

# Secret Recording Devices in News, Current Affairs and Other Factual Content

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## Status of Guidance Note

This Guidance Note, authorised by the Managing Director, is provided to assist interpretation of the Editorial Policies to which the Guidance Note relates. Guidance notes provide advice to assist in the interpretation of the Editorial Policies, which contain the standards enforceable under the ABC's internal management processes and under the ABC's complaints handling procedures.

It is expected that staff will normally act in accordance with the advice contained in Guidance Notes. In a given situation there may be good reasons to depart from the advice. This is permissible so long as the standards of the Editorial Policies are met. In such situations, the matter should ordinarily be referred upwards. Any mandatory referrals specified in Guidance Notes must be complied with.

## Key Editorial Standards

Excerpts of key editorial standards relevant to this Guidance Note are set out below. Other editorial standards may also be relevant, depending on the specific circumstances applying in each case.

### 5 Fair and honest dealing

#### *Secret recording and other types of deception*

- 5.8 Secret recording devices, misrepresentation or other types of deception must not be used to obtain or seek information, audio, pictures or an agreement to participate except where:
- a justified in the public interest and the material cannot reasonably be obtained by any other means; or
  - b consent is obtained from the subject or identities are effectively obscured; or
  - c the deception is integral to an artistic work and the potential for harm is taken into consideration.

#### *Mandatory referral*

- 5.9 An appropriately senior ABC person designated for the purpose must approve in advance, having consulted ABC Legal, any proposal:
- a to use secret recording during the production of content commissioned, produced or co-produced by the ABC; or

- b to broadcast or publish material obtained by deception; or
- c to broadcast or publish without attribution information that forms the basis of a report and the ABC is to be committed to protect the identity of the source of the information; or
- d not to honour an assurance given in relation to conditions of participation, use of content, confidentiality or anonymity.

## Mandatory referrals

Under editorial standard 5.9, it is mandatory for an appropriately senior ABC person, having consulted ABC Legal, to approve in advance the use of a secret recording device or the broadcast or publication of material obtained via a secret recording device. In the case of all divisions, the 'appropriately senior ABC person' will be the divisional director.

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### Scope of this guidance note

For the purposes of this guidance note, a secret recording device is any device for the recording of vision, audio or other material involving identifiable individuals, which the ABC has taken active steps to conceal.

Under normal circumstances, the ABC does not broadcast or publish content that has been obtained through the use of secret recording devices. This is in accord with the principles of fair and honest dealing. The ABC, in gathering material for broadcast or publication, goes about its business honestly and openly. Those participating in ABC content are generally entitled to be aware of what we are doing and why we are doing it, and to make informed decisions about their participation.

This guidance note deals **only** with the use, gathering, broadcast and/or publication of material using secret recording devices in news, current affairs or other factual content.

This guidance note does not cover those situations where content is openly recorded in a public place, with no attempt to conceal our presence, but the activity may not have been observed by the subjects being filmed or where a secret recording device is used in the preparation of entertainment content. In each case, different considerations will apply.

### Use of a secret recording device

The use of a secret recording device in these circumstances is usually done for one or a combination of the following two reasons --

- To obtain material of significant public importance that could not otherwise reasonably be obtained.
- To protect ABC or co-production personnel when operating in dangerous situations.

In both cases, the mandatory requirements to upwardly refer to an appropriately senior ABC person, who will consider the merits of the situation and obtain advice from ABC Legal, will apply. In the case of all divisions, the 'appropriately senior ABC person' will be the divisional director.

In considering the public importance of the material to be gathered, the senior ABC person will consider --

- the editorial significance of the material likely to be gathered;
- the reasons why this material could not otherwise be reasonably obtained.

These factors need to be weighed against the normal expectation that the ABC would operate openly, and respect individuals' reasonable expectation of privacy.

## **Risk to production personnel**

There are potential risks to ABC or co-production personnel operating with a secret recording device which include being detected in situations where the filming is clearly unwanted.

However, there are also risks in operating openly, and this can be a key factor, as discussed above, in determining that the use of a secret recording device is warranted.

In approving the use of a secret recording device in any specific instance, the senior ABC person making the decision must therefore be satisfied that proper risk assessment processes have been completed, in order to identify and minimise any risks.

In the event that it is deemed appropriate to use a secret recording device specifically to minimise risks to production personnel in dangerous situations, the appropriately senior ABC person will consider --

- the level of risk involved in operating openly;
- the risk assessment and security precautions that have been put in place;
- the editorial significance of the material likely to be gathered.

In the event that it is deemed appropriate to use a secret recording device for valid editorial reasons and there is an associated risk to production personnel as a result of the decision to use that device, a risk assessment process will be carried out to assess the risks involved and to put in place appropriate measures to eliminate or manage that risk.

No production personnel will be required to operate a secret recording device if they feel uncomfortable doing so.

## Legal limitations

It should be noted that the use of secret devices (often called ‘surveillance’, ‘listening’ or ‘optical surveillance’ devices) is subject to a range of varying legislative restrictions across Australian states and territories.

In accordance with Editorial Standard 5.9, advice should be sought from ABC Legal prior to any secret recording device being deployed.

## Use of third party material from a secret device

From time to time, the ABC publishes or broadcasts material acquired from third parties that the ABC has not been involved in commissioning, producing or co-producing.

Where the ABC has obtained and intends to use any material from a third party which has been obtained using a secret device, an appropriately senior ABC person will approve the use of that material, having taken into account the principles and guidelines set out in this guidance note.

## Notification to Managing Director

In all instances where material from a secret recording device has been approved for broadcast or publication, the Managing Director will be notified prior to the material being broadcast or published.

Where relevant, the notification will include the reasons for not explaining to audiences the use of secret recording devices if the Director has decided that there are compelling reasons not to do so.