

16 December 2011

Mr Nigel Waters
Australian Privacy Foundation and Privacy International
Board5@privacy.org.au

Dear Mr Waters,

ACMA PROJECT – Review of the ACMA Privacy Guidelines for Broadcasters 2005

I refer to the Australian Communications and Media Authority's review of its ACMA's *Privacy Guidelines for Broadcasters*. There were 15 submissions to the review, most of which will be published on the ACMA website.

Having carefully considered submissions to the consultation, the final guidelines are being amended to provide that:

- they apply only to the relevant broadcasting codes of practice and do not cover other privacy related laws
- they generally relate to the broadcast of material that relates to a person's personal or private affairs, for example by disclosing personal information, or that invades a person's privacy, for example by intruding upon seclusion
- a person is identifiable if, from the broadcast their identity is apparent or can reasonably be ascertained
- a person's seclusion will be intruded upon where there is an expectation of privacy and an ordinary person of reasonable sensibilities would consider the broadcast to be *highly offensive* (replacing the *inappropriate or offensive* test previously proposed)
- consent to the use of material that would breach privacy may be withdrawn, if in all the circumstances it is reasonable to do so
- consent to the use of material obtained surreptitiously can be given after recording but before broadcast
- in relation to vulnerable people, a person's vulnerability may be intrinsic (mental illness, difficulty communicating in English) or situational (bereavement or involvement in a distressing event)
- for material in the public domain, the absence of access restrictions, while an important consideration, will not be determinative
- whether material that invades privacy is in the public interest, will depend on all the circumstances including whether a matter is capable of affecting the community at large so that citizens might be legitimately interested in or concerned about what is going on.

A further case study will also be inserted at the Appendix to the guidelines dealing with the ACMA's most recent decision concerning the broadcast of material obtained from the internet. Appendix 2 of the consultation draft is being deleted as a hyperlink to the broadcasting codes of practice is being inserted in the Introduction. This will enable users have access to current instruments.

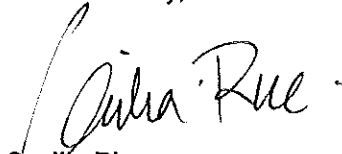
In the review we have aimed to produce guidelines that are principles-based and non-prescriptive, utilising case studies based on ACMA decisions. However, the guidelines also make it clear that the ACMA will consider each matter on a case by case basis.

The Australian Privacy Foundation and Privacy International's (APF&PI) submission referred to matters concerning the ambit of broadcasting codes of practice, the findings of the ALRC report and State Law Reform Commissions, and the ACMA's research on privacy issues. It also argued for the broadening of the broadcasting codes of practice and commented on the draft guidelines concerning identifiable person, personal information, seclusion, public figures, consent, children and vulnerable people, material in the public domain and public interest.

As the guidelines are subject to the broadcasting codes of practice, the review was not intended to expand the scope of privacy protections available under codes of practice. The ACMA considers that the post consultation amendments will address the APF&PI's concerns by clarifying the ambit of the guidelines, replacing the 'inappropriate and offensive' test for an intrusion of seclusion with a 'highly offensive' test, and developing the provisions concerning consent, children and vulnerable people, material in the public domain and public interest.

It is anticipated that the final *Privacy Guidelines for Broadcasters* will be released next week (wc 19 December 2011). I thank you for your submission.

Yours sincerely,



Cecilia Rice
Project Manager
Broadcasting Investigations Section