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Q&A ON PRIVACY

University of Newcastle
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The Hon. Michael Kirby AC CMG

UNIVERSITY OF NEWCASTLE

PRIVACY Q & A

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1. *Importance of right to privacy?*

The importance of privacy is that it preserves the right of the individual to control perceptions of him or her and thus is an aspect of individualism. It is guaranteed in the *Universal Declaration of Human Rights* and the ICCPR.

2. *Public interest derogation?*

Freedom of expression includes rights sometimes to intrude into individual privacy. However, public interest is not the same as the fact that some, perhaps many, members of the public are interested.

3. *Individual and collective rights?*

The individual right to privacy stands alongside the right to freedom of expression, which also belongs to individuals. The issue is not one of collective versus individual rights. It is a matter of reconciling competing rights where they come into conflict.

4. *Current causes of action?*

I think it would be generally agreed that the current motley collection of legal rights do not, even in combination, adequately protect the individual right to privacy in Australia. Just look at the gross invasions of private rights in which the modern media indulge.

5. *Statutory tort?*

Both the NSWLRC and the ALRC have proposed (in somewhat different language) a statutory cause of action for breach of privacy. I support this idea and consider that it is long overdue. Given time, the courts might even develop a common law right. But legislation, carefully balanced with appropriate defences, would be the better way to go.

6. *Human rights protection?*

The lack of effective human rights protection in Australian law means that the universal right to privacy, respected in the UDHR and ICCPR, have to struggle against the sheer power of opinionated media and the pressure to invade privacy for reasons of celebrity, titillation or media profits.

7. *Legal protection?*

I do believe that legal protection is required for privacy. Even in the United States of America, which has the most extended protection for free expression and freedom of the press in the world, the Supreme Court has found a constitutional right to privacy. So far, we have not accepted that right in Australia.

MICHAEL KIRBY