

Shooting in public places (Part Two)

While many people believe they can freely photograph any public place in Australia, that is not the case. In part two of her feature on photography and the law, IP lawyer **Sharon Givoni** busts some common myths.

“**W**e must be the only country in the world where you could get a criminal record for taking a picture of a rock!” – Ken Duncan, Australian panoramic photographer and Chairman of Arts Freedom Australia, as quoted by the Australian Commercial and Media Photographers.

Taking photographs in public spaces is restricted by laws, rules and regulations. Professional photographers need to be aware of these to avoid potentially embarrassing situations.

While Ken Duncan’s quote above may, on the face of it, appear somewhat extreme, he is technically correct. Under the Environment Protection and Biodiversity Conservation Regulations 2000 (Cth) persons capturing an image in a restricted Commonwealth Reserve may be committing a criminal offence, with penalties payable of up to \$8,500 (as at July 2013).

The ‘rock’ Mr Duncan referred to is of course Uluru, which is governed by an extensive list of rules, laws and guidelines in relation to what photographs may be taken. Duncan has cynically stated that these rules and restrictions have led to Uluru becoming known as ‘Ulu-rules’ and Kakadu as ‘Kaka-don’t’.

But Uluru is not the only Australian icon which has strict photography limitations in place. The legal landscape (excuse the pun!) for Australian photographers is characterised by a myriad of legislation, regulations and conditions. Arts Freedom Australia (AFA), which represents some of Australia’s major photographic associations and individual photographers, states on its website that the laws relating to photography “...in some instances deny our local artists the freedom to express their artistic talents in a manner that may make their work distinctly Australian.” While it’s widely assumed that any ‘public place’ can be freely photographed, in fact, this is far from the case. Read on for tips on how to avoid potential pitfalls.

Take-away points

Never assume that being in ‘public’ equates to freedom to photograph. Generally speaking, if the photo is for a commercial purpose, the more likely it will be that you’ll need to get permission. And if you get permission once, you can’t assume you



will get it again. Each location has different rules (eg churches, parks, government property). Check before you start shooting!

Public spaces: Obtaining permission

We’ll start by conceding that many photographers feel aggrieved they even need to get permission when taking photographs in a public space. For example, Robert Walls, author of photography blog ‘This Photographers Life,’ expressed the view that asking photographers to apply for permission to take photographs is ‘like asking musicians to apply in writing before they can play music,’ a process he describes as ‘guaranteed to stifle’ creativity. However, despite photographers’ discontent, many public spaces (including universities, the Sydney Opera House, museums, parks, public transport areas and the like) are governed by their own set of legal regulations stipulating that permission is required (especially by professional photographers). Melbourne University, for example, has privacy policies (available online) requesting that people obtain consent from subjects of photographs taken on its property. It also requires people wishing to take wedding photographs to obtain a permit at a cost of \$200



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(as at July 2013). (See <http://services.unimelb.edu.au/venuehire/general/weddings>). So do not take professional photographs in public places – not without carefully checking the rules first!

Case study: The Royal Botanic Gardens, Sydney

Former Artist in Residence of the Royal Botanic Gardens in Sydney, Phillipa Carnemolla, relates her experience taking photographs of her sculptures in the Gardens. While Phillipa did not encounter any specific issues, she stresses that she was always very careful to get permission before taking any images. “Communication is crucial,” she says, adding, “I always kept everyone in the loop, from the chief executive through to the horticulturalists.” This became particularly important when she wanted to stand in a garden bed to have a photograph taken. As Phillipa says, “If they found you in a garden bed they’d probably be very upset.” But as she’d sought permission, this made all the difference. It’s always worthwhile to obtain permission in advance. And despite having permission, you may still need to

check with someone before tramping over vegetation to reach a perfect vantage point!

Case study: Victoria Barracks

The beautiful façade of Victoria Barracks on St Kilda Road, Melbourne, is popular with wedding couples. Leading photography studio Untamed Images Photography frequents this location. For wedding photography at the Victoria Barracks a permit needs to be obtained via the Department of Defence. Usually the wedding couple organise the permit, however there have been several occasions where the studio has obtained the permit on its clients’ behalf. Requirements must be met, such as certain documentation signed by a Justice of the Peace and then approved by the Department of Defence. Without approval of this documentation, it’s illegal for wedding photography to take place there under the Defence Act 1903 (Cth).

Leaving aside the Victoria Barracks, issues can arise when it comes to taking photographs on or of any government property. For example, it’s illegal to take a photograph of any Australian Defence installation, and any area of Government land or water can be

ABOVE

The Sydney Opera House is one of Australia’s most photographed structures. It is also one of many locations subject to a range of restrictions related to the taking its picture. Image by James Morgan.



COURTESY OF UNTAMED IMAGES PHOTOGRAPHY © 2013 (WWW.UNTAMEDIMAGES.COM.AU)

ABOVE
Untamed Images Photography shoots weddings outside Victoria Barracks in Melbourne, but requires a permit from the Department of Defence.

OPPOSITE PAGE
Even busy locations like Melbourne Central shopping centre in that city's CBD can be the subject of extensive regulation for photographers.

declared an area in which it is prohibited to take photographs if it is necessary for defence purposes. Disobeying these restrictions can lead to fines, confiscation and potential destruction of your equipment and photographs or even (in extreme cases) imprisonment. Remember, your permit is your 'ticket' in. Don't forget to bring it with you!

Another location popular for wedding photos is Melbourne's Shrine of Remembrance. While the Shrine and its surrounding gardens have a special beauty, when couples request that it be used as a location for their wedding photographs, some photographers have been known to refuse as a mark of respect.

Even if the photographer is willing to take wedding photographs at the Shrine, they could face difficulties. The following are some of the terms and conditions of use of the Shrine in regard to professional photography:

"Commercial photography and filming for non-related purposes, as deemed by Shrine Trustees, is NOT allowed in the Shrine or on the Shrine Reserve. Special consideration may be given to applications that support the mission of the Shrine of Remembrance.

"Full acknowledgement of the Shrine of Remembrance must appear on all imagery and footage taken. The Shrine logo must appear on all printed material with: Shrine of Remembrance, Melbourne."

If photographs taken for a non-related purpose come to the attention of the Shrine Trustees then the photographer may be liable for a fine of up to \$280 under The Shrine of Remembrance Act 1978 (Vic). It's also possible that the Shrine Trustees could apply to the courts to have the photographs destroyed or delivered to them. Imagine the surprise of the clients if they were told they would have to return their precious photographs because the photographer had failed to check!

What do photographers think?

Melbourne photographer Simon Watts has strong views on the topic: "If I think there might be a problem taking photographs in a certain location then I just don't bother." He takes the view that the ever-growing multitude of requirements and restrictions on

photographers has left most members of the public confused as to their rights and this has caused some issues. For example, when Watts took a photograph (right) of shopping centre Melbourne Central a few years ago he wasn't aware of any restrictions, however he concedes that today he would have to be far more careful.

Why are these laws in place?

Famous American landscape photographer Ansel Adams once said, "No man has the right to dictate what other men should perceive, create, or produce, but all should be encouraged to reveal themselves, their perceptions, and emotions, and to build confidence in the creative spirit."

This begs the question, why do bureaucrats insist on imposing such draconian restrictions? These reasons given for such rules and regulations

include safety, privacy concerns and basic public order, as well as to ensure that not too many professional photographers are in the same place at the same time and to set behavioural expectations of photographers, especially professionals (such as crew size, start and end times, permitted equipment and the like).

In the case of general bans, the rules are trying to avoid photos being taken surreptitiously and exposed for all to see via the internet. Naturally, terrorism concerns have also been behind restrictions placed on the taking of photos in popular public places. Whether you like it or not, the rules are almost certainly here to stay!

Copyright issues

We should briefly address copyright. Basically, even if you've obtained permission to shoot in a specific location, you also need to be wary not to infringe copyright. Obtaining permission and infringing someone's copyright are two separate issues. While sculptures, monuments and artwork are generally protected in their own right under copyright laws, and therefore can't be reproduced without authorisation, sections 65 and 66 in the Copyright Act 1968 (Cth) specifically permit people to take and publish photographs of buildings, models of buildings, sculptures and works of "artistic craftsmanship" so long as the work is 'situated, otherwise than temporarily, in a public place, or in premises open to the public.'

Case study: Graffiti and streetscapes

Graffiti is also a relevant consideration for Australian photographers. Particularly in Melbourne, which has colloquially been dubbed the 'Stencil Graffiti Capital'. Graffiti features prominently in many photographers' works, including those of Melbourne-based photographer Matt Irwin who has been photographing streetscapes for 24 years. Matt Irwin's goal has been to document the 'less than obvious beauty' (to use his words) hidden in some of Melbourne's alleyways, rather than focusing on famous landmarks.

"I tend to gravitate towards non-obvious, non-glamorous, non-iconic subject matter. The details of bins, alleyways, rubbish,

and even decay often produce some of my interesting works. While I'm aware of the permissions I need to photograph in public places, this is rarely applicable to my work."

Photographers beware

Reading this, you may think that being stopped as a photographer is something which happens to others. Think again! A recent study undertaken by researchers from Monash University with the Centre for Contemporary photography indicates otherwise. According to the study, an alarming 74.7% of the 261 professional photographers interviewed said they were asked to stop taking photographs in a public space. Almost 16% of those said they had been threatened with physical harm during the process. Over 17% claim they were threatened with legal action or arrest (despite the fact they thought they were acting within their rights), and 26% said that demands were placed upon them that their photographs be deleted. (The study can be found at www.ccp.org.au/docs/Submission_Invasion_Privacy.doc).

Conclusion

The law relating to public spaces and photography is by no means black and white. However, on the 'plus' side it's often not too difficult to find out. Don't take risks: contact the relevant authority. If you're approached while taking photographs have your permit on hand; avoid confrontation; and know your rights. The final lesson is that the contrary of the old adage holds true: It's better to ask for permission than to ask for forgiveness! 🌐

Disclaimer: The contents of this article are of a general nature only and must not be relied upon as a substitute for tailored legal advice.

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SIMON WATTS

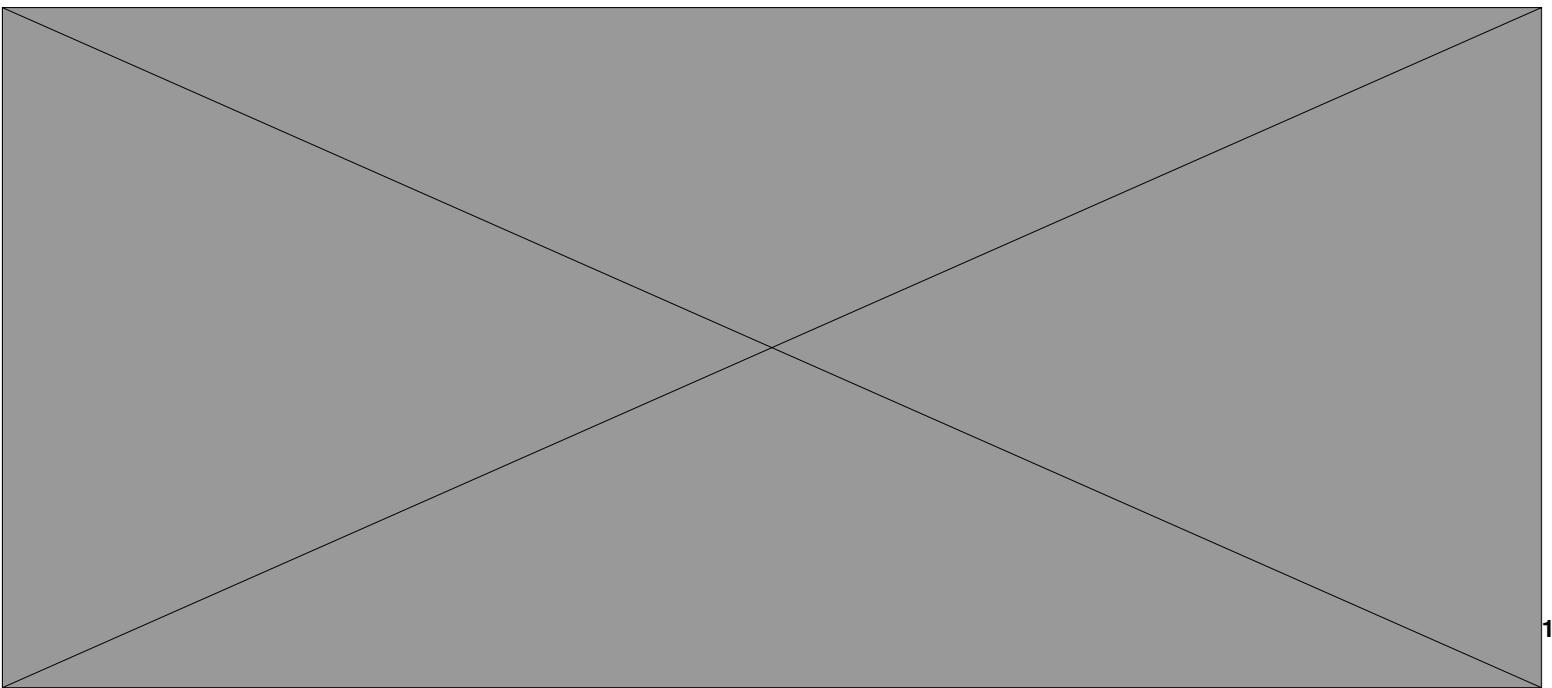


Photo policies in public places

UNIVERSITIES

Monash University (Victoria)

The Monash University policy, as stated on its website, allows for the unrestricted use of photography for private use, but requires a permit for photography which is intended for commercial use. www.copyright.monash.edu/faqs/artworksatmonash.html

University of Melbourne

The picturesque grounds in this university tend to attract wedding photographs. A specific permit and a fee (of approximately \$200 + GST for 1 hour) are required to take wedding photographs. These permits are required to be granted in advance and are limited to certain weekends. <http://services.unimelb.edu.au/venuehire/general/weddings>

BEACHES

Bondi Beach, NSW

The use of this public space is regulated by certain legislation and photography requires a permit. You can find more details here:

http://www.waverley.nsw.gov.au/things_to_do/sport_and_recreation/use_of_public_open_space
http://www.waverley.nsw.gov.au/__data/assets/pdf_file/0009/14310/UseOfPublicSpaceForm-APR13_PRESS.pdf

PARKS AND GARDENS

Victorian Parks

Victoria area permits are required so professional photography in parks (including wedding and portrait photographers) is managed safely and responsibly. An annual licence is available for landscape photographers who regularly photograph in parks.

"A location fee, supervision fee and bond may be required" and the "fees vary depending on the scale of the photography and the type of filming proposed."

<http://parkweb.vic.gov.au/park-management/applications,-licences-and-permits/filming-and-photography>

Royal Botanic Gardens Victoria

Royal Botanic Gardens Regulations 2004 (Vic) prohibits commercial activities or commercial functions without a permit (including wedding ceremonies and commercial photography or commercial filming).

<http://www.rbg.vic.gov.au/about-us/act-and-regulations>

Commonwealth National Parks

Other regulations apply to Commonwealth Reserves such as Kakadu National Park, Christmas Island and Norfolk Island Environment Protection and Biodiversity Conservation Regulations 2000 (Cth)

SPORTING FACILITIES

Fitness First Australia

Cameras are not permitted in Fitness First clubs without written authorisation.

<http://www.fitnessfirst.com.au/Documents/Terms%20and%20conditions/National%20TCs%20May%202013%20FA.pdf>

Melbourne Sports & Aquatic Centre

A strict policy on filming and photography applies to Melbourne Sports & Aquatic Centre, particularly in relation to child protection and privacy. Parents

are welcome to take photos of their children, but it's requested that the privacy of other patrons is respected and photos of them are not taken. Commercial photography or filming must be booked.

<http://www.melbournesportshub.com.au/media/filming-photography-policy>

Rod Laver Arena (Victoria)

The policy for the use of cameras varies for each event. Professional-style cameras (those with detachable or zoom lenses) are prohibited at most events.

http://www.rodlaverarena.com.au/desktopdefault.aspx/tabid-263/203_read-283/

MCG and Etihad Stadiums

It is a condition of entry to the venue (including all areas under owner or hirer, the "Venue") for matches forming part of the Australian Football League's season that patrons agree not to bring into the Venue any photographic, video or audio recording equipment for any purpose other than private non-commercial purposes.

<http://www.afl.com.au/tickets/conditions-of-entry>

LANDMARKS

Sydney Opera House

Sydney Opera House has extensive guidelines regarding photography.

Wedding photography on site is permissible where the images are for your client's personal use and the photos are taken in a way that minimises disruption to other visitors enjoying the precinct.

The Sydney Opera House essentially distinguishes between personal and commercial photography with the latter requiring the consent of the Sydney Opera House. This is especially true if the photographs will be used in advertising various goods.

http://www.sydneyoperahouse.com/about/Image_and_FilmingFAQ.aspx

PUBLIC TRANSPORT

Metro Trains

Victoria's Metro welcomes authorised visitors, tourists, students and rail enthusiasts taking photos of their trains and stations. A valid permit must be carried by the photographer at all times and be produced upon request by a Metro employee.

Filming and photography guidelines can be downloaded from the website and become the permit once they are signed by the photographer. Additional restrictions may apply regarding certain stations.

<http://metrotrains.com.au/filming-and-photography>

Yarra Trams

Written permission is required to undertake photography at Victoria's Yarra Trams' stops, on a tram or at a tram depot through a formal application form that needs to be submitted at least seven days prior to a filming date.

Further, written permission is required to film or take photographs on board a tram, which also requires an application form. The photographing of a tram in the background of another photograph requires no permit.

Photography on trams is not permitted during peak times and it isn't permitted if its purpose is to portray Yarra Trams in a negative light.

http://www.yarratrams.com.au/media/55350/filming___photography_guidelines.pdf



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