



Can I use financial information disclosed during property settlement for another purpose?

Date: Sunday March 3, 2024

During the course of [property settlement proceedings](#), documents may come into your possession that are relevant in other processes like [child support assessments or spousal maintenance](#) applications. In this blog, we look at when you can share documents disclosed in one part of your family law proceedings (for example, property settlement) for a separate part of your family law proceedings (for example, child support assessment).

We also look at the Harman Principle, which addresses the use of family law documents in non-family law-related proceedings – for example, criminal law proceedings.

Duty of disclosure

During property settlement proceedings, each party has a duty to disclose their financial position to the other party and to the court. This is to help determine all the assets, liabilities, and superannuation accumulated during the relationships.

Duty of disclosure includes all items held in the party's name or in which they hold a legal or equitable interest. Examples of documents include bank statements, tax returns, credit card statements, payslips, and superannuation statements.

You can read more about the duty of disclosure in property settlement proceedings in our earlier blog, [“What is duty of disclosure in family law?”](#).

Can I send my former partner's financial documents to other people and organisations?

If you have obtained your former partner's financial documents during the course of property settlement proceedings, it is important

that you speak with your lawyer before sharing them with other agencies like the Child Support Agency, Centrelink or another third party, including the bank.

[CONTACT AN EXPERIENCED FAMILY LAWYER: 08 6245 0855](#)

In most cases, you will need the permission of the Federal Circuit and Family Court of Australia or the Family Court of Western Australia (for WA applications) (the Family Court) before you can disseminate those documents.

Restraint against publication of family law proceedings– including on social media

The Family Law Act (**the Act**) restrains the publication of documents in family law proceedings. Section 121(1) of the Act makes it unlawful (subject to exceptions) to publish information that identifies any person who is a party to such proceedings or who is otherwise connected to the proceedings. This offence is punishable by a maximum of one year imprisonment.

The restraint on sharing the financial information includes:

by publishing it in a newspaper or periodical publication;

by radio broadcast or television by other electronic means; or

disseminating to the public or a section of the public by any means.

Importantly, sharing any financial or other identifying information about a party to the proceedings on social media would constitute a breach of this section. You should be wary about posting anything on social media that could be related to the family law proceedings.

While the term “disseminates to the public” should deter people from communicating with a widespread audience, it shouldn’t include:

talking with a close personal friend; or

providing documents to any other authoritative agency like the ATO, Child Support Agency, or Child Protection agencies.

Can I use family law documents for non-family law related proceedings?

The obligations set out in section 121 of the Act also sit alongside something called the “The Harman Principle” which applies to the

publication of materials outside of family law proceedings, for example in criminal law proceedings.

What is the Harman Principle?

The Harman Principle was established in 1983 and is an implied obligation that parties to proceedings will not use documents obtained in litigation for any other purpose.

The Harman Principle has been reflected in rule 6.04 of the Federal Circuit and Family Court of Australia (Family Law) Rules 2021. This principle should encourage parties to family law proceedings to provide full and frank disclosure without fear of it being used against them in other proceedings.

There are exceptions to the rule mainly related to the disclosure of documents to a solicitor or barrister or if the person has a common interest in the document. A person may also disclose the document if permission of the court is granted.

What about sharing property settlement documents for child support purposes?

In [Pedrana & Pedrana \(No 2\) \[2012\] FamCA 348](#), the court considered whether a party could provide disclosure documents from a property settlement proceeding to the Child Support Registrar in a departure application. A departure application is made to the court when a party seeks to depart from the standard child support formula and create alternative obligations for the payer of child support.

The father had provided the mother with financial documents during the course of their negotiations for property settlement. After the conclusion of the property settlement proceedings, the mother then applied to the Child Support Agency for a departure from the administrative assessment. She used some of the father's financial disclosure documents in her application.

Prior to the mother sharing the father's financial disclosure, the Child Support Agency had made an administrative assessment that the father pay \$1,898 per annum for the parties' two children. However, in light of the new documents provided by the mother, a departure determination was made, and the father was reassessed to pay \$12,634 annually.

The court was asked to determine whether the Harman Principle would "yield" or concede in circumstances where it is inconsistent with the provisions of other legislation.

Ultimately, the court found that the mother was entitled to share the new information as she was required to accurately describe the income, property and earning capacity of the parties in her departure application. If she had not produced the financial information received during the family law proceedings, she would have knowingly omitted supplying the Child Support Registrar with material information.

What about the release of family law documents to others?

Where the Harman Principle applies, the court will consider the release of documents obtained in family law proceedings where

there are special circumstances and a good reason that justifies it.

The court will consider the following factors:

The nature of the document;

The circumstances under which it came into existence;

The attitude of the author of the document and any prejudice the author may sustain;

Whether the document existed prior to litigation or was created for that purpose and therefore expected to enter the public domain;

The nature of the information in the document (if it contains personal data or commercially sensitive information);

the circumstances in which the document came into the hands of the applicant for leave; and

The likely contribution of the document to achieving justice in the second proceeding.

The Court has further held that the document must be “reasonably required” to achieve justice and not just desirable.

How can a family lawyer help?

Before you share any documents you have obtained during the course of family law proceedings with any other persons or agencies, you should obtain legal advice about your specific circumstances. The sharing of documents and other information could see you in breach of the law and/or orders of the court.

Our team of experienced family lawyers are here to help.

The information contained in this article is of general nature and should not be construed as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.