

Photographing Children

The Department of Sport and Recreation supports initiatives to make sport and recreation safer for children and acknowledges that there is legislation that supports children's rights. Children should be free to participate in sport and recreation without undue exposure to the risk of abuse. Photographing children involved in sport and recreation activities can put children at risk, particularly if the images are being posted on websites or distributed in publications.

The department seeks to raise community awareness about child protection issues and promote vigilance without over-reacting, especially in the context of sporting events. Managing the taking of photographs can be handled as part of the event risk management plan.

Background

Mobile phone cameras have added a new dimension to covert behaviour and perceptions of privacy. Technology is well-ahead of legislation and a national approach to the use of unauthorised photographs has been advocated. Photographing people in public places is not illegal as long as the subject is not compromised – e.g. undressed. Where photographs are “published” is of increasing community concern.

Many facilities do not allow the use of mobile phones (regardless of whether they have camera features) in change rooms. Some local government pools require permission for photography anywhere in their venue. Some facilities require people photographing their children to obtain permission from other parents whose children might be photographed too. Beach inspectors have the power to police inappropriate behaviour at beaches, including voyeuristic photography. Some local governments require a permit for commercial photography in parks and reserves.

In August 2005 the Standing Committee of Attorneys General released a discussion paper *Unauthorised Photographs on the Internet and Ancillary Privacy Issues*; some key points include:

- A 1937 High Court decision is considered an authority for the view that there is no common law right to privacy in Australian law.
- ... the vast majority of photographs of children are taken in appropriate circumstances and are used for acceptable purposes. Any prohibition would require a vast number of exceptions (for example: family, friends, media) and arguably these exceptions could be the most common source of abuse or misuse. It would also be necessary to define how consent might be given, that is whether it would need to be in writing, or implied from the circumstances. For these reasons, a prohibition of this nature would seem to be unenforceable and perhaps a disproportionate response to the issue sought to be addressed.
- The use to which an image is put is central to this discussion paper.

Contacts

Tricia Summerfield
Senior Policy Officer

(08) 9492 9831

tricia.summerfield@dsr.wa.gov.au

Resources

In WA the following legislation defines relevant offences:

- *Censorship Act 1996*
 - sale, display or possession of “child pornography”.
 - Use of computer to obtain or transmit “child pornography”.
- *Criminal Code 1913*
 - indecently recording children.
- *Surveillance Devices Act 1998* – use of devices to record a “private activity” without consent.
 - Publishing such recordings.

Standing Committee of Attorneys-General (2005) Unauthorised *Photographs on the Internet and Ancillary Privacy Issues*: discussion paper

[http://www.ag.gov.au/agd/WWW/rwpattach.nsf/VAP/\(CFD7369FCAE9B8F32F341DBE097801FF\)~8+AugInternetPhotosFinalPaperAugust05.pdf/\\$file/8+AugInternetPhotosFinalPaperAugust05.pdf](http://www.ag.gov.au/agd/WWW/rwpattach.nsf/VAP/(CFD7369FCAE9B8F32F341DBE097801FF)~8+AugInternetPhotosFinalPaperAugust05.pdf/$file/8+AugInternetPhotosFinalPaperAugust05.pdf)

Department of Sport and Recreation (2006) Guidelines for photographing children involved in sport and recreation (attached).

CHILD PROTECTION

GUIDELINES FOR PHOTOGRAPHING CHILDREN INVOLVED IN SPORT AND RECREATION

Children should be free to participate in sport and recreation without undue exposure to the risk of child abuse.

The Department of Sport and Recreation supports initiatives to make sport and recreation safer for children and acknowledges that there is legislation that supports the child's right.

- Federal privacy laws protect the personal information of adults and children and images of individuals in photographs may be treated as personal information where a person's identity is clear or can be reasonably worked out from that image. However there is no common law right to privacy in Australian law so where a situation is not clear you should contact the Office of the Federal Privacy Commissioner or visit <http://www.privacy.gov.au/>

Photographing children involved in sport and recreation activities can put children at risk, particularly if the images are being posted on websites or distributed in publications.

The guidelines below will help parents and organisers ensure that children are not placed at risk of abuse or exploitation when participating in sporting activities.

- Establish the type of images that appropriately represent the sport for the Internet and other media.
- If child athlete is named in a publication or on the Internet avoid using their photograph;
- If a photograph is used in a publication or on the Internet avoid naming the child athlete;
- Seek permission from the sporting group or main sporting body controlling an event prior to photographing participants, preferably in writing;
- Require the written permission of parents or legal guardians to publish the images of children aged under 18;
- Only publish images of children in appropriate sporting dress to reduce the risk of inappropriate use. Given the diversity of sport it is difficult to specify what exactly is appropriate; however there are clearly some sporting activities where the risk of potential misuse is greater.
- When photographing sports such as swimming, gymnastics and athletics ensure that the focus is on the activity rather than the particular child and avoid full face and body shots.
- Shots of children in a swimming pool would be appropriate; poolside shots should be waist or shoulder up;
- Do not name individuals or provide information that can identify a child or where they live; and
- Conduct a risk management assessment of your activity to ensure that you are doing all you can to protect against the misuse of images you may publish on the internet.

Guidelines when you invite professional photographers and video camera operators attend a sporting event:

- Provide a clear brief about what is considered appropriate in terms of content and behaviour.
- Issue the photographer or cameraperson with identification which must be worn at all times.

- Inform athletes and parents that a photographer will be in attendance at an event and ensure they consent to both the taking and publication of films or photographs.
- Do not allow unsupervised access to athletes or one to one photo sessions at events.
- Do not approve/allow photo sessions outside the events or at an athlete's home.

If parents or other spectators are intending to photograph or video an event they should also be made aware of your expectations.

- Spectators should be asked to register at an event if they wish to use photographic equipment.
- Athletes and parents should be informed that if they have concerns they can report these to the organiser.
- Be vigilant about people taking photographs at your children's sporting activities.
- Concerns regarding inappropriate or intrusive photography should be reported to the event organiser or official and recorded in the same manner as any other child protection concern.

These guidelines do not constitute legal advice. You are strongly urged to obtain your own legal advice in relation to these issues, particularly related to privacy.