

When the *Open Courts and Other Acts Amendment Act 2019* commences operation, *Open Courts Act 2013* s 8(1A) will prohibit the making of a suppression order that covers information already restricted by the provisions listed in s 8(2). This document describes the effects of those provisions.

### ***Adoption Act 1984***

- General prohibition on publication of the names of parties to an adoption without their consent during the adoption process. Includes consent of adopted child if they are over 10 years of age.<sup>1</sup>

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

- Except with the permission of the President or Magistrate, there can be no 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 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.<sup>2</sup>
- A Magistrate may grant permission to publish in emergency circumstances and where publication is reasonably necessary to protect the safety of a child, witness, party, or another member of the community.<sup>3</sup>
- The Secretary may in special circumstances grant permission for publication in relation to a child who is the subject of specific orders or has absconded.<sup>4</sup>
- Particulars likely to lead to the identification of a person include:
  - Their name, title, pseudonym or alias;
  - Their work or home address or the locality of those addresses;
  - Their school address or its locality;
  - A physical description of the person or their style of dress;
  - Their employment, profession, occupation, or calling and any official or honorary position they hold;
  - The relationship of the person to identified relatives, friends, associates, or business, official, or professional acquaintances;
  - Their recreational interests or their religious, philosophical or political beliefs or interests;
  - Any real or personal property which they own or hold an interest;<sup>5</sup>

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<sup>1</sup> *Adoption Act 1984* (Vic) s 121.

<sup>2</sup> *Children, Youth and Families Act 2005* (Vic) s 534(1).

<sup>3</sup> *Ibid* s 534(1A).

<sup>4</sup> *Ibid* s 534(3)-(3A).

<sup>5</sup> *Ibid* s 534(4).

- Disclosure made for the purposes of Part 5A of the *Family Violence Protection Act 2008* by an information sharing entity is permissible and not a violation of this Act.<sup>6</sup>

### ***Confiscation Act 1997***

- A court may order that proceedings on the following applications be in closed court, that only certain persons be present for all or part of the proceeding, or it may make a suppression order:
  - To restrain property;<sup>7</sup>
  - For civil forfeiture restraining order;<sup>8</sup>
  - For civil forfeiture order;<sup>9</sup>
  - For unexplained wealth restraining order.<sup>10</sup>

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

- In any proceeding under this Act, a court may order the suppression of any evidence, any report or document, or any information that might enable an accused or any witness to be identified.<sup>11</sup>

### ***Criminal Organisations Control Act 2012***

- Protection and substantive applications are to be heard in closed court unless ordered otherwise and only certain persons may attend.<sup>12</sup>
- A person may not publish information about a protection or substantive application hearing or any information from it unless otherwise ordered.<sup>13</sup>
- A person must not disclose protected criminal intelligence.<sup>14</sup>
- A person must not disclose material subject to an unsuccessful protection application.<sup>15</sup>

### ***Evidence (Miscellaneous Provisions) Act 1958***

- A court may order that protected evidence be heard in camera, make a suppression order or any other order as to disclosure as it deems necessary to protect relevant information or persons.<sup>16</sup>
- A court must make a suppression order regarding anything said during an application for disclosure of an interstate operative's identity.<sup>17</sup>

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<sup>6</sup> Ibid s 534(7). Further exceptions to the prohibition on publication are listed at: s 534A.

<sup>7</sup> *Confiscation Act 1997* (Vic) ss 17(3)–(5).

<sup>8</sup> Ibid ss 36L(6)–(8).

<sup>9</sup> Ibid ss 37(9)–(11).

<sup>10</sup> Ibid ss 40H(7)–(9).

<sup>11</sup> *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic) s 75(1).

<sup>12</sup> *Criminal Organisations Control Act 2012* (Vic) ss 73(1)–(2), ss 81(1)–(3).

<sup>13</sup> Ibid ss 77(1), 83(1).

<sup>14</sup> Ibid s 84(1).

<sup>15</sup> Ibid ss 85(1)–(2).

<sup>16</sup> *Evidence (Miscellaneous Provisions) Act 1958* (Vic) s 32F.

<sup>17</sup> Ibid s 42BQ.

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

- A report of proceedings or about an order made under this Act cannot be published if it contains:
  - In cases where a child is a party, a witness, or is the subject of the order:
    - The locality or any particulars likely to lead to the identification of the particular court;
    - Any particulars likely to lead to the identification of any person involved in the proceeding or the subject of the order.
  - If a child is not a party, witness, or the subject of the order:
    - Any particulars likely to lead to the identification of any person involved in the proceeding or the subject of the order, unless the court orders otherwise.
  - A picture containing any person concerned in a proceeding for family violence intervention order, unless the court orders otherwise.<sup>18</sup>
- These restrictions on publication do not apply to reports of the proceedings or an order that do not identify the locality of a court or particulars likely to identify a venue of a court or particulars of a person.<sup>19</sup>
- The list of particulars deemed likely to lead to identification is identified in s 168.
- The Court may allow publication of particulars or a picture only if the court reasonably considers it:
  - Is in the public interest;
  - Is just in the circumstances;
  - Will not be likely to lead to the identification of a child.<sup>20</sup>

## ***Major Crime (Investigative Powers) Act 2004***

- A person must not publish any report of an application for coercive powers order or any information from that proceeding.<sup>21</sup>
- The Chief Examiner may make a suppression order with respect to any evidence or information given to them, including the identify of any person giving evidence.<sup>22</sup>
- Certain court proceedings involving the Chief Examiner are to be heard in closed court and no person may publish information about them.<sup>23</sup>

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

- Broad prohibition on publication in relation to any judicial proceedings any indecent matter, indecent medical surgical or physiological details calculated to injure public morals.<sup>24</sup>
- In relation to a criminal pre-trial or sentence hearing, any matters other than:
  - The identity of the court and the name of the judge;

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<sup>18</sup> *Family Violence Protection Act 2008* (Vic) s 166.

<sup>19</sup> *Ibid* s 167(1)(a).

<sup>20</sup> *Ibid* s 169.

<sup>21</sup> *Major Crime (Investigative Powers) Act 2004* (Vic) s 7.

<sup>22</sup> *Ibid* s 43.

<sup>23</sup> *Ibid* s 48.

<sup>24</sup> *Judicial Proceedings Reports Act 1958* (Vic) s 3(1)(a).

- The names, ages, home addresses and occupations of the witnesses and the accused;
- Any relevant business information;
- The offence or offences or a summary thereof;
- The names of legal practitioners engaged in the proceeding;
- If the proceeding is adjourned, the date and place to which it is adjourned and the bail arrangements on the adjournment.<sup>25</sup>
- This prohibition does not apply after the conclusion of the trial or hearing of the person charged.<sup>26</sup>
- The foregoing prohibitions do not apply to:
  - The printing of any pleading transcript or other document used in connection with any judicial proceeding;
  - The printing of any notice or report pursuant to the directions of the adjudicating court;
  - The printing of any matter in any separate volume or part of a bona fide series of law reporters;
  - Any bona fide technical publication intended for circulation among members of the legal or medical profession.<sup>27</sup>
- 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*.<sup>28</sup>

### ***Public Health and Wellbeing Act 2008***

- A court may order that information relating to the disclosure of an HIV test or other prescribed disease be heard in closed court, permit only specified persons to be present, or make a suppression order relating to the proceedings.<sup>29</sup>

### ***Serious Offenders Act 2018***

- There is a broad prohibition on publishing:
  - Any evidence given in a proceeding before a court under this 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;

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<sup>25</sup> Ibid s 3(1)(c).

<sup>26</sup> Ibid s 3(1E).

<sup>27</sup> Ibid s 3(5).

<sup>28</sup> Ibid s 4(1A).

<sup>29</sup> *Public Health and Wellbeing Act 2008* (Vic) s 133.

- Any information that might enable a victim of a relevant offence committed by the offender to be identified.<sup>30</sup>
- The police are excepted from these prohibitions in a number of circumstances as is the media if requested by the police for certain purposes.<sup>31</sup>
- A court may make an order authorising publication of any prohibited material if satisfied that exceptional circumstances exist, and the prohibitions do not extend to the court's publication of its reasons for a decision authorising publication.<sup>32</sup>
- If satisfied that it is in the public interest, a court may order that any information identifying an offender or his whereabouts not be published.<sup>33</sup>
- In making an order authorising publication, a court must have regard to:
  - Whether the publication would endanger the safety of any person;
  - The interests of any victims of the offender;
  - The protection of children, families and the community;
  - The offender's compliance with any order made under this Act;
  - The location of the residential address of the offender.<sup>34</sup>

### ***Sex Offenders Registration Act 2004***

- A court may order that registration of prohibited person order proceedings be suppressed if likely to lead to the identification of a registrable offender, victim, or person protected by an order.<sup>35</sup>

### ***Terrorism (Community Protection) Act 2003***

- Very broad prohibition on the publication of a report of any proceedings relating to covert search warrants.<sup>36</sup>

### ***Victims of Crime Assistance Act 1996***

- VOCAT may restrict publication of certain materials.<sup>37</sup>

### ***Victorian Civil and Administrative Tribunal Act 1998***

- A person must not publish any information about a proceeding under the *Guardianship and Administration Act 1986* that could identify a party to the proceeding.<sup>38</sup>

### ***Witness Protection Act 1991***

- Broad prohibition on disclosure of those protected by this Act and applications for disclosure are to be heard in closed court.<sup>39</sup>

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<sup>30</sup> *Serious Offenders Act 2018* (Vic) s 277(1).

<sup>31</sup> *Ibid* s 277(2)–(3).

<sup>32</sup> *Ibid* s 278.

<sup>33</sup> *Ibid* s 279.

<sup>34</sup> *Ibid* s 280.

<sup>35</sup> *Sex Offenders Registration Act 2004* (Vic) s 66ZZB.

<sup>36</sup> *Terrorism (Community Protection) Act 2003* (Vic) s 12.

<sup>37</sup> *Victims of Crime Assistance Act 1996* (Vic) s 43.

<sup>38</sup> *Victorian Civil and Administrative Tribunal Act 1998* (Vic) sch 1, cl 37.

<sup>39</sup> *Witness Protection Act 1991* (Vic) ss 10–10A, 13.