

## 1 Notice of application and notification to media

- Suppression order applicants must give 3 business days' notice of the application to the court or tribunal and to the parties (s 10(1)). Where an applicant has failed to give such notice, the court or tribunal may nevertheless hear the application if it is satisfied that there was good reason for notice not being provided and that it is in the interests of justice to hear the application without notice (s 10(3)).
- On receiving a notice under s 10(1) the court or tribunal must take reasonable steps to ensure that relevant news media organisations are notified of the application for a suppression order (s 11(1)).

## 2 Automatic provisions and contempt

- Application of an automatic provision or the law of sub judice contempt can render the making of the order sought unnecessary. Where the order sought would have no additional effect except to reflect what an automatic provision already requires, or to prohibit publication which is already prohibited by the law of sub judice contempt, the order should not be made.

## 3 Grounds

- Five key statutory grounds are available for Victorian courts and tribunals (except for the Coroners Court) to make proceeding suppression orders and closed court orders, namely, where such an order is:
  - (a) necessary to prevent a real and substantial risk of prejudice to the proper administration of justice that cannot be prevented by other reasonably available means;
  - (b) necessary to prevent prejudice to the interests of the Commonwealth or a State or Territory in relation to national or international security;
  - (c) necessary to protect the safety of any person;
  - (d) necessary to avoid causing undue distress or embarrassment to a complainant or witness in any criminal proceeding involving a sexual offence or a family violence offence;
  - (e) necessary to avoid causing undue distress or embarrassment to a child who is a witness in any criminal proceeding (ss 18(1)(a)-(e) and 30(2)(a)-(e)).
- A court cannot make an order unless at least one of these grounds is satisfied.
- VCAT has two additional grounds (ss 18(1)(f) and 30(2)(f)) and the Coroners Court has specific grounds available to it (ss 18(2) and 30(3)).
- The Supreme Court in its inherent jurisdiction may make broad suppression orders on common law grounds which are substantially the same as those in the *Open Courts Act*, as can the County Court in its criminal jurisdiction (s 25). The Magistrates' Court has two statutory broad suppression order grounds (s 26(1)).

## 4 Necessity

- For each ground relied on, having regard to the presumptions in favour of disclosure of information and the court being open (ss 4 and 28), the applicant must demonstrate, by evidence or sufficient credible information (s 14(1)), that it is **necessary** to make the order to achieve the purpose set out in that ground.

## 5 Other ways to address the concern

- Conformably with the principles of the Act, courts must structure orders to least interfere with the principle of open justice. Consideration must be given to addressing the concern in the case with other means, including giving specific directions to a jury, closing the court, excluding specific persons, redacting information in a judgment or transcript or making a combination of less intrusive orders.

## 6 Clarity and scope of objects

- Suppression orders must be drafted with sufficient specificity to ensure that they are limited to achieving the purpose for which they are made, that they apply to no more information than is necessary to achieve their purpose, and that the objects of the order are readily apparent (s 13(1)).
- The purpose of the order and ground relied upon must be included in most orders (s 13(2)).

## 7 Temporal limitation

- Suppression orders must operate for no longer than is reasonably necessary to achieve their purpose (s 12(4)).
- Suppression orders must operate for a fixed period or until the occurrence of an event (s 12(2)). Where an order is fixed by reference to an event that may not occur the order must specify a period, not exceeding 5 years, after which the order expires (s 12(3)).

## 8 Geographic limitation

- Proceeding suppression orders may apply outside Victoria but only if the court or tribunal making the order is satisfied that it is necessary for achieving the order's purpose (s 21).
- Broad suppression orders made in the Magistrates' Court may apply outside Victoria but only if the Court is satisfied that it is necessary for achieving the order's purpose (s 26).

## 9 Audience bound

- While orders made under the Act may bind the world at large, they should not bind an audience wider than is necessary to achieve their purpose (*General Television Corp Pty Ltd v DPP* [2008] VSCA 49).
- Broad suppression orders made in the Supreme and County Court cannot bind the world at large (*Herald and Weekly Times Pty Ltd v A* (2005) 160 A Crim R 299). Instead such orders must be directed at particular persons.

## 10 Procedural matters

- Where the order made is a suppression order, the court or tribunal's ordinary procedures to disseminate notice of the order to the media should be undertaken.
- Where the court or tribunal is to be closed, a notice must be posted on the door of the court or tribunal or in another conspicuous place where such notices are usually posted (s 31).