



commission for  
children and young people  
and child guardian

## Tips for parents on photography of children and young people

This fact sheet aims to explain privacy laws around the use of images of children and young people to provide parents and carers with the knowledge they need to challenge threats to the privacy of children and young people if they do occur.

New technologies provide better and faster ways to communicate than in the past, decreasing the global divide. Mobile phone, digital and video cameras allow people to take images of themselves doing anything, anywhere and send them to anyone.

This has some negative implications for children and young people. While most young people use these technologies to share messages with friends and family, some people using them have ulterior motives.

As recently as June 2007, convictions have been recorded in Queensland where people have used mobile phone cameras to take photos up girls' skirts ('upskirting'), or to secretly film children at public pools. Such images have also been traded on the Internet as a form of child pornography<sup>1</sup>.

Children and young people should be made aware of the dangers that can arise from people taking photos or filming them, without creating fear. It is important that children and young people feel confident about their achievements, and having a visual record of successful moments, such as winning a sporting event, can reinforce this.

### Parents taking photos/videos of their children

In most cases, it's not illegal for parents or guardians to take photos of their children while they're involved in sports or events. However, many sports clubs now require consent from administrators, parents and the children themselves before young people can be filmed or photographed. It is recommended that you obtain consent from the parents of other children at events, and from the other children if they are of sufficient maturity, before you begin taking photographs.

Ask the sporting team organisers or venue owner what their risk management strategy is in relation to taking photographs of children at events. Organisations will usually have a code of conduct or guidelines on photography at events they manage.

For further information on photography of children and young people at sporting events, see the Australian Sports Commission website at [www.ausport.gov.au/ethics/childimages.asp](http://www.ausport.gov.au/ethics/childimages.asp).

### Children and young people in the child protection system

It is prohibited under s189 of the *Child Protection Act 1999* to publish information which identifies, or is likely to identify, a child or young person in the context of intervention by the child safety system without the written approval of the Department of Child Safety's Director-General<sup>2</sup>.

1 Office of the Victorian Privacy Commissioner (2003). "Appendix F: Info sheet 05.03 – 28 August 2003". Annual Report 2003-04. p72.

2 Office of the Queensland Parliamentary Counsel (2006). "Child Protection Act 1999". Reprinted as in force on 30 October 2006. Reprint No.4A

## Children and young people in contact with the youth justice system

Generally, the *Juvenile Justice Act 1992* protects a young person against their identifying information being published. This includes having media take video footage or photographs. However, there are some situations where young people in the youth justice system can be filmed or photographed.

Under s234 of the Act, the court may allow publication of identifying information:

- 1) This section applies if—
  - a) a court makes an order under section 176(3) relating to a child found guilty of a serious offence that is a life offence; and
  - b) the offence involves the commission of violence against a person; and
  - c) the court considers—
    - i. the offence to be a particularly heinous offence having regard to all the circumstances; and
    - ii. that it would be in the interests of justice to allow publication of identifying information about the child.
- 2) The court may order that identifying information about the child may be published.
- 3) The order does not authorise publication of identifying information before the end of any appeal period or, if the child gives notice of appeal or of application for leave to appeal, before any appeal proceeding has ended.

Under s301(3) of the Act, the chief executive may give written authority to a person to publish identifying information about a child if the chief executive is satisfied the publication is necessary to ensure a person's safety.

## Private property

There is a common law understanding when a person enters private land that they consent to any requirements that the property owner may impose upon them. This means the property owner, for example a school or sports club, may not permit photographs or videos of events held on their land to be taken. However, there is nothing to prevent a person from taking photos from outside the borders of private land, regardless of the property owner's preferences.

## Public places

There is currently no one specific piece of legislation preventing people from taking photos of children and young people in public places, unless the person photographing or filming creates a 'public nuisance'. This only applies to the photographer or camera-person if their conduct is 'offensive' or 'threatening' and likely to interfere with public enjoyment of a public place (under s6 of the *Queensland Summary Offences Act 2005*).

## Indecent photographs of children and young people

It is against the law to take indecent<sup>3</sup> photographs of a child under the age of 16, or to involve a child in any material which exploits them. Under s210(1)(f) of the *Criminal Code Act 1899* it is an offence if a person takes an indecent photograph of a child under the age of 16 years.

Under s43 of the *Classification of Films Act 1991*, a person must not procure, or attempt to procure, a minor to be in any way concerned in the making or production of an objectionable film<sup>4</sup>.

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<sup>3</sup> Indecent in this instance refers to circumstances where a reasonable adult would expect to be afforded privacy as per s227A of the *Criminal Code Act 1899*.

<sup>4</sup> Office of the Queensland Parliamentary Counsel (2005). "*Classification of Films Act 1991*".

## Appropriate representation

Ensure that all children in the photograph or image are appropriately dressed. Care should be taken not to print or broadcast any images that may be used for the sexual gratification of others, for example, images of naked or semi-dressed children or those that display young people emulating adults.

Do not publish images that are likely to cause distress, upset or embarrassment to the child – either now, or in the future. Consider whether the image portrays the child or young person in a demeaning way, or if it could be seen to exploit the child in any way.

## Commercial use

If a photograph or vision is to be used commercially – for example, modelling photos – a signed release is required. However, this is not required for non-commercial images<sup>5</sup>.

If a professional photographer is hired to take photos of an event involving children and young people, ensure that the images remain the property of the organisation hiring the photographer. Where possible, have this written into the signed agreement with the photographer prior to the event.

## Who owns the image?

The photographer or camera-person owns the images they take (under the *Copyright Act 1968 (Commonwealth)* s35(5)<sup>6</sup>). If a photographer takes a photo of a child or young person at an event or in public and the image cannot be classified as indecent, they hold the copyright on that image and can publish it without asking for consent. The Internet is not governed by the same regulations as print or broadcast media, so photographers can display photographs or vision online.

## Tips for parents or guardians

- It is **not illegal for people to take photos of children** apart from their own at school events, dance performances etc. unless these photos are (as outlined above) indecent, or are likely to identify a child in the child protection or juvenile justice systems. A common sense approach needs to be taken in these situations to ensure everyone can have their child's achievements documented photographically.  
When hosting an event where parents are permitted to take photographs or videos, make it clear from the start that any images taken must be for **private use** only.  
Ask the organisers of school or sporting events to **place conditions** on the use of photographic devices and / or restrict photography to official photographers only.
- Ask organisations with which your child is involved to develop a risk management strategy which outlines ways in which they can make their organisation a safe place for children and young people. If an organisation your child is involved with does not have a risk management strategy, the Commission can assist through the provision of free risk management strategy workshops. For further information, visit the Commission's website here [www.ccypcg.qld.gov.au/about/risk\\_management.html](http://www.ccypcg.qld.gov.au/about/risk_management.html). The minimum standard for child protection risk management strategies has now been specified in the Commission for Children and Young People Amendment Regulation (No.1) 2006, effective from 1 January 2007.
- There are a number of legal issues to consider when publishing photos online, including copyright and defamation. Although many children and young people today are 'cyber-savvy', they may not always understand how images they put on the Internet could be used. Loss of privacy and identification of particular children by on-line predators are the biggest risks.

<sup>5</sup> Nemeth, A (2006). "NSW photo rights: Australian street photography legal issues". [www.4020.net/words/photorights.shtml](http://www.4020.net/words/photorights.shtml)

<sup>6</sup> Ayres, R (2007). "Review of Privacy: Issues Paper 31". Letter from the Arts Law Centre of Australia to the Executive Director, Australian Law Reform Commission. 15 January.

- When posting photos of themselves, it might be useful to advise children and young people to use group photos rather than photos of them alone. The use of low resolution and compressed images will make photos more difficult to modify, and care should be taken so that background identifiers in photos don't show where they were taken. Encourage children to ask permission from other people in a photo before publishing it online, and never include identifying information such as name, age, or address next to an image.
- **Discuss the photos your child has on their social networking sites**, such as MySpace, and what images they can share when chatting with friends online. Explain that the photos and videos they post online to share with friends can easily be saved, modified or reproduced, so they should keep their identity confidential. For more information, see the Commission's Fact Sheet 5 with tips for parents on how to help keep young people safe online.
- **Webcam vision can embarrass the subjects.** It is easy for children and young people to play around with webcams, but the results can end up on video sharing sites like YouTube for all to see. Explain that private photos and videos taken with mobile phone cameras may end up in the wrong hands, so photos of private moments should be kept private. It's also important for children and young people to respect the privacy of others in this regard.
- **Retain an open and communicative relationship with your child** so they are comfortable discussing these issues with you.

## How to make a complaint

If you have a complaint about an invasion of privacy experienced by a child through photography or video media, write to the organisation or agency concerned and try to resolve your complaint with them in the first instance.

Give the respondent reasonable time – say, 30 days – to respond to your complaint. If you are not satisfied with the response to your complaint, or if the respondent does not reply, you can complain to the Office of the Privacy Commissioner.

Your letter of complaint to the Privacy Commissioner should include the name of the organisation or agency involved, a description of the privacy breach, any action the organisation or agency has taken to fix the problem, a description of any response you have had from the organisation or agency, and copies of any relevant documents. Complaint forms can be downloaded from [www.privacy.gov.au/publications/complaintform.html](http://www.privacy.gov.au/publications/complaintform.html)

If you need help completing this form, please phone the Office of the Privacy Commissioner hotline on 1300 363 992 or email [privacy@privacy.gov.au](mailto:privacy@privacy.gov.au)

## For more information

Attorney-General's Department	<a href="http://www.ag.gov.au">www.ag.gov.au</a>
Australian Law Reform Commission	<a href="http://www.alrc.gov.au">www.alrc.gov.au</a>
Crime and Misconduct Commission	<a href="http://www.cmc.qld.gov.au">www.cmc.qld.gov.au</a>
Department of Child Safety	<a href="http://www.childsafety.qld.gov.au">www.childsafety.qld.gov.au</a>
Department of Education, Training and the Arts	<a href="http://www.education.qld.gov.au">www.education.qld.gov.au</a>
Office of the Federal Privacy Commissioner	<a href="http://www.privacy.gov.au">www.privacy.gov.au</a>
Queensland Police Service's 'Surf Safely'	<a href="http://www.police.qld.gov.au/programs/personalSafety/surfsafely.htm">www.police.qld.gov.au/programs/personalSafety/surfsafely.htm</a>