



CDPP

Australia's Federal Prosecution Service

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Our Reference:

13 November 2018

Australian Law Reform Commission  
PO Box 12953  
GEORGE STREET, QUEENSLAND 4003

**By email: [familylaw@alrc.gov.au](mailto:familylaw@alrc.gov.au)**

#### CDPP Submission on the ALRC Review of the Family Law System: Discussion Paper

1. The Commonwealth Director of Public Prosecutions (CDPP) is an independent prosecution service established to prosecute alleged offences against Commonwealth law. Relevant to the ALRC Review of the Family Law System Discussion Paper, the work of the CDPP includes prosecutions of offences against section 121 of the *Family Law Act 1975*.
2. Proposal 12-11 in the Discussion Paper relates to s121 of the *Family Law Act*, proposing a number of amendments to clarify the scope and operation of s121. Question 12-1 in the Discussion Paper asks whether privacy provisions should be amended explicitly to apply to parties who disseminate identifying information about family law proceedings on social media or other internet-based media. This submission relates only to those parts of the Discussion Paper.
3. There are two offences contained in s121 of the *Family Law Act*:
  - s121(1) Publish or disseminate an account of proceedings or identifying party to proceedings; and
  - s121(2) Publish or disseminate a list identifying names, parties in proceedings.
4. Both offences are indictable offences,<sup>1</sup> punishable by imprisonment for a maximum of one year.
5. Pursuant to s121(8), proceedings for offences against s121 shall not be commenced except by, or with the written consent of, the Director of Public Prosecutions.

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<sup>1</sup> s121(5) *Family Law Act 1975*

6. The elements of the two offences are as follows:

**s121(1) Family Law Act 1975 – Publish or disseminate an account of proceedings or identifying party to proceedings**

- a. D publishes in newspaper or periodical publication by radio broadcast or TV or by other electronic means or otherwise disseminates information to the public or a section of the public by any means (conduct)

**Fault:** Intention (*Criminal Code* section 5.6(1))

- b. That information is an account of any proceeding or any part of a proceeding under the *Family Law Act 1975* (circumstance)

**Fault:** Recklessness (*Criminal Code* section 5.6(2))

- c. The account identifies a party to the proceeding, person concerned or witness in the proceedings (circumstance)

**Fault:** Recklessness (*Criminal Code* section 5.6(2))

**s121(2) Family Law Act 1975 - Publish or disseminate a list identifying names, parties in proceedings**

- a. D publishes in newspaper, periodical publication, by radio broadcast or TV or by other electronic means or otherwise disseminates information to the public or a section of the public by any means (conduct)

**Fault:** Intention (*Criminal Code* section 5.6(1))

- b. That information is a list of proceedings under the *Family Law Act 1975* identified by reference to the names of the parties to the proceedings that are to be dealt with by a court (circumstance)

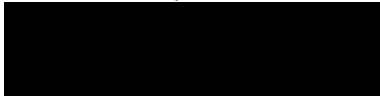
**Fault:** Recklessness (*Criminal Code* section 5.6(2))

7. Since the commencement of the offences, there have been seven completed prosecutions by the CDPP involving a proven offence against s121 of the *Family Law Act*. These prosecutions have been against individuals as well as media organisations.
8. In relation to the proposal to amend s121 to make it easier to understand, provide for exemptions on disclosure of information in certain circumstances, and clarify that the offence does not apply to private communications, the CDPP is generally supportive of the proposal. Whilst specific proposed amendments are not available for comment, the CDPP is supportive of amendments which make the obligations in s121 and the offences easier to understand, and clarify the scope of the offences.
9. In relation to what constitutes a publication or dissemination to the public, this will depend on the circumstances but 'dissemination to the public' has been interpreted to mean "widespread

communication with the aim of reaching a wide audience.”<sup>2</sup> Communications which are essentially of a private or personal nature would not be captured.<sup>3</sup>

10. In relation to social media posts or other internet-based dissemination, the CDPP considers this could constitute a publication by electronic means or dissemination to the public, depending on the facts including the medium and actual/potential audience. However the CDPP submits that it would be preferable for the legislation to explicitly state the intended application of the offences to social media and other internet postings.
11. There are many different types of social media and online platforms, involving different uses and audiences. Such online communications may be private chat conversations, or posted to a limited group of contacts, or posted to the platform and the world at large. In considering any proposed amendments to explicitly cover social media and internet-based communications, the CDPP’s view is that it is preferable that the scope of application is made clear, both for clarity of obligations on parties and observers, and for application of the offences.
12. I trust this submission is of assistance. If you have any questions regarding the submission, please do not hesitate to contact Tania Kemenes at CDPP ([tania.kemenes@cdpp.gov.au](mailto:tania.kemenes@cdpp.gov.au) ; 02 6206 5681)

Yours faithfully

A solid black rectangular box redacting the signature of David Adsett.

David Adsett  
Deputy Director  
International Assistance and Specialist Agencies

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<sup>2</sup> *Re Edelsten; Ex parte Donnelly* (1988) 18 FCR 434, per Morling J at 436, cited with approval in *Hinchcliffe v The Commissioner of the Australian Federal Police* [2001] FCA 1747 at [54].

<sup>3</sup> *Hinchcliffe v The Commissioner of the Australian Federal Police* [2001] FCA 1747 at [57]