



FAMILY COURT
AND FEDERAL
CIRCUIT COURT

HUMAN RESOURCES POLICY

SOCIAL MEDIA POLICY

Aims This policy is intended to clarify the responsibilities of court employees in relation to the use of social media. Social media for this purpose includes social networking sites (such as Facebook and LinkedIn), blog sites and forums allowing posting personal comments (including Twitter), online collaborations or information sites (such as Wikipedia and Connections) geospatial tagging, online gaming and sites allowing instant messaging.

Scope This policy applies to all APS employees of the Family Court and Federal Circuit Court (the Courts), and to contractors and their staff who are integrated into the Courts' organisation or who use the Courts' electronic communications facilities. (Hereafter referred to as the Courts' staff.)

Principles The principles and policies normally applicable to the conduct of the Courts' staff apply in relation to the use by employees of social media, except as specifically modified by this Policy. These include policies and principles normally applying to the use of the Courts' electronic communications facilities, the making of public comment and bullying and harassment. The APS Values and Code of Conduct apply in this as in all other relevant respects to the conduct of APS employees. The Courts expect court personnel also to comply with the standards set out in the APS Code of Conduct.

Example 1: Cyber bullying will be treated seriously under these arrangements as any other form of bullying or harassment.

Example 2: When using the Courts' electronic communications facilities, the reasonable private use requirement and other requirements of the Courts' Internet and Email Policy apply. Reasonable private use involves intermittent use. It is not a reasonable private use of the Courts' facilities to keep social media sites continuously open while using the Courts' facilities. Where this is desired for special private reasons, such as a need to keep in close touch with the condition of a close relative who is ill, permission should be sought from an employee's supervisor.

The use of social media for official purposes is subject to express authorisation. The Courts' staff must not post non-official comments on blog sites, including Twitter, using the courts' electronic communications facilities or identify themselves as court personnel other than as authorised for official purposes. This is not intended to affect rights protected by law, such as rights that may arise under the Fair Work Act.

When using social media, it must in all respects be treated as a form of public written communication. Privacy and anonymity cannot be guaranteed.

The Courts' staff 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. Compliance with the law is mandatory.

Example 3: Derogatory public comment about others may lead to the person making it being liable in defamation. There is no exception to liability for

comment made online.

The use of social media contrary to the Courts' policies, to specific instructions to court personnel or to the APS Values or Code of Conduct will be treated as a serious disciplinary matter. Use of social media will be monitored for compliance with the courts' policy in the same way as other Internet use.

Background *Privacy*

The use of social media must comply with privacy requirements. The *Privacy Act 1988* 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 collected in the normal course of administration, including information about individuals 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.

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' staff 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)).

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.

Posting photographs online gives rise to some special issues. Posting photographs without the permission of the subjects would be a breach of their privacy rights. Also, social media sites may require users to assign copyright in their posted photographs or other material to the site owner.

The APS Code of Conduct

The APS Code of Conduct set out in 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 use official information 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.

Public comment

In Australia, we value our democratic traditions, including the right to freedom of expression. This right has been recognised 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 freedom staff enjoy must be balanced in practice with their responsibilities. Court staff are citizens with the normal rights of citizens and take part in public affairs as citizens, but in doing so must distinguish between their role as citizens and their role as court staff.

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 Courts' staff, in their capacity as court 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 or act so as to affect relations between the Courts and the other arms of government except as expressly authorised. Also, the Courts' staff should not make unauthorised public comment, in their capacity as court staff or add to the weight given to their comments because they are court staff. In the case of more senior staff of the Courts, or those who, by their role, have a public profile, greater sensitivity is required.

**Further
Information**

HR contact
Manager, Human Resources
