



## Introduction

The Court of Appeal is committed to upholding the principle of open and transparent justice. The Court recognises, however, that in some limited circumstances it is appropriate that a party or witness relevant to a criminal application or appeal not be identifiable. The Court has prepared this protocol to indicate the circumstances when it will apply a pseudonym and how pseudonyms are selected.

The Court aims to make its interlocutory jurisprudence available as soon as possible but is sensitive to the concerns this may raise while the substantive matter is still on foot in another court. Anonymising all interlocutory appeals permits the publication of the resulting judgment without risk of harm to the underlying proceeding.

The Court is excluded from the prohibitions on publication in the *Judicial Proceedings Reports Act 1958* for a purpose connected with the proceeding, e.g., publishing a judgment. Nonetheless, being conscious of the Act's protective purpose, the Court has deemed it appropriate to use pseudonyms to act in a manner supportive of the legislation.

The Court is aware that in many cases there may already be orders in place which control publication or identification of parties or events. In those circumstances it will defer to such an order.

In cases where issues of cooperation with or assistance to the authorities are significant, but are not readily apparent, the relevant party's representative, VLA, the OPP, or the CDPD should promptly bring this point to the attention of the Judicial Registrar or the Senior Registry Lawyer who will give consideration to anonymising the matter following consultation with the parties. The issue of the necessity for this action may then be addressed further at any hearing of the matter.

The Court may at any time direct that a matter not be anonymised by the use of a pseudonym.

## Process

If, in the judgment of the Court or a member of the Registry's legal staff, a case involves any facts protected by any of the relevant legislation appearing below, the Registry will anonymise the case by allocating a pseudonym to the applicant or respondent, as the case may be. A case note will also be made on the Court file stating why the matter has been anonymised so that the rationale is clearly stated in the Court's records.

## Selection of Pseudonyms

All matters requiring anonymisation will be allocated a pseudonym. The pseudonym will thereafter appear in place of the relevant party's name in the daily list and, at the discretion of the bench, in any judgment in the matter. This avoids the often-confusing past practice of using initials in order to anonymise matters, i.e., the 'alphabet soup' problem.

The Deputy Registrar (Legal) or the Senior Registry Lawyer will allocate pseudonyms to relevant matters on the Court file upon acceptance of appeal documents or when otherwise required. All pseudonyms will consist of one given name and one surname.

If a pseudonym has been allocated by the court below, it has been agreed that the same pseudonym will be allocated in the Court of Appeal. Otherwise, pseudonyms may be sourced from any of the following, or other, online name generators:

- <http://www.behindthename.com/random/>
- <http://www.fakenamegenerator.com/>
- <http://www.starmanseries.com/toolkit/names.html>
- <http://www.atlantagamer.org/iGM/RandomNames/index.php>

If a pseudonym has been allocated, the applicant will be advised of the particular pseudonym chosen. The parties may be invited to specify, typically within 7 days, whether there are objections to a particular pseudonym which has been allocated or to outline their reasons for any overall objection to the allocation of a pseudonym. Where appropriate, an alternative pseudonym may be allocated.

A list of all pseudonyms allocated to matters will be maintained by the Registry.

When a judgment is published using a pseudonym, it will indicate this clearly. For example, the name of the case will appear as: *John Smith (a pseudonym)<sup>1</sup> v The Queen*.

## Summary Writing and Judgments

In preparing Neutral Summaries in cases where a pseudonym has been allocated, the Registry Lawyer will prepare a draft being particularly mindful not to include any information that might reasonably, either by itself or in combination with other facts, lead to the identification of the victim of a sexual offence or a child or witness involved in a criminal proceeding. This may include, amongst other facts:

- Their work or residential address or the locality where those premises are located;
- Their date of birth;
- The address of their school or its locality;
- Their physical description or style of dress;
- Their employment, occupation, profession, or official or honorary position;
- Their relatives, friends, business, and official or professional acquaintances;
- Their recreational interests, or political, philosophical, and religious beliefs;
- Any real or personal property they own or are associated with; and
- Any information submitted to the court that might enable a person (other than the offender) who has given evidence in the proceeding to be identified.

In cases where a pseudonym has been assigned, the Neutral Summary will contain a 'Registrar's Note', in bold type at the beginning of the document, or a footnote next to the name of the case, stating that it has been anonymised in accordance with this protocol.

Associates when proofreading a draft judgment will similarly be alert to the need to avoid inclusion of detail likely to identify a victim whose identity is protected.

## Relevant Legislation

Below is a non-exhaustive list of Victorian legislative provisions most likely to arise in cases presented to the Court of Appeal:

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<sup>1</sup>A footnote may also be added which states:

This matter has been anonymised and a pseudonym allocated per the Court's Anonymisation Protocol.

### ***Open Courts Act 2013***

- Section 1 provides that the purposes of the Act include the consolidation of provisions for suppression orders relating to information derived from or relevant to proceedings applicable to the Supreme Court, County Court or VCAT. Section 8 makes clear that the Act does not limit or otherwise affect the operation of a provision under another Act that prohibits, restricts or authorises a court to prohibit or restrict the publication or other disclosure of information in connection with any proceeding.

### ***Judicial Proceedings Reports Act 1958***

- Section 4(1A) prohibits publication of any particulars that may lead to the identification of a person *against whom* a sexual offence is alleged to have been committed; or, an offence where the conduct constituting it consists (even partly) of taking (or attempting to take) part in an act of sexual penetration as defined in s 35 of the *Crimes Act 1958*.

### ***Crimes (Mental Impairment and Unfitness to be Tried) Act 1997***

- Section 75(1) permits a Court to order the suppression of any information that might enable an accused or any witness in a proceeding under the Act to be identified.

### ***Family Violence Protection Act 2008***

- Broadly stated, s166 prohibits publication of a report of proceedings or about an order made under the Act if it contains the locality, any particulars likely to lead to the identification of the particular court or of any person involved in the proceeding or the subject of the order.
- A picture containing any person concerned in a proceeding for family violence intervention order, unless the court orders otherwise.

### ***Serious Sex Offenders (Detention and Supervision) Act 2009***

- Section 182 similarly imposes a broad prohibition on publishing any evidence given in a proceeding before a court under the Act; the content of any report or document put before the court; any information that is submitted to the court that might enable a person (other than the offender) who has attended or given evidence in the proceeding to be identified; any information that might enable a victim of a relevant offence committed by the offender to be identified.

### ***Children, Youth and Families Act 2005***

- Except with the permission of the President, s 534 prohibits publication of:
  - A report of a proceeding that contains any particulars likely to lead to the identification of:
    - The particular venue of the Children's Court (with limited exceptions) in which the proceeding was heard;
    - A child (as defined in s 3) or any other party to the proceeding;
    - A witness in the proceeding.
  - A picture that includes a child, other party, or witness in a proceeding.
- Any matter that contains any particulars likely to lead to the identification of a child as being the subject of an order made by the Court.

NB: Commonwealth legislation affords even broader protection to child witnesses or complainants. See *Crimes Act 1914* (Cth) s 15YR.

### ***Stalking Intervention Order Act 2008***

- If a party or witness in a proceeding under this Act is a child, there can be no publication of any of the proceedings containing the locality or any particulars calculated to lead to identification of the particular venue of the court or any particulars calculated to lead to the identification of the child or any other person in the proceedings either as a party or as a witness. Nor can there be any picture of or including the child or other persons in the proceedings.

### **Witness Protection**

- The State's *Witness Protection Act 1991* (Vic) s 10(5) includes a broad prohibition on publishing information about the identity, location, or which might compromise the security of any one who is or has been a participant under the Act.
- The *Crimes Act 1914* (Cth) ss 15LC, 15MS, provides similar protection for federal witnesses.

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