

Response from Dr Michael Douglas, UWA Law School:

Question is whether UK actions like [this one](#) could be a problem for the Australian media OR whether their exemption from the Act will mean that people can't sue journalists and media groups for holding a plaintiff's private information on their devices:

Much depends on what the Government does in response to the recommendations made in the Privacy Act Review Report.

If the Government gives effect to the recommendations, it will mean that media organisations need to comply with 'standards that adequately deal with privacy' to get the protection of the journalism exception. The journalism exception, in turn, means that media organisations do not need to comply with the requirements of the Privacy Act that fall on many other entities.

The media's recent coverage of itself with respect to this reform is predictably hysterical. As regards the journalism exception, it means that that media organisations and their employees will need to comply with the same standards as everyone else. Eg they will have to be careful with individuals' personal information.

The Report's proposals modernise the approach to privacy, so various sectors of the media—the old print, the new digital, and everything else—are treated fairly. They would better align privacy protections with society's expectations, perhaps at the cost of inconvenience to Australia's media barons.

If journos and the media don't mean those 'standards that adequately deal with privacy', then they might face consequences. So it is only the sloppy and the dodgy that have anything to worry about.

Could I also clarify if there are any legal avenues currently for people who feel their privacy has been breached by a journalist, or must they rely on media codes like ACMA?

The protection afforded by Australian privacy law is notoriously weak. This is especially the case with respect to invasions by journalists and media organisations.

Some people might try to use defamation to indirectly protect privacy, but it is an awkward fit, and won't always work. Eg:
<https://www.theguardian.com/media/2019/sep/19/daniel-johns-sues-news-corp-for-defamation-over-front-page-brothel-story>
<https://lsj.com.au/articles/the-case-that-changed-me-david-rolph/>

Codes like those of ACMA are toothless.

It is currently difficult to sue over an invasion of privacy. The High Court had an [opportunity to recognise a tort of invasion of privacy years ago](#) in a case called *ABC v Lenah Game Meats* (about you guys!), but it declined to do so. Courts of comparable systems (UK, Canada, NZ) have developed means for redress while Australia has fallen behind.

For the Privacy Act Review Report I was quoted as saying (p 86):
Michael Douglas submitted that it is difficult to provide examples of Australian court cases because causes of action to protect privacy are lacking. Instead he pointed to examples of cases involving privacy breaches by the media in the UK, submitting that 'the UK sees more relevant cases because the law there is better for plaintiffs, not because Australian journalists are more ethical.'

The introduction of a statutory tort for serious invasions of privacy is long overdue. Experts have been calling for it for years. Media voices are worried about it because it means some will be held accountable for dodginess they might currently get away with.

Are there any stories you've seen around or are aware of that you think should / would be knocked out by the right to sue for breach of privacy?

Some we are wondering about are:

[Barnaby Joyce bundle of joyce](#)
[Kate Ritchie outside the clinic](#)
[Rebel Wilson outing](#)

Barnaby would have been unlikely to have any success if this statutory tort were in force. His profession, and the identity of his partner, and their role in government, favour the view that he would not have a reasonable expectation of privacy with respect to the story. That proposition is magnified given he has historically campaigned on 'traditional values' issues, like marriage equality.

Kate Ritchie might have had a claim. Compare [Naomi Campbell's claim when she was outed with respect to her attended NA](#). This became a [leading privacy case](#) for the common law world.

Rebel Wilson may also have had a claim. The court would have to consider whether she had a 'reasonable expectation of privacy'. Although she is a celeb, she might still have succeeded. [Compare this case, called 'PJS'](#). The [identity of the person who succeeded](#) in this case is notorious, and you should be able to figure it out by digging—he is a celebrity—but his ID has been suppressed by the court.

[Lara Bingle](#) nude photo release

The details of the [limo driver described as covid “patient zero”](#) being released by the media

Yes, each of those examples is the sort of thing that could justify a person suing under the new statutory tort.

The fact that certain media organisations are worried about this tort is illuminating. It indicates that they would prefer to continue invading people's privacy in pursuit of their business objectives without repercussions.