

Practice Direction – De-identification of Statement of reasons for Publication

This practice direction is issued pursuant to section 7A of the *Guardianship and Administration Act 1995* (the Act).

Anita Smith, President

Updated: 31 July 2014

Scope:

This direction applies to the process of de-identification of statements of reasons for the purposes of publication.

Relevant provision: Section 13 *Guardianship and Administration Act 1995*

“13. Reports of proceedings

(1) Except as provided by subsection (2), a person must not publish –

(a) any particulars calculated to lead to the identification of any person in respect of whom any proceedings of the Board have been brought or any other person concerned in the proceedings; and

(b) pictures of any person in respect of whom proceedings have been brought or any other person concerned in the proceedings.

(2) Where the Board considers that it is in the public interest to do so, the Board may determine that a person may publish, or cause to be published in accordance with its determination, a report of any proceedings of the Board.

(3) A person who fails to comply with this section is guilty of an offence and is liable on summary conviction to a fine not exceeding 20 penalty units or imprisonment for a period not exceeding 6 months or both.”

Practice Directions:

Publication of de-identified statement of reasons is generally in the public interest as it contributes to the community’s understanding of the relevant areas of law and the operations of the Board.

All statements of reasons written by Board members will be de-identified and published on the Australasian Legal Information Institute website:

<http://www.austlii.edu.au/>

General Principles:

The best interests of the person who is the subject of the statement of reasons is paramount.

Subject to the exceptions stated below, a statement of reasons shall be de-identified to the extent that any particulars that are likely to lead to the identification of the person who is the subject of the statement of reasons or any other persons who have been concerned in the proceedings have been removed.

Although they are possibly ‘persons concerned in the proceedings,’ professional persons who have been involved in proceedings as legal representatives or expert witnesses should, where appropriate, remain identified. Additionally staff and members of the Board, the Public Trustee and the Public Guardian should, where appropriate, be identified. This promotes procedural fairness and accountability in the Board’s proceedings.

A Division of the Board which has authored a statement of reasons may make a determination pursuant to section 13(2) of the Act to the effect that this Practice Direction, or any part, of it shall not apply.

The President of the Board shall approve all de-identified statements of reasons for publication. Approval for publication shall amount to a determination pursuant to section 13(2) of the Act.

The following paragraphs are intended as general guidance for de-identification of the Board’s statements of reasons:

What are ‘*particulars [likely] to lead to the identification of any person*’?

- The name, address, school or employer of the person who is the subject of the application or any of the lay persons who attended or contributed materials to the hearing of the application.
- Names of any other person with whom the person who is the subject of the statement of reasons is in a personal relationship, e.g. relative, spouse, friend, neighbour etc.
- Names of any lay person appointed as the administrator, guardian, enduring power of attorney or enduring guardian for the person who is the subject of the statement of reasons.
- Names of any supported accommodation facility (excluding hospitals) in which the person who is the subject of the statement of reasons lives or the names of the staff members which may also identify that facility.
- Names of specific geographical areas – however general references to cities or regions are acceptable.

- Names of any person with whom the person who is the subject of the statement of reasons is in a professional relationship where disclosure of the relationship will be likely to lead to identification of the person
- The registration numbers of information stored on public record, such as: (i) enduring powers of attorney or enduring guardianship, (ii) lands titles, (iii) motor vehicles, or (iv) court proceedings.

What are ‘*particulars* [NOT likely] to lead to the identification of any person’?

- Names of any professionals who have provided expert opinion or participated in the determination of the hearing e.g. medical practitioners, legal practitioners, psychologists, public servants, advocates
- Names of any delegates of the Public Trustee or the Public Guardian
- Names of any officers or members of the Board.

Redaction:

Names of persons concerned in the proceedings shall be replaced with initials that cannot lead to the identification of those persons.

Where the name of a facility has been redacted it will be replaced by a general descriptor e.g. “Mary’s Grange Aged Care” becomes [the Aged Care Facility].

Specific geographical areas will be replaced by more general references. For example: ‘Hobart area’ or ‘the North West’ are not identifying, whereas ‘Branxholm’ is likely to lead to the identification of the person.

Materials that were not disclosed to all of the parties at the hearing will be redacted from any de-identified statement of reasons. For example, where a statement of reasons refers to the terms of a person’s will or other financially or personally sensitive information, and such information was not the subject of open discussion at the hearing, references to that information shall be redacted from the published version. Where materials are redacted this shall be noted in the published version: e.g. [material redacted in the interests of the parties]

Anita Smith
PRESIDENT