass

There are no laws preventing an individual taking your photo in a public place and posting it online.

There are also no laws preventing an individual from taking photos of you on your private property as long as they have not entered your property without your permission.

In Australia, the law of trespass prevents people from entering your property without your permission. So if someone has taken a photo of you while on your property, you may be able to take legal action against them for trespass (not invasion of privacy) to prevent the photos from being used or published.

Harassment

It is a crime to use the internet to record someone or share images or videos of that person without their permission if the material shared would be regarded as harassing or offensive.

Defamation

Revealing or publishing information about you to another person or a group of people, and if that information is information that would cause others to think less of you, it may be considered defamatory and there are legal remedies available.

Stalking

Repeatedly contacting, following or watching someone with the intention of causing the person physical or mental harm or fear is stalking. It is also stalking to do something with the intention of preventing the other person from doing something or making them do something.

Surveillance camera (installing CCTV) of your neighbour

If your neighbour has a surveillance camera pointed at your house and you are worried about your privacy, there is no right to privacy remedy. Surveillance cameras operated by individuals are not covered by the *Privacy Act 1988 (Cth)*, but police may be able to help you for very serious matters.

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If a person flies a drone/aircraft over someone's house or private space and takes photographs of someone, it is not an offence unless the intent of the action was unlawful, for example they deliberately or inadvertently take images of someone doing something private. Then such an action is a criminal offence.

Breach of confidentiality

If someone attempts to post or reveal to others information about you that is very private, this may also be against the law.

In order for it to be against the law, you must have provided the information to someone in circumstances where it is obvious that the information was to be kept a secret. The information must be something that most people would consider to be 'confidential'. Keeping such information a secret must be extremely important to you, in order for legal remedies to be available to you under this law.

Postal confidentiality

Tampering with or unauthorised interception of another person's mail is a criminal offence.

Some useful contacts:

Office of the Information Commissioner WA - (08) 6551 7888 or 1800 621 244 (country callers) or its website. <https://www.oic.wa.gov.au>

Office of the Australian Information Commissioner- 1300 363 992 information about freedom of information and privacy including fact sheets on your rights and the processes for making a complaint, and FAQs on a range of privacy issues.
<https://www.oaic.gov.au>

Australian Administrative Appeals for information on reviews.
www.aat.gov.au

Health complaints for information about privacy issues in health areas.

Health and Disability Services Complaints Office:
www.hadscowwa.gov.au
Health Consumers Council: www.hconc.org.au

Office of the eSafety Commissioner information on protecting children's information online.
<https://www.esafety.gov.au/complaints>

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