

Chapter 13

Privacy Rights and Charter Rights

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I Introduction

Section 13(a) of the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (the Victorian Charter) provides that a person has the right not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with. This chapter considers the nature and scope of the novel right to privacy embodied in the expression ‘privacy, family, home or correspondence’ and the qualification that arises from the requirement that any interference must not be ‘unlawful or arbitrary’. Section 13(a) has been considered primarily in two contexts: where the right is raised in the context of the requirement that statutory provisions should be interpreted as far as it is possible to do so consistently with their purpose, as required under s 32; and where it is argued that a public authority has acted incompatibly with s 13(a) or failed to give it proper consideration in its decision-making, as required under s 38(1).

This chapter begins by establishing the context for the operation of s 13(a), situating it within the framework of laws that protect aspects of privacy within Victoria and discussing its interrelationship with key international frameworks and international human rights decision-making.¹ There then follows a detailed analysis of these rights, drawing on international jurisprudence and discussion of the key cases that have interpreted and applied s 13(a). The chapter concludes with an analysis of the extent to which the right to privacy in the Victorian Charter has expanded the level of privacy protection in Victoria.

II Contextualising the Right to Privacy

The concept of privacy is broad in the sense that it is multi-dimensional,² but also narrow in that it is seldom unqualified. The multi-faceted nature of privacy has created a tendency for it to be protected on an ad hoc basis, with the consequence that it is

1 It should be noted that s 32(2) of the Victorian Charter states that: ‘International law and the judgments of domestic, foreign and international courts and tribunals relevant to a human right may be considered in interpreting a statutory provision.’

2 For example, Raab identifies seven dimensions; ‘privacy of the person, privacy or behaviour or action, privacy of personal communication, privacy of data and image, privacy of thought and feelings, privacy of location and space, and privacy of association (including group privacy)’: C Raab, ‘Surveillance: Effects on Privacy, Autonomy and Dignity’ in D Wright and R Kreissl (eds), *Surveillance in Europe*, Routledge, 2015, p 262.

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