



Can I use information disclosed during my family law matter for other purposes?

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Documents received and/or disclosed during family law proceedings cannot be used for any other purpose other than what they were provided for. This is due to an implied undertaking or obligation to the Court, known as the Harman Undertaking.

What is the Harman Undertaking?

In family law proceedings, there is an obligation on all parties to provide full and frank disclosure. You can read more about this obligation in our earlier article, [“Duty of disclosure in family law”](#).

The Harman Undertaking is an implied promise that you make to the Court not to use any documents disclosed during your family law proceeding for any purpose outside the case. An undertaking is binding and, therefore, has the same effect as an order of the Court.

The purpose of the Harman Undertaking is to encourage parties to produce documents without fear of those documents being used inappropriately and, therefore, ensure the confidentiality of the disclosed documents.

The undertaking extends to parties' lawyers and other third parties who may receive family law documents.

What documents are covered by the Harman Undertaking?

Some examples of documents covered by the Harman Undertaking include:

- financial disclosure, including but not limited to personal and company taxation returns and financial statements and/or bank statements;
- medical disclosure, including but not limited to medical reports, psychological/psychiatric reports and/or drug test results;
- affidavits and other Court documents; and
- expert reports, such as [child impact or family reports](#).

What can I do if I want to use these documents for another purpose or in another case?

Circumstances may arise where documents that have been disclosed during your family law proceedings may be useful in other matters. This commonly arises with respect to child support applications, [Intervention Order proceedings](#) and/or criminal matters (including breach of Intervention Order charges).

Before using a disclosed document for any other purpose, you must first obtain leave or permission from the Federal Circuit and Family Court of Australia to be released from the Harman Undertaking.

In order to obtain such leave, you will need to make an application to the Court and satisfy the Court that *special circumstances* exist to justify the release of the documents. In determining your application, the Court will consider whether the documents are reasonably required for the purpose of doing justice between the parties in other proceedings and any decision would be made on the unique facts and circumstances of your case.

It is important to note that even if the other party consents to the use of disclosed documents for other purposes, orders releasing a party from the Harman Undertaking cannot be made by consent (between the parties). Rather, the order **must** be made by a Judge.

What if I use disclosed documents without leave of the Court?

Using any documents received in family law proceedings for any other purpose other than what they were provided for without leave (permission) of the Court breaches the Harman Undertaking and is treated in the same way as a breach of a Court order.

This is taken very seriously by the Court, and you may be found in contempt of the Court and face other penalties, such as a fine or a costs order requiring you to pay the other party's legal fees.

Publishing the identity of parties to family law proceedings

In addition to the Harman Undertaking, it is also a breach of Section 114Q of the *Family Law Act 1975* (Cth) to publish the identities of parties subject to family law proceedings unless such publication is at the direction of the Court or approved by the Court.

Section 114Q states:

(1) A person commits an indictable offence if:

- 1. the person communicates to the public an account of proceedings under this Act; and*
- 2. the account identifies:*
 - 1. a party to the proceedings; or*
 - 2. a witness in the proceedings; or*
 - 3. a person who is related to, or is associated with, a party to the proceedings; or*
 - 4. a person who is, or is alleged to be, in any other way concerned in the matter to which the proceedings relate.*

Penalty: Imprisonment for 1 year.

Section 114Q(3) outlines examples of the types of material/publications that could identify a party to family law proceedings:

(3) ... Examples of such material might include the following:

- 1. a picture, recording, or physical description of the person;*
- 2. a name or title that identifies the person;*
- 3. an address or location where the person resides or works;*
- 4. details of the person's employment, paid or voluntary;*
- 5. the relationship or other connection between the person and an identified person or business;*
- 6. the person's political, philosophical or religious beliefs;*
- 7. any real or personal property associated with the person.*

Get help from a family lawyer

This is general advice only. Should you require further advice as to whether you can use family law documents for other purposes or whether special circumstances are likely to exist in your case, we recommend that you obtain independent legal advice, and one of our lawyers would be happy to discuss your options with you further.

This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.