

1. Could a similar finding to the Cliff Richard privacy ruling made this week be made by an Australian court? Why/why not? Courts in the UK have developed a cause of action for misuse of private information, which balances an individual's right to privacy against the public interest in freedom of speech and the press. As a result, privacy claims by celebrities have become increasingly common in the UK in the past 15 years. Although some Australian courts have taken tentative steps towards recognising a right to privacy, the law here is very much in its infancy. There have been no successful claims by celebrities seeking to protect their privacy here. It is unlikely that an Australian court would protect a celebrity in circumstances similar to those involving Sir Cliff.
2. Could the Cliff Richard privacy ruling in the UK have an impact on Australian law? I doubt it. The ruling in the UK is an application of a cause of action that was developed to ensure that UK law was consistent with the rights and freedoms in the European Convention on Human Rights. Australia does not have a bill of rights or any other enshrined right to privacy and there is therefore no impetus that could cause the law to evolve in the same direction as UK law. The Australian Law Reform Commission has recommended that parliament pass a law creating a statutory right to privacy but that recommendation has not been implemented.
3. With no tort of privacy in Australia, what legal recourse would be available to an Australian celebrity (or ordinary citizen) if their privacy was invaded in a similar manner? Celebrities in Australia who are aggrieved by media reporting are generally restricted to suing for defamation (where what has been published damages their reputation, almost always because what is published is false) or breach of confidence (where what has been published reveals confidential information, contrary to some obligation on the part of the publisher to protect the information). Neither of those actions would be likely to provide a remedy to a celebrity in Sir Cliff's circumstances. Neither protects pure invasions of privacy.
4. Do you think the decision will have a chilling effect on media reporting of police raids in the UK? And here? The result in Sir Cliff's case is similar to that in many other celebrity cases in the UK in recent years - for example, Naomi Campbell (photos leaving a drug treatment facility); Michael Douglas and Catherine Zeta-Jones (unauthorised wedding photos), Max Mosley (video of sadomasochistic sexual activities), Prince Charles (publication of a journal extract concerning the handover of Hong Kong to China). These cases always involve delicate balances between freedom of the press and the right to privacy, but I see the Sir Cliff case as an application of existing law, not the creation of new law. That said, media reporting of raids in the UK is likely to be more circumspect in light of this ruling. I do not think the ruling will have any discernable effect on the media in Australia.