
 <p><b>FAMILY COURT OF AUSTRALIA</b></p>	 <p><b>FEDERAL MAGISTRATES COURT OF AUSTRALIA</b></p>	<p>INFORMATION TECHNOLOGY – HR-PO-310</p> <hr/> <p><b>THE USE AND MISUSE OF SOCIAL MEDIA</b></p>
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**Aims** This Policy is intended to clarify the responsibilities of all Family Court of Australia and Federal Magistrates Court of Australia (the Courts) employees in relation to the use of social media.

**Scope** This Policy applies to all APS employees of the Courts and to contractors and their staff who are integrated into the Courts organisation or who use the Courts' electronic communications facilities.

**Definitions** Social media includes a range of tools and technologies such as:

- Social networking sites (E.g. Facebook, Myspace, LinkedIn, Bebo, Yammer);
- Video and photo sharing websites (e.g. Flickr, Youtube);
- Blogs, including corporate blogs and personal blogs;
- Forums, discussion boards and groups (e.g. Google groups, Whirlpool);
- Wikis and online collaborations (e.g. Wikipedia); and
- Instant Messaging (including SMS).

**Principals** The principles and policies normally applicable to the Courts' personnel apply in relation to the use of social media such as Facebook, except as modified by this Policy. These include the policies and principles normally applying to the use of Courts' electronic communications facilities, the making of public comment and bullying and harassment.

This means that when using the Courts' electronic communications facilities, the reasonable private use requirement and other requirements of the Courts' E-mail and Internet Policy apply. It is not a reasonable private use of the Courts' facilities to keep social media sites continuously open on a Courts' computer.

The Courts' personnel must not post comments on blog sites using the Courts' electronic communications facilities or identifying themselves as the Courts' personnel other than as authorised for official purposes. This prohibition is not intended to affect rights protected by law, such as rights that may arise under the *Fair Work Act 2009*.

The use of social media must in all respects have regard to the necessity to treat it as a form of public written communication and not as a form of spoken communication. The Courts' personnel will be personally responsible for the consequences of their use of social media, except as expressly authorised for official purposes. These consequences, depending on the circumstances, may include legal consequences.

The use of social media contrary to the Courts' policies, to instructions provided to the Courts' personnel or to the APS Values or Code of Conduct will be treated as a serious disciplinary matter. Contractors and their staff are expected to comply with the APS Values and Code of Conduct in the use of the Courts' facilities or if identified with the Courts.

**Background** The *Privacy Act 1988* (Privacy Act) applies to certain personal information collected, retained and used by the Courts. The Act applies to information used for the Courts' administrative purposes. This will include information we collect in the normal course of administration, including information about each of us that is necessary for normal personnel administration. It does not apply to information used for non-administrative, or judicial, purposes. Nevertheless, the Courts take the privacy rights of those involved in

cases extremely seriously, as it takes all of its privacy obligations. The distinction between the administrative and non-administrative purposes is not a precise one and we must exercise care in any case of uncertainty.

Where the Privacy Act does apply, the Information Privacy Principles set out in section 14 of that Act govern the collection, storage, security, disclosure and use of personal information. Personal information is any information about a person and/or his or her personal affairs from which his or her identity may be established. The Courts' employees are expected to comply with the Information Privacy Principles in relation to personal information as a minimum standard, unless otherwise directed. This is the default position.

It is an offence for a Commonwealth officer (including a contractor) to disclose information that it is his or her duty not to disclose (*Crimes Act 1914*, section 70). It is the Courts' position that it is the duty of the Courts' employees, contractors and contract staff not to release official information except as a normal consequence of the performance of their official duties or otherwise as expressly authorised.

So far as case related information is concerned, it is an offence to publish to the public, or a section of the public, an account of proceedings or a part of proceedings from which those involved can be identified (*Family Law Act 1975*, subsection 121 (1)).

The APS Code of Conduct, section 13 of the *Public Service Act 1999* is also relevant to your obligations. Amongst other things, an APS employee in the Courts must not release information, or use it, inappropriately, or so conduct himself or herself as to treat other APS employees with lack of respect or so as to bring the APS into disrepute.

At common law, the Courts' employees have an implied contractual duty to the Courts to serve with good faith and fidelity. In practice this includes:

- A duty not to impede the operations of the Courts; and
- A duty not to criticise the Courts' publicly, for example so as to damage its reputation or operational efficiency.

When information is received in circumstances that indicate that it is to be treated as confidential, the Courts will ordinarily impose a legal obligation of confidentiality. Information about a person's marital affairs is normally treated as being of a private and confidential nature. The Courts' staff must therefore maintain such information they receive in the course of their duties in strictest confidence.

The issue of the ability of the Courts' staff to participate in public and political affairs is particularly sensitive. In Australia, we value our democratic traditions, including the right to freedom of expression. This right has been recognized by the High Court as an implied right flowing from the Constitution. It is also reflected in the International Covenant on Civil and Political Rights, to which Australia is a party.

As in other areas of life, the freedoms we enjoy must be balanced in practice without responsibilities. The Courts' staff are citizens with the normal rights of citizens. However there are some limitations upon us because of the nature of the organisation for which we work. There are three arms of Government under the doctrine of the separation of powers. These are the Courts, the Parliament, and the Executive Government. The Executive government is what we normally think of when we refer to the government. The Courts' staff, in their capacity as the Courts' staff, must not act so as to interfere with the functions or operations of the other two arms of government, except as authorised by a law. Likewise, we must not act so as to affect deleteriously relations between the Courts and the other arms of government except as expressly authorised.

As an example, these obligations would require that you not make unauthorised public comment, in your capacity as an employee in the Courts, on what is done or not done by the other arms of government. In the case of more senior staff of the Courts, or those who, by their role, have a public profile, greater sensitivity is required.

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## References

- *Fair Work Act 2009*;
- *Privacy Act 1988*;
- *Crimes Act 1914*;
- *Family Law Act 1975*;

- *Public Service Act 1999*;
  - International Covenant on Civil and Political Rights; and
  - HR-PO-301 - E-mail and Internet Policy.
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**Further  
Information**

Information Technology, Communications??