The Charter of Human Rights and Responsibilities

Section 13 – Right to privacy and reputation

Scope of the right

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 right to privacy under section 13 of the Charter protects people in Victoria from ‘unlawful’ interference with their privacy – this means that no interference can take place except in cases authorised by law.

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 Charter right to privacy ensures that even lawful interference should be in accordance with the provisions, aims and objectives of the Charter 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.

Case 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).

In Victoria, a number of cases have dealt with rights under section 13 of the Charter, including:

- WK v The Queen [2011] VSCA 345, in which the court held that privacy considerations had to give way to police surveillance practices authorised by other legislation
- Swancom Pty Ltd v Yarra CC [2009] VCAT 923, in which the Victorian Civil and Administrative Tribunal held that a Council’s refusal to approve extension of trading hours and increase patron numbers for a pub was justified because the council had to consider (amongst other things) residents’ right to privacy under section 13 of the Charter
- AC (Guardianship) [2009] VCAT 1186, in which the Victorian Civil and Administrative Tribunal held that it was reasonable to limit a mentally-ill person’s right to privacy (and freedom of movement) if he presented a risk to the public
- Michelle Dawson v Transport Accident Commission [2010] VCAT 796, which held that the right to freedom from interference with privacy and family life does not extend to a right to child care benefits
- Caripis v Victoria Police (Health and Privacy) [2012] VCAT 1472, in which the Victorian Civil and Administrative Tribunal considered the rights to privacy, freedom of expression and peaceful assembly in the Charter and found that the police retention of protest footage was authorised by the Information Privacy Act 2000 and that there was no breach of the right to privacy.
Examples of when this right could be relevant in practice

The actions of public authorities can both promote and limit rights.

Section 13 could be engaged by activities that:

- involve surveillance of persons for any purpose (such as closed-circuit television)
- 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 (including entry into a controlled environment)
- 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 provisions 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.

Section 13 of the Charter of Human Rights and Responsibilities Act 2006 says that:

A person has the right –

(a) not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with; and

(b) not to have his or her reputation unlawfully attacked.

The right to privacy is modelled on Article 17 of the International Covenant on Civil and Political Rights, a treaty to which Australia became a party in 1980.

Under the Charter, all rights may be subject to reasonable limits (section 7(2)). The nature of the right is relevant when considering what is reasonable.