
The Introduction of Paragraph Numbers in Court Judgments

judgment as the traditional paper copy.

The debate concerning the merits of incorporating paragraph numbers within court decisions and the application of a medium neutral citation system has been ongoing both here and in the United States and Canada for some time now. In the United States the American Bar Association Special Committee on Citation Issues recommended in 1996 that all US jurisdictions adopt a medium neutral citation system for both paper and electronic court decisions. Additionally, the Committee recommended that each court number the paragraphs in their decisions.

In August 1996, the American Bar Association (ABA) approved a resolution made by the Committee calling for all state and federal courts to develop a standard citation system and recommending a format that could be used by state and federal courts. That resolution called for courts to identify the citation on each decision at the time the decision is made available to the public. The report and resolution were approved

by the ABA in August 1996.

The basic components of a medium neutral citation system are:

- 1? the parties,
- 2? the year the judgment is handed down by the court,
- 3? a unique court identifier (abbreviation),
- 4? the judgment number (issued by the court), and
- 5? a pinpoint reference (where required).

The High Court of Australia has recently approved the use of a medium neutral citation system. The system is based on the following format:

(the parties) [the year of the decision] (the Court abbreviation) (the sequential number of the judgment)

For example the 99th decision of 1998 might appear as:

Smith v Jones [1998] HCA 99

Where necessary, specific locations within the decision can be identified with the additional reference to the

applicable paragraph number. For example:

Smith v Jones [1998] HCA 99 at para 17

The new citation system is designed to operate in conjunction with, not in lieu of, traditional citation methods. Courts will continue to rely on commercial legal publishers to identify important cases and traditional printed reports and citation methods will continue to operate alongside the medium neutral system. For the first time however court decisions can be placed immediately in the public domain and cited.

Electronic publishing and the use of electronic research techniques are here to stay. The current problems limiting the functionality of the electronic version of judgments must be addressed. The incorporation of paragraph numbers within the body of judgments, coupled with the development of a truly medium neutral citation system, has the potential to significantly enhance the functionality of electronic court decisions.

Report on Framework Legislation for Electronic Commerce Released by Attorney-General

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The Federal Attorney-General, Hon Daryl Williams, has released for public comment the report of his Expert Group on Electronic Commerce entitled "**Electronic Commerce: Building the Legal Framework**". The Expert Group was chaired by an officer of the Attorney-General's Department and comprised experts from industry, business and the legal profession including the author of this note.

The Expert Group's Report recommends federal legislation to remove existing legal obstacles to electronic commerce and to reduce

the legal uncertainty surrounding the use of electronic messages and electronic signatures for commerce. The Report states that the legislation should be broad in its operation, covering all data messages in trade and commerce or with government, subject to some categories of exceptions being developed (possible examples include wills, negotiable instruments, some consumer transactions).

Two broad aims underlie the Report:

Functional Equivalence— as far as possible, paper-based

commerce and electronic commerce should be treated equally by the law; and

Technology Neutrality - the law should not discriminate between forms of technology.

Following these aims, the Report does not try to pick technological winners or prescribe detailed rules for particular technologies, such as digital signatures relying on asymmetric public key encryption and certification authorities. In other jurisdictions which have legislated to give digital signatures some legal preference over other authentication

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methods, such as Utah, the legislation has had to be highly prescriptive as to standards in order to responsibly confer preferential legal benefits and the market has so far been reluctant to utilise these prescriptive regimes. On the contrary, certification authority businesses have emerged in jurisdictions without prescriptive and preferential legal rules.

The Report follows the framework of the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Commerce and recommends the adoption of provisions based on the Model Law with some amendments and omissions. The main recommendations of the Report are as follows:

- *Legal Effect:* Information, records, signatures, messages and contracts are not to be denied legal effect solely on the ground that they are in electronic form.
- *Writing:* Information in the form of an electronic data message is sufficient to satisfy any legal requirement that information be in writing.
- *Signature:* Where the law requires the signature of a person, that requirement is met in relation to an electronic data message if a method is used to identify that person and to indicate their approval of the contents of the message and that method is as reliable as was appropriate for the purpose (eg a password, PIN or digital signature)
- *Originals:* Legal requirements for information to be presented or retained in its original form are satisfied by an electronic form of that information which can be displayed and which

reliably assures the integrity of the information

- *Evidence:* Information in the form of an electronic data message is not to be denied admissibility in evidence on the sole ground that it is a data message
- *Record Retention:* Legal requirements for retaining records (eg under tax or corporations law) can be satisfied by retaining electronic data messages subject to satisfying conditions of reliability and identification of place, time and date of origin and receipt.
- *Time and Place of Dispatch and Receipt:* Rules are proposed to make certain when and where electronic messages are sent and received (eg at an ISP's server or in an electronic mailbox or when read).
- *Forged Signatures and Altered Messages:* As in paper-based commerce, no special rules are created to presume the attribution of a message to the apparent sender and the non-alteration in transit of data messages. Parties can manage the risks of forged signatures and alteration of messages by using suitably reliable technology and, in the case of parties who regularly exchange messages, by agreeing on risk allocation rules in their trading partner agreements.

The Report seeks to facilitate electronic commerce at a fundamental level by removing obstacles and uncertainty. More specific government reports and initiatives are expected to follow:

- 1) on particular technologies such as digital signatures in a

public key authentication framework (PKAF). The National Public Key Infrastructure Working Group operating under the auspices of the National Office on the Information Economy should report in April on recommendations as to the structure of a PKAF in Australia.

- 2) on regulating electronic commerce in particular fields such as tax, company law and privacy.

The Expert Group's Report is open for public comment and the government is expected to make a decision on legislation in June 1998. The Executive Summary of the Report is available at <http://law.gov.au/aghome/advisory/eceg/ecegreport.html>.

Twilight Seminar on Australian Framework Laws for Electronic Commerce— Wednesday 13 May 1998

University of Melbourne Law School from 6.15pm to 7.30pm (light refreshments available from 5.45pm). Professor Mark Sneddon will analyse:

- the Electronic Commerce Expert Group's recommendations
- the work of the NPKI Working Group
- the Victorian government's legislative proposals for Electronic Commerce Framework legislation
- comparable overseas legislative models.

Cost: \$70

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