



Publishing Family Court judgments : problems & solutions

Law via the Internet
10-11 November 2015
Sydney, Australia

Introduction: Publishing Family Court judgments: problems and solutions

- Highly desirable for judgments to be published online to demonstrate transparency of the court and to facilitate free access.
- Need for protection of privacy in family law and the potential for use and misuse of personal information available in judgments.
- Two types of information:
 - Factual (e.g. The parties are John Smith and Paula Brown)
 - Contextual (e.g. the father is an international soccer player who has represented Australia at the World Cup)

S 121 *Family Law Act 1975 (Cth)*

Parties and witnesses not to be identifiable in published accounts of proceedings.

Breach of s 121 is a criminal offence.

Effectively obliges Court to provide extra resourcing to undertake anonymisation prior to publication.

S 121(3) provides a starting point for anonymisation.

Family Court publication policy

Judgments are anonymised by staff of the Judgments Publication Office (JPO).

Almost all judgments are published on AustLII, including final and interim judgments.

Exceptions where suppression or non-publication orders are made – JPO to be notified in that case, to avoid “accidental” publication.

Underlying principles of anonymisation:

Maintain the **privacy** of the parties and their children.

Maintain the **integrity** of the judicial officer's reasons.

Maintain the **readability** of the judgment.

Options for anonymisation:

Use of generic language minimises the need for anonymisation.

Partially automated – software used to remove & replace names (eg FCCA), supplemented by manual editing for other information.

Manual – applies a 'word by word, line by line' approach to manually edit the document (eg FCoA).

Why use pseudonyms?

Easier to remember than letters/initials for citation purposes.

Protects the privacy of the parties.

Enables the media to report on cases without fear of breaching s 121.

Same pseudonym is used over the life of the matter.

Pseudonyms should:

Begin with **same letter** as party's actual name.

Be **ethnically** appropriate.

Be **culturally** sensitive.

Be **respectful** to the parties.

Be **phonetically dissimilar** to party's actual name.

Parties' names – citation and cover sheet

Only parties are allocated pseudonyms, all other names use letters.

Citation e.g. Saunders & Hume / *Smith & Hall*
[2014] FamCA ...

and

Cover sheet e.g.

Applicant: William Saunders / *Mr Smith*

Respondent: Anne Hume/ *Ms Hall*

Names - in the orders and reasons

If possible, use **generic descriptions** consistently throughout the judgment.

Mr Smith (“the father / husband / applicant”) / Ms Hall (“the mother / wife / respondent”)

For children and witnesses use **initials/letters**.

Brandon (“the child”) / “the children B, F and G”

Dr Q (“the family report writer”)

Mr R (“the single expert witness”)

NB: as each letter stands in place of word, the same letter should not be used for different words

Government and large business entities

No need to anonymise unless it is apparent that a failure to do so would permit a party or witness to be identified.

“Centrelink” / “Commonwealth Bank” / “Victoria Police”.

Alternatively where necessary, “the father is the CEO of a public service agency” / “the mother is the CEO of a large financial institution” / “the paternal grandfather is a public official”.

Business entities (generally) and private companies

Use **generic descriptions**.

“the father’s company” / “the family trust”

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Where necessary – use **initials/letters** or take other steps to conceal the identity of the entity.

“C Pty Ltd” / “Z Limited” / “B PLC” / “Firm X” / “A Business”

Law firms (and lawyers) are generally not anonymised unless a party to proceedings.

Significant dates likely to be publicly accessible (birth, marriage, death)

Refer only to the year.

“the parties married in 1992” / “the child was born in 2004”

Alternatively, where necessary, refer only to the month and the year.

“the paternal grandfather died in July 1996”

Not usually necessary to anonymise dates of separation, applications, affidavits, Court events, etc.

Geographical information (e.g. residential and business addresses)

Use a **generic description** for the property.

“the former matrimonial home” / “the coastal property” / “overseas”.

Where necessary to refer to a property by more specific location, anonymise using **letters** or broader geographic location.

“the house in Town E” / “the F Street property” / “the Melbourne and Sydney properties” / “southern Europe”.

Other identifying details e.g. schools, employers, sports clubs, occupations, bank account details, motor vehicle registration numbers, etc

Unique numerical identifiers should be replaced by an ellipsis, or a combination of an ellipsis and last digit(s) of the number sequence.

“vehicle registration number ...” / “NAB Account No ...456” /
“property folio number” / “ABN no ...”

Use a **generic** description.

“the child’s school” / “the child’s extracurricular activities” /
“the father is a professional”

Where necessary, use **initials/letters**.

“R Public School” / “the mother attended X Church”

Quotes from passages of evidence, orders, transcript, or other judgments in the same matter / litigation in other jurisdictions involving the same parties

Any quoted material from earlier proceedings in the matter needs to be anonymised, with such anonymisation enclosed in square brackets.

“The wife’s affidavit evidence was that:
‘[The husband] told [the child] that I was going to sell [the former matrimonial home].’ ...”

With judicial officer’s permission, citations and quotes from published judgments in other jurisdictions may be omitted , e.g. “Citation omitted”

Contextual information

Individual (apparently innocuous) facts that can be combined to identify parties/children.

“The father is an **international soccer player** who developed an addiction to **Stilnox**” becomes “The father is an **elite sportsman** who developed an addiction to **a prescription drug.**”

Includes industry/environment specific jargon or language.

“The husband was **dishonorably discharged** from his employment.”

Anonymisation keys

Running sheets are compiled and maintained to record original/anonymised terms.

Ensures consistent anonymisation, regardless of the number of judgments in a particular matter.

Ensures any appeal judgment is anonymised consistently with judgment appealed from.

Facilitates reading of multiple decisions when following the history of a matter through judgments.

Transparency – public access v parties' / children's privacy

“Jigsaw” identification – identification achieved using two or more pieces of information from two or more sources e.g. a judgment and google.

Media coverage, other courts' judgments, social media, personal websites.

Rule of thumb for inclusion/exclusion – must retain if ratio, may omit if obiter.

May negotiate with judicial officer to omit information, signified by appropriate notation e.g. “Sentencing reasons omitted to comply with s 121 *Family Law Act 1975* (Cth)”.

CONCLUSION

Aim:

To publish the Family Court's judgments online within the constraints imposed by *Family Law Act 1975* (Cth) s 121.

Outcome:

Judgments that are published online meet the criteria of privacy protection, integrity of reasons and readability, and provide access to case law in the family law jurisdiction.

Enquiries regarding unreported/unpublished
Family Court judgments may be made to:
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