

PRIVACY LAW CASEBOOK

A Quick Guide



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Domestic Privacy Cases

High Court

Victoria Park Racing & Recreation Grounds Co Ltd v Taylor (1937) 58 CLR 479

Relevance to Privacy Tort:

- Established that Australian law did not recognise a general right to privacy.
- Confined the decision to property and nuisance, leaving open later recognition of privacy as a separate actionable interest.
- Provides historical context, the absence of a privacy tort here underscores the significance of later judicial and legislative developments.

Victoria Park Racing (VPR) charged admission fees for accessing their track and on-track betting. The defendant was a neighbour of the park who allowed a radio station to build a platform on his property overlooking the racecourse and broadcast the description of the races. This resulted in a decrease of attendance to the racecourse, and VPR believed this was attributable to the broadcast. VPR sought an injunction to halt the broadcasts on the grounds of privacy, nuisance, and non-natural use of property. The injunction was denied and when appealed, the High Court reaffirmed the trial court's refusal to grant the injunction.

Chief Justice Latham held that Australian law does not recognise a general right to privacy, and that the defendants' conduct did not constitute nuisance or trespass. The court emphasised that Taylor's conduct involved no violation of legal rights. This case precluded recognition of a privacy tort for decades.

The precedent this case set was clarified in *ABC v Lenah Game Meats Pty Ltd*. The High Court declared that the Victoria Park Racing case was concerned with the right to appropriate and control how information can be made public rather than privacy.



High Court

Australian Broadcasting Corporation v Lenah Game Meats Pty Ltd (2001) 208 CLR 199, 185 ALR 1, [2001] HCA 63.

Relevance to Privacy Tort:

- Corporations lack standing — privacy protections apply only to *natural persons*.
- Reopened the door to recognising privacy as an actionable interest, but confined that recognition to individuals rather than organisations.

Lenah Game Meats Pty Ltd (Lenah) was a licensed possum processing facility. Animal rights activists trespassed and installed hidden cameras. The footage was then given to the ABC, who intended to publish it. Lenah sought an injunction from the High Court on the grounds of privacy to prevent this publishing of the material.

Lenah made three arguments as to why the footage should not be published; firstly that the slaughter process was confidential, secondly that the material had arisen as a result of trespass and thirdly that the publication would be a violation of Lenah's privacy.

The High Court rejected all three arguments. However, the High Court did indicate that it would be receptive to a right to privacy in the future. Four of the six Judges expressed that a privacy tort should be limited to the protection of individuals rather than corporations (in 43; 132; 190). The decision affirmed that while corporations enjoy an

entitlement to privacy in regards to sensitive matters such as directors meetings, they do not have the same right to privacy as a natural person.

Victorian High Court of Appeal

Giller v Procopets [2008] VSCA 236, 24 VR 1, 40 Fam LR 378, 79 IPR 489.

Relevance to Privacy Tort:

- Demonstrated that emotional distress arising from an invasion of privacy can attract damages under breach-of-confidence principles.
- Provided an equitable pathway for compensating non-economic loss before the creation of a statutory privacy tort.
- Supports the view that privacy interests can be vindicated through equitable doctrines even in the absence of a specific tort.

Ms Giller lived with Mr Procopets in a de facto relationship. Procopets assaulted Giller on no less than 5 occasions. Procopets recorded sexual encounters with Giller without her knowledge or consent. As their relationship deteriorated, Procopets threatened to show the tapes to family and friends and subsequently provided copies of the tape to her family members and close friends and exposed her mother to photographs of the tape. The court originally found that despite her suffering an egregious breach of confidence the law could not award her damages. However, upon appeal, Ms Giller was awarded damages through breach-of-confidence principles.

Plaintiffs alleging unauthorised disclosure of private information can obtain monetary relief for emotional suffering through breach-of-confidence principles, without proving a diagnosable psychiatric illness. This effectively supplies a functional privacy remedy in equity, even in the absence of a statutory or tort-based right to privacy.

Federal Court of Australia

TCN Channel Nine Pty Ltd v Network Ten Pty Limited [2002] FCAFC 146 (22 May 2002)

Relevance to Privacy Tort:

- Clarified that the “character of news” should be interpreted broadly and purposively under fair-dealing provisions.
- Provides an interpretive guide for the Privacy Act’s journalistic exemption and the statutory privacy tort’s “news” defence.
- Supports defendants arguing that humorous or light-hearted content can still qualify as “news” for exemption purposes.

Between August 1999 and June 2000, Network Ten’s program *The Panel* broadcast excerpts from 20 programs originally aired by Channel Nine. The case primarily concerned copyright law, not privacy. Its relevance to privacy law arises from the court’s interpretation of s 103B of the Copyright Act 1968 (Cth), which provides a *fair dealing* exception for material used “for the purpose of, or associated with, the reporting of news in a newspaper, magazine or similar periodical.”

In construing this provision, the Full Federal Court adopted a purposive approach, focusing on whether the dominant intention of the program was to *inform* or to *entertain*. The court found that the concept of “news” is not confined to serious or traditional journalism and may include material presented humorously, provided the purpose remains to report or comment on current events.

The Full Court’s purposive reasoning is relevant by analogy to the journalistic exemption under the Privacy Act 1988 (Cth) and the statutory tort for serious invasion of privacy. Both turn on whether material possesses the “*character of news*.” The case establishes that “news” should be interpreted broadly and purposively; and content may retain the *character of news* even when presented humorously or in a light-hearted format.

Accordingly, *TCN v Network Ten* guides how courts may interpret journalistic exemptions in privacy litigation, emphasising purpose over tone when determining whether a publication falls within the protection afforded to news reporting.



Victorian County Court

Waller (a pseudonym) v Barrett (a pseudonym) [2024] VCC 962

Relevance to Privacy Tort:

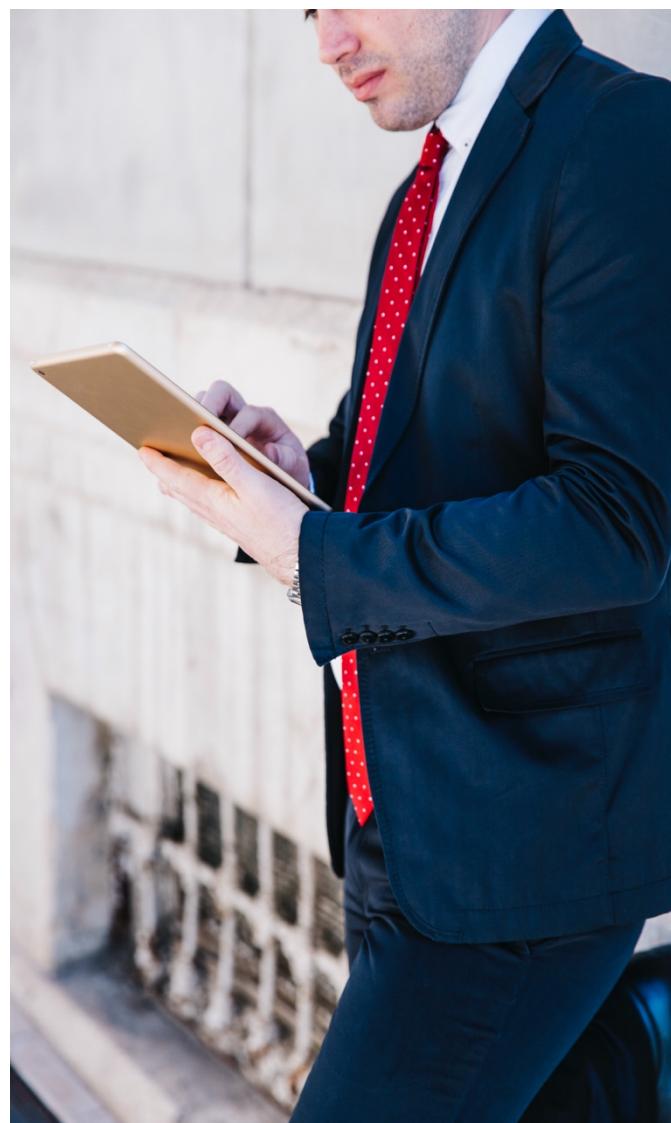
- Recognised invasion of privacy as an incremental development within the equitable doctrine of breach of confidence.
- Reinforces that privacy protection is linked to human dignity and personal autonomy, distinct from commercial confidentiality.
- Supports a plaintiff's argument that privacy law evolves through incremental judicial recognition, not wholesale innovation.

A wife stabbed her husband (Barrett). The husband survived and contributed to a book on the event and participated in media interviews about the attack. In these events he disclosed personal information about his daughter (Waller), whom he shared with his wife. The daughter then sued the (then estranged) father for breach of statutory duty, negligence, breach of confidence and invasion of privacy.

The court determined that the claim relating to the private information shared already falls within an existing branch of the equitable doctrine of breach of confidence.

Key in this case is that one of the statements made by the defendant regarding the plaintiff was untrue, leaving Waller with no actionable claim in breach-of-confidence. However, the

court held that the statement was highly offensive and within the daughter's private sphere. Consequently, Waller was awarded damages under the tort of invasion of privacy. Acknowledging this branch within the common law and referring to it as an action for "invasion of privacy" would represent only an incremental evolution of that doctrine. Tran J emphasised that this does not amount to the creation of a new tort, but rather to the recognition of a form of the action aimed at protecting human dignity and personal privacy, distinct from the branch concerned with commercial or trade confidentiality.



Victorian County Court

Jane Doe v Australian Broadcasting Corporation [2007] VCC 281

Relevance to Privacy Tort:

- Awarded damages for publication of a sexual assault victim's identity, using breach of confidence as a vehicle for privacy protection.
- Demonstrated that disclosure of identifying information about victims of crime constitutes a serious invasion of privacy.
- Illustrates the limits of the new statutory tort's journalistic exemption — under current law, similar facts may fall outside the tort's scope.

A sexual assault survivor was named on an ABC radio broadcast. She then subsequently sued the ABC on a number of grounds including breach of confidence. The County Court of Victoria awarded damages resulting from a breach of confidence, describing it as an incremental development of breach of confidence.

Prior to the legislative introduction of the privacy tort, the ability to claim damages for an invasion of privacy was being developed through case law under a 'breach of confidence'. Due to the privacy tort's broad exemption for journalistic activity, this case would likely not succeed under the newly introduced privacy tort.

Doe v ABC sets a precedent that may allow plaintiffs to seek damages for journalistic privacy invasions under a breach of confidence rather than the privacy tort.

Queensland District Court

Grosse v Purvis [2003] QDC 151

Relevance to Privacy Tort:

- Recognised invasion of privacy as a standalone cause of action at common law.
- Defined key elements now echoed in the statutory tort: intentional intrusion, reasonable expectation of privacy, and "highly offensive" conduct.
- Provides persuasive (though not binding) authority for intrusion-based privacy claims.

In the 1990s Grosse and Purvis had a brief romantic relationship and worked together professionally. Once the relationship ended Purvis began stalking and harassing Grosse. Grosse's mental health suffered as a result and she attempted suicide on one occasion.

Grosse sued the defendant for harassment, stalking, emotional distress and breach of privacy. The plaintiff was awarded damages for harassment and humiliation. The case recognised the invasion of privacy as a legitimate legal claim. This case set persuasive precedent for defining elements and thresholds of the privacy tort ("highly offensive" and "reasonable expectation of privacy"). Especially relevant if the litigant's case involves intrusion into seclusion rather than publication of private information.



Regulatory Decisions

Although decisions of the Privacy Commissioner / OAIC are administrative rather than judicial, they can form persuasive precedent. The decisions interpret and apply the Privacy Act 1988 (Cth). The decisions can provide authoritative guidance on what conduct the regulator considers to be a “serious” or “unjustified” interference with privacy influencing courts. See updated list of determinations [here](#). Two cases of particular importance are detailed below. These cases are valuable, as the Privacy Act does not have any dedicated to facial surveillance technology, meaning the Privacy Commissioner’s determinations are the premier source of precedent in the interpretation of the Privacy Act to facial surveillance technology.

The Privacy Commissioner ruled that Kmart’s use of facial surveillance technology to scan every individual entering certain stores breached privacy law.

Kmart did not obtain consent to collect the sensitive biometric data as required under the Privacy Act. While the exact number of people affected is unknown, it may extend to hundreds of thousands.

Kmart argued that its use of facial surveillance fell within an exemption to the *Privacy Act* permitting data collection to combat unlawful activity. However, the Commissioner found the technology was only “partially suitable” for that purpose and, given its invasive nature and vast scale, was disproportionate to the relatively small amount of fraud it prevented.

Commissioner Initiated Investigation into Bunnings Group Ltd (Privacy) [2024] AICmr 230 (29 October 2024)

Relevance to Privacy Tort:

- Found that facial-recognition surveillance without consent breached the Australian Privacy Principles.
- Reinforces that biometric data collection must be necessary, proportionate, and consent-based.
- Provides persuasive guidance on the “seriousness” and “reasonableness” thresholds under the privacy tort.

- Confirmed that organisational safety concerns do not justify disproportionate biometric surveillance.
- Clarified the balance between individual privacy rights and legitimate business or security purposes.
- Demonstrates how proportionality and necessity tests apply to large-scale data collection.



Bunnings used facial recognition technology to cross-reference customers entering its stores against a database of individuals previously identified as aggressive or violent, in an effort to prevent in-store threats to safety. The OAIC found that this practice breached the Australian Privacy Principles, particularly those concerning notice, consent and the lawful purpose of collection. The Commissioner held that Bunnings' justification did not

constitute a reasonably necessary or proportionate purpose for the collection of biometric information without consent. This finding clarified the balance between organisational safety objectives and individuals' rights to privacy, confirming that even well-intentioned security measures must comply with privacy law requirements for necessity, proportionality and transparency.



International Cases Relating to Privacy Law

The new privacy tort bears similarity to the UK tort of the 'Misuse of Private Information.' While some concepts such as the Australian exemption from journalistic material is different from UK law, other concepts such as a "reasonable expectation of privacy" and weighing any privacy right against the public interest and a test of seriousness have all been defined through UK civil law.

Given the similarity of the legal systems between Australia and the UK, Australia will likely turn to the UK for persuasive precedent. Let's now look at the cases to be turned to.

Campbell v MGN Ltd [2004] UKHL 22, [2004] 2 AC 457

Relevance to Privacy Tort:

- Established modern misuse-of-private-information principles, distinguishing between taking and publishing images.
- Reinforces that truthful publication can still constitute a serious invasion of privacy.
Supports plaintiffs where private images or health-related information are disclosed without consent.

Naomi Campbell was photographed leaving a Narcotics Anonymous

meeting. The *Daily Mirror* published those photographs alongside an article revealing her attendance and details of her drug addiction and treatment.

Lord Hope drew a distinction between the taking of the photographs (which may not in itself always be actionable) and their publication (which was in this case a misuse of private information). He reasoned that publication of photographs could constitute a separate and more serious invasion of privacy, particularly when they disclose information about a person's health or therapy. Despite the journalistic exemption of the privacy tort the applicability of this case is still important. Use cases for this precedent include where private images have been published in cases of "revenge porn".

Baroness Hale introduced the "popping out for milk" analogy. She explained that while the public may always be interested in seeing photographs of celebrities, they are not entitled to see every moment of a celebrity's private life. Photographs showing a celebrity performing ordinary activities such as "popping out for milk" may be justifiable. However, where photographs allude to private matters such as addiction treatment, publication will generally be unjustified. This precedent supports a celebrity's right to sue an individual (not covered by the journalistic exemption) for posting exposing photos of them online.

Importantly, the House of Lords held that while the press was entitled to

correct Campbell's false public claim that she did not take drugs (a matter of public interest), the publication of the photographs and specific details of her treatment went beyond what was necessary to serve that public interest. The disclosure of those images crossed the line into a misuse of private information. This supports the argument that if an individual discusses a matter in the limelight, or brings a subject matter to the public's attention, the individual then forfeits their right to privacy over that matter. For example, if an influencer centres their content on their collection of designer bags and is then photographed purchasing counterfeit bags overseas, they may not sue the individual who took or shared the photo.

Stoute v News Group Newspapers
[2023] EWCA Civ 523.

Relevance to Privacy Tort:

- Held that privacy expectations diminish where claimants invite publicity through their conduct.
- Supports defendants arguing that plaintiffs who voluntarily seek public attention may have reduced privacy rights.
- Raises caution in applying this reasoning to vulnerable groups to avoid implicit victim-blaming.

Wealthy plaintiffs were snapped by paparazzi as they arrived at a restaurant on a JetSki. The plaintiffs sought an injunction to prevent the publishing of these photos by the tabloids. The attention grabbing nature of their

arrival counted against their claim to privacy and the injunction was declined. This sets a precedent to consider to the extent that the plaintiffs' behaviour incited the invasion of privacy. While in some cases this is appropriate, this does open the door to scrutinise the behaviour of say, stalked women.

This is particularly relevant to the privacy of children of celebrities. If celebrities have facilitated their child's celebrity (eg. family vlogging) this erodes the reasonable expectation of the child's privacy. This was affirmed in *Spelman v Express Newspapers [2012]* (alternative link [here](#)) at [100] and [119]-[120] and *Murray v Express Newspapers [2008]* at [33].

Murray v Express Newspapers [2008]
EWCA Civ 446 [2009] Ch 481.

Relevance to Privacy Tort:

- Established "reasonable expectation of privacy" factors now mirrored in the Australian statutory tort.
- Recognised special protection for children and affirmed that privacy can extend into public places.
- Supports plaintiffs where context (child's presence, home setting, private activity) elevates privacy expectations.

Both the Australian tort (Clause 7(1)(b) of Schedule 2 of the Privacy Act 1988) and the UK tort rely upon proving a reasonable expectation of privacy. The examples provided in the privacy act reflect the "Murray factors" examined



by UK lawyers when deciding if a reasonable expectation of privacy exists. The Murray factors arise from a lawsuit resulting from JK Rowling and her husband being photographed by paparazzi on a public street with their small child. The case was originally dismissed, however, upon appeal the judge found that children have specific privacy rights. The case *Weller v Associated Newspapers* also affirmed the presence of a child being an aggravating factor when deciding the reasonable nature of the invasion of privacy. This is reflected in the legislation through schedule 2, section 7(5)(f)(i) of the Privacy Act which requires contextual matters such as the presence of a child be considered in the reasonable expectation of privacy.

Schedule 2, section 7(5)(e) of the Privacy Act requires that the location of the privacy breach be considered. This case supports the argument that privacy rights can extend into public places.

In *CC v AB A Husband* threatened to expose his famous wife's affair to the media. The wife's lover sought an injunction to prevent the publication of the information. The affair had been discreetly conducted out of the public's eye. The Judge held that the lover "had not misled the public by false denials, nor has he moralised publicly on family life, or his own continence in sexual matters" (at [52]) and was therefore entitled to privacy on the matter.

This case is significant because the judge's comments imply that if a claimant has moralised their relationship or family life, an invasion of privacy in that area may be considered justified. While deceit about personal matters presented to the public, or issues voluntarily disclosed by the individual, are generally less likely to be protected as private, this judgment appears to extend that logic to the moralisation of any issue.

CC v AB [2006] EWHC 3083 (QB).

Relevance to Privacy Tort:

- Confirmed that private relationships and affairs can be protected where the claimant has not publicly moralised the issue.
- Supports defendants where claimants have created a public moral stance inconsistent with their private conduct.
- Helps define the boundary between hypocrisy and privacy in public-interest analysis.

AMC v News Group [2015] EWHC 2361 (QB)

Relevance to Privacy Tort:

- Clarified that celebrity status alone does not remove privacy rights.
- Limited "public interest" justifications to matters genuinely affecting public roles or integrity.
- Supports plaintiffs arguing that moral judgments or gossip do not outweigh privacy interests.

A famous athlete had an affair while dating a girlfriend. The athlete later



married the girlfriend and was able to secure an injunction to prevent any further publication on the adulterous encounter. While the court held that he was a role model (at [20]), he was not a role model in a moral capacity, rather in a sporting capacity. Therefore, his immoral two timing was beyond the realm of what the public is entitled to know. This precedent supports the argument that celebrity does not negate one's privacy. While the applicability of this case to Australian Privacy Law is impacted by the journalistic exemption, the case offers valuable insight into what the public is entitled to know and what is to be considered private matters.

At [24] the court finds that exposing the mere "breaking of rules" is not enough to justify an invasion into one's privacy. The claimant appeared in advertisements and profited as a result. The defendant argued that the claimant was profiting off his clean family man image and it was therefore in the public's interest to expose his deceit. In rejecting these arguments the court refined what privacy invasions can be considered 'public interest'.

Ash v McKennitt [2006] EWCA Civ 1714, [2007] 3 WLR 194, [2008] QB 73

Relevance to Privacy Tort:

- Established that fame does not negate an individual's right to privacy.
- Protected disclosures arising from personal relationships, even where one party is a public figure.
- Supports plaintiffs seeking to prevent publication of private or relational information by acquaintances.

Loreena McKennitt is a famous Canadian folk singer who sued her former friend Niema Ash to prevent the publication of sections of her book '*Travels with Loreena McKennitt: My Life as a Friend*'. Excerpts of the book focused on intimate details of their friendship that would not have otherwise been known to the public. The court found that despite her musical success she had deliberately avoided the limelight and therefore her right to privacy was not to be negated by her fame.



Mosley v News Group Newspapers **[2008] EWHC 687 (QB)**

Relevance to Privacy Tort:

- Affirmed that consensual sexual activity conducted in private is inherently protected by privacy rights.
- Rejected moral judgment and sensationalism as valid public-interest defences.
- Supports plaintiffs claiming serious invasions of intimate privacy without legitimate public interest.

Max Mosley, then President of the Fédération Internationale de l'Automobile (FIA), sued *News of the World* after it published secretly filmed footage of him participating in a private sadomasochistic orgy. The newspaper alleged that the event was "Nazi-themed" and therefore in the public interest to expose. Mosley argued the orgy was a standard prison scene, whereas Tabloids claimed he spoke in a German accent, "prisoners" wore striped pajamas and the claimant had his head shaved. The Tabloids argued that the public had a right to know that a public figure was engaged in Nazi roleplay and were therefore justified in their publication of the matter. However, Justice Eady found that nothing verifiable about the scene was unique to Nazism. Justice Eady found that a sadomasochistic orgies or sexual affairs otherwise could not reasonably be considered a matter of public interest, however, if the mocking of Jews or the holocaust had occurred there may be

genuine public interest in the publication of such information.

The decision affirmed that consensual sexual activity in private is inherently protected by privacy rights and not open to public scrutiny without a compelling public interest.

It established that moral judgment, sensationalism, or curiosity cannot justify breaching privacy.

Although Mosley sought an injunction to prevent further dissemination of the video, it was refused on practical grounds as the footage was already widely available online.

PJS v News Group Newspapers [2016] **UKSC 26, [2016], 1 AC 1081; [2016] 2 WLR 1253, [2016] 4 All ER 554**

Relevance to Privacy Tort:

- Upheld an injunction despite widespread online publication, confirming that each further disclosure is a new wrong.
- Prioritised family and children's privacy interests over freedom of expression.
- Supports plaintiffs seeking ongoing injunctive relief where information has partially entered the public domain.

In *PJS v News Group Newspapers Ltd*, the UK Supreme Court upheld an injunction preventing the publication of details about a celebrity's private sexual encounter, despite the story already circulating online and in foreign

jurisdictions. Demonstrates judicial willingness to protect privacy despite “public domain” arguments and supports that each additional act of disclosure can be independently tortious. The court placed particular weight on the privacy rights of PJS’s children, emphasising That children’s welfare must be considered even when their parents are public figures.

Sicri v Associated Newspapers [2020] EWHC 3541 (QB), [2021] 4 WLR 9

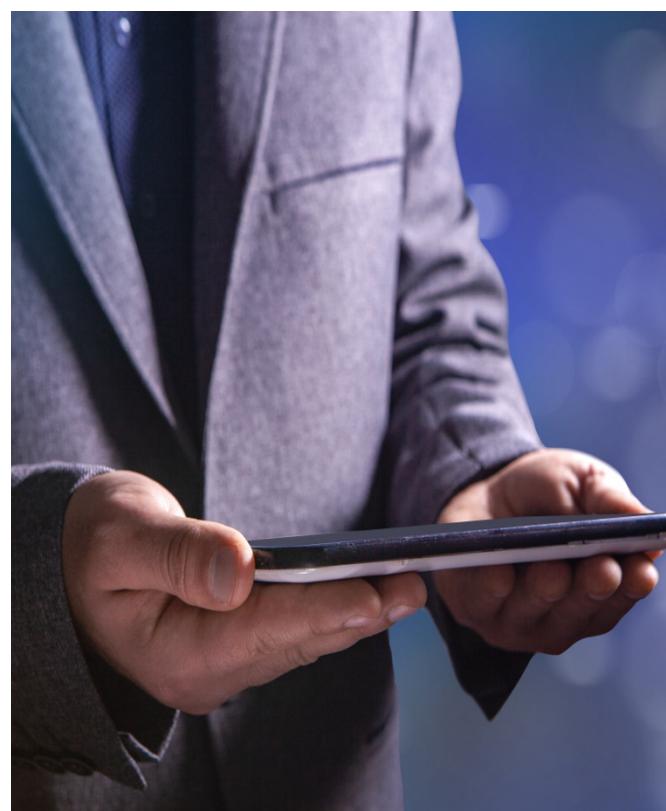
Relevance to Privacy Tort:

- Affirmed that individuals under investigation retain privacy until formally charged.
- Excluded reputational damages from privacy torts to preserve distinction from defamation.
- Supports plaintiffs seeking privacy protection during pre-charge investigations and media coverage.

In *Sicri v Associated Newspapers Ltd*, the claimant was arrested on suspicion of terrorism offences following the Manchester Arena bombing. A UK news outlet published his name and details while he was still under investigation, leading to intense public scrutiny and vilification. He was later released without charge, and police confirmed that no further action would be taken. Sicri then attempted to sue for misuse of private information, arguing that the publication of his identity as a suspect in a serious criminal investigation violated his privacy and caused reputational harm.

The court held that The claimant could pursue damages for the misuse of private information but reputational damages were not recoverable under the tort. *Sicri* offers guidance on how the boundaries of the new privacy tort should be drawn, particularly in relation to other causes of action such as defamation and breach of confidence.

Importantly, this case set the precedent that individuals being investigated for crimes have rights to their privacy until they are charged. The courts also found this in *Bloomberg LP v ZXC* [2022] UKSC 5, [2022] AC 1158 at [146], *ERY v Associated Newspapers Ltd* [2016] EWHC 2760 (QB) [2017] EMLR 9 and *Richard v British Broadcasting Corporation* [2018] EWHC. These cases establish that under UK law individuals being investigated for crimes have the right to privacy for matters relating to that crime until they are charged.



Further resources

- See [here](#) for elevenM's Victorian Privacy Case Notes Database. The site lists over 30 VCAT and Victorian Supreme Court decisions that relate to the interpretation of the Privacy and Data Protection Act 2014 (Vic) and the Information Privacy Principles.
- 5RB is a UK based group of barristers who specialise in Media law, including privacy law. They maintain an up to date [list of casenotes](#) on privacy law cases in the UK and sometimes beyond.

- The OAIC maintains an up to date [list of privacy determinations](#) resulting from their investigations. These determinations are useful when seeking guidance on how language from the Privacy Act 1988 is to be interpreted.

