
Version No. 010
Open Courts Act 2013
No. 58 of 2013

The Parliament of Victoria enacts:

Part 1—Preliminary

1 Purposes

The main purposes of this Act are to—

- (aa) recognise and promote the principle that open justice is a fundamental aspect of the Victorian legal system which—
 - (i) maintains the integrity and impartiality of courts and tribunals; and
 - (ii) strengthens public confidence in the system of justice;
 - (a) reform and consolidate provisions for suppression orders relating to information derived from proceedings applicable to the Supreme Court, the County Court, the Magistrates' Court, the Coroners Court, the Victorian Civil and Administrative Tribunal and other prescribed courts and tribunals;
 - (b) reform and consolidate provisions for suppression orders relating to other information relevant to, but not derived from, certain proceedings in the County Court and the Magistrates' Court;
 - (c) make general provisions applicable to all suppression orders made pursuant to the exercise of the inherent jurisdiction of the Supreme Court and by courts or tribunals under this Act;
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(d) reform and consolidate provisions for closed court orders applicable to the Supreme Court, the County Court, the Magistrates' Court, the Coroners Court, the Victorian Civil and Administrative Tribunal and other prescribed courts and tribunals.

2 Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act does not come into operation before 1 December 2013, it comes into operation on that day.

3 Definitions

In this Act—

business day means a day other than a Saturday, a Sunday or a public holiday within the meaning of the **Public Holidays Act 1993**;

child means a person under 18 years of age;

closed court order means an order made under Part 5;

S. 3 def. of *corresponding interstate order* repealed by No. 53/2016 s. 110(c).

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S. 3 def. of *corresponding New Zealand order* repealed by No. 53/2016 s. 110(c).

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court or tribunal means—

- (a) the Supreme Court;
 - (b) the County Court;
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- (c) the Magistrates' Court;
- (d) the Coroners Court;
- (e) VCAT;

- (f) any other prescribed court or tribunal;
- (g) a prescribed person or body;

family violence intervention order has the same meaning as it has in the **Family Violence Protection Act 2008**;

family violence offence means—

- (a) an offence where—
 - (i) the accused is a person who, at the time of the alleged offence, is subject to a family violence intervention order, a family violence safety notice or a non-local DVO; and
 - (ii) the complainant or alleged victim is a person who is protected by the order or notice referred to in subparagraph (i); and
 - (iii) the conduct comprising the alleged offence, if established, includes conduct by the accused which is a contravention of the order or notice referred to in subparagraph (i); or
- (b) an offence where the conduct comprising the alleged offence, if established, constitutes family violence within the meaning of the **Family Violence Protection Act 2008** by the accused against the complainant or alleged victim and the conduct could

S. 3 def. of
*family
violence
offence*
amended by
No. 53/2016
s. 110(b).

reasonably have justified the making of a family violence intervention order or a family violence safety notice applying to the accused and protecting the complainant or alleged victim;

family violence safety notice has the same meaning as it has in the **Family Violence Protection Act 2008**;

information includes any document;

inquest has the same meaning as it has in the **Coroners Act 2008**;

interim order means an order made under section 20;

news media organisation means—

- (a) a commercial enterprise that engages in the business of broadcasting or publishing news;
- (b) a public broadcasting service that engages in the dissemination of news through a public news medium;

non-local DVO means a non-local DVO within the meaning of the **National Domestic Violence Order Scheme Act 2016**;

party to a proceeding includes—

- (a) in the case of a criminal proceeding, the complainant or victim or alleged victim;
- (b) any person named in evidence given in a proceeding;
- (c) in relation to a proceeding that has concluded, a person who was a party to

S. 3 def. of
*non-local
DVO*
inserted by
No. 53/2016
s. 110(a).

the proceeding before the proceeding concluded;

proceeding means a civil proceeding or a criminal proceeding;

proceeding suppression order means an order made under section 17;

publish means disseminate or provide access to the public or a section of the public by any means, including by—

- (a) publication in a book, newspaper, magazine or other written publication; or
- (b) broadcast by radio or television; or
- (c) public exhibition; or
- (d) broadcast or electronic communication—

and *publication* must be construed accordingly;

sexual offence has the same meaning as it has in the **Criminal Procedure Act 2009**;

suppression order means—

- (a) a proceeding suppression order;
 - (b) an interim order;
 - (c) an order made under section 25 or 26;
 - (d) an order made by the Supreme Court in the exercise of its inherent jurisdiction that prohibits or restricts the publication or other disclosure of information in connection with any proceeding, whether or not the information was derived from the proceeding.
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4 Principle of open justice prevails unless circumstances require displacement

- (1) A court or tribunal is to have regard to the primacy of the principle of open justice and the free communication and disclosure of information in determining whether to make a suppression order.
- (2) A court or tribunal is only to make a suppression order if satisfied that the specific circumstances of a case make it necessary to override or displace the principle of open justice and the free communication and disclosure of information.

~~**4—Presumption in favour of disclosure of information**~~

~~To strengthen and promote the principles of open justice and free communication of information, there is a presumption in favour of disclosure of information to which a court or tribunal must have regard in determining whether to make a suppression order.~~

5 Abrogation of common law and no implied jurisdiction

- (1) Nothing in this section limits or otherwise affects the inherent jurisdiction of the Supreme Court.
- (2) Any common law power to make an order prohibiting or restricting the publication of information in connection with any proceeding is abrogated.
- (3) A court or tribunal has no implied jurisdiction to make an order prohibiting or restricting the publication of information in connection with any proceeding.

6 Jurisdiction and powers of courts and tribunals to deal with contempt

(1) This Act does not limit or otherwise affect any jurisdiction or any power that a court or tribunal has apart from this Act to deal with a contempt of the court or tribunal.

(2) In this section—

jurisdiction includes any implied jurisdiction and, in the case of the Supreme Court, its inherent jurisdiction;

power includes any power at common law.

7 Admission of evidence and disclosure of information to a court or tribunal or party to a proceeding

This Act does not limit or otherwise affect—

- (a) the making of an order or decision by a court or tribunal that requires the disclosure of information in the course of, or in relation to, a proceeding;
- (b) any rule of law restricting the permitted use and disclosure of information referred to in paragraph (a);
- (c) the making of an order or decision by a court or tribunal regarding the admission into evidence of information;
- (d) the making of an order or decision by a court or tribunal that—
 - (i) conceals the identity of a person by restricting the way the person is referred to in open court;
 - (ii) restricts the way an event or thing may be referred to in open court;
 - (iii) prohibits or restricts access to a court or tribunal file.

8 Other laws restricting or prohibiting publication not affected

- (1) This Act does not limit or otherwise affect the operation of a provision made by or under any other Act, including an Act of the Commonwealth, that—
- (a) prohibits or restricts, or authorises a court or tribunal to prohibit or restrict, the publication or other disclosure of information for or in connection with any proceeding; or
 - (b) requires or authorises a court or tribunal to close any proceeding to the public.

(1A) If a provision of an Act referred to in subsection (2) prohibits or restricts, or authorises a court or tribunal to prohibit or restrict, the publication or other disclosure of information for or in connection with any proceeding, a court or tribunal must not make a suppression order that prohibits or restricts the publication or other disclosure of information which is already prohibited or restricted by that other provision.

- (2) Without limiting the generality of subsection (1), this Act does not limit the operation of the following provisions—
- (a) section 121 of the **Adoption Act 1984**;
 - (b) section 534 of the **Children, Youth and Families Act 2005**;
 - (c) sections 17(3), (4) and (5), 36L(6), (7) and (8), 37(9), (10) and (11) and 40H(7), (8) and (9) of the **Confiscation Act 1997**;
 - (d) section 75 of the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997**;
 - (e) Part 4 of the **Criminal Organisations Control Act 2012**;
 - (f) sections 32F or 42BQ of the **Evidence (Miscellaneous Provisions) Act 1958**;
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S. 8(2)(c)
amended by
No. 27/2016
s. 44.

- (g) sections 166 or 167 of the **Family Violence Protection Act 2008**;
- (h) section 43 of the **Major Crime (Investigative Powers) Act 2004**;
- (i) section 133 of the **Public Health and Wellbeing Act 2008**;
- (j) Division 1 of Part 19 of the **Serious Offenders Act 2018**;
- (ja) section 66ZZB of the **Sex Offenders Registration Act 2004**;
- (k) section 12 of the **Terrorism (Community Protection) Act 2003**;
- (l) section 43 of the **Victims of Crime Assistance Act 1996**;
- (m) clause 37 of Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998**;
- (n) sections 3 and 4 of the **Judicial Proceedings Reports Act 1958**;
- (o) sections 7 and 48 of the **Major Crime (Investigative Powers) Act 2004**;
- (p) sections 10A and 13 of the **Witness Protection Act 1991**.

S. 8(2)(j)
substituted by
No. 27/2018
s. 361.

S. 8(2)(ja)
inserted by
No. 21/2016
s. 23.

Note

Other Acts have specific suppression regimes that place statutory restrictions or prohibitions on the disclosure of information. For example, see ~~sections 3 and 4 of the **Judicial Proceedings Reports Act 1958**~~ and sections 77 and 78 of the **Juries Act 2000**.

- (3) A suppression order that prohibits or restricts the publication or other disclosure of information

which is already prohibited or restricted by the operation of a provision made by or under any Act, including an Act of the Commonwealth, is not invalid merely because it covers the same prohibition, restriction or disclosure as the provision of an Act.

Part 2—General provisions for suppression orders

9 Application of Part

This Part applies to any suppression order.

10 Notice of applications for suppression orders

- (1) Subject to subsection (3), an applicant for a suppression order must give 3 business days' notice of the making of the application to—
 - (a) the court or tribunal in which the application is to be made; and
 - (b) the parties on the record in the proceeding to which the application relates.
- (2) Notice under subsection (1) must be in accordance with rules of court (if any) applying in the court or tribunal in which the application is made.
- (3) The court or tribunal may hear an application for a suppression order despite the failure of the applicant to give notice in accordance with subsection (1) if the court or tribunal is satisfied that—
 - (a) there was a good reason for the notice not being given or not being given within the required time period; or
 - (b) it is in the interests of justice that the court or tribunal hear the application without notice being given.
- (4) This section does not apply to the making of a proceeding suppression order by a court or tribunal on its own motion.

**S. 10(1)(b)
substituted by
No. 55/2014
s. 176.**

11 Notifications to relevant news media organisations

- (1) On receiving a notice under section 10(1), the court or tribunal must take reasonable steps to ensure that any relevant news media organisation is notified of the application for a suppression order.
- (2) Notification under this section may be by electronic communication or any other means that the court or tribunal considers appropriate.
- (3) In this section, *relevant news media organisation* means a news media organisation which the court or tribunal would ordinarily ensure was sent notice of the making of a suppression order.

12 Duration of orders

- (1) The period for which a suppression order other than an interim order operates must be—
 - (a) determined by the court or tribunal in accordance with this section; and
 - (b) specified in the order.

Note

For interim orders, see section 20(3).

- (2) The period for which a suppression order operates may be specified by reference to—
 - (a) a fixed or ascertainable period; or
 - (b) subject to subsection (3), the occurrence of a specified future event.

- (3) If the period for which a suppression order operates is specified by reference to a future event that may not occur, the order must also specify a period from the date of the order (not exceeding 5 years) at the end of which the order expires unless sooner revoked.

Example

An order that is expressed to be in effect until further order of the court or tribunal would also need to specify a period not exceeding 5 years at the end of which the order expires unless sooner revoked.

- (3A) Unless a court or tribunal otherwise orders or the suppression order otherwise specifies, a suppression order (unless it is sooner varied or revoked) continues to operate until—
- (a) the expiry of any appeal period in relation to the proceeding to which the order relates; or
 - (b) if an appeal is made, the determination of the appeal.
- (4) The court or tribunal must ensure that a suppression order operates for no longer than is reasonably necessary to achieve the purpose for which it is made.

13 Scope of information covered by order ~~and purpose of suppression order~~

- (1) A suppression order must specify the information to which the order applies with sufficient particularity to ensure that—
- (a) the order is limited to achieving the purpose for which the order is made; and
 - (b) the order does not apply to any more information than is necessary to achieve the purpose for which the order is made; and
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(c) it is readily apparent from the terms of the order what information is subject to the order.

(2) A suppression order—

~~(a) must specify the purpose of the order; and~~

(b) in the case of a proceeding suppression order or an order under section 26(1), must specify the applicable ground or grounds on which it is made.

14 Order must be made on basis of evidence or sufficient credible information

(1) In making a suppression order, a court or tribunal must be satisfied on the basis of evidence, or sufficient credible information that is satisfactory to the court or tribunal, that the grounds for making the order are established.

(2) Subsection (1) does not apply to an interim order.

14A Statement of reasons for making a suppression order

~~(1) Subject to subsection (2), a court or tribunal which makes a suppression order must give a statement of reasons that sets out—~~

~~(a) the reasons for the terms of the order; and~~

~~(b) the reasons for the duration, grounds and scope of the information covered by the order.~~

~~(2) A court or tribunal is not required to give a statement of reasons—~~

~~(a) for an interim order; or~~

~~(b) for an order varying a suppression order, if the order specifies the purpose of the variation; or~~

~~(c) for an order revoking a suppression order; or~~

- (d) if giving a statement of reasons would render the suppression order ineffective.
- (3) A failure to comply with this section does not affect the validity of a suppression order.

15 Review of orders

- (1) The court or tribunal that made a suppression order may review the order—
 - (a) on the court's or tribunal's own motion; or
 - (b) on the application of—
 - (i) the applicant for the order;
 - (ii) a party to the proceeding in connection with which the order was made, including in any criminal proceeding involving a sexual offence or a family violence offence, a victim or an alleged victim of that offence;
 - (iii) the Attorney-General;
 - (iv) the Attorney-General of another State or a Territory or of the Commonwealth;
 - (v) a news media organisation;
 - (vi) any other person who, in the opinion of the court or tribunal, has a sufficient interest in the question of whether the order should be confirmed, varied or revoked.
 - (1A) A court or tribunal hearing an appeal from a proceeding in which a suppression order has been made which has continued to operate pursuant to section 12(3A) may review the order—
 - (a) on the court's or tribunal's own motion; or
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- (b) on the application of—
 - (i) the person who was the applicant for the order in the proceeding which is the subject of the appeal;
 - (ii) any other party to the proceeding which is the subject of the appeal in connection with which the order was made;
 - (iii) in any criminal proceeding involving a sexual offence or a family violence offence, a victim or an alleged victim of that offence;
 - (iv) the Attorney-General;
 - (v) the Attorney-General of another State or a Territory or of the Commonwealth;
 - (vi) a news media organisation;
 - (vii) any other person who, in the opinion of the court or tribunal, has a sufficient interest in the question of whether the order should be confirmed, varied or revoked.
 - (1B) Subject to subsection (1C), in reviewing an order under subsection (1) or (1A), the court or tribunal must make an order revoking the suppression order which is the subject of the review if—
 - (a) unless the review is on the court's or tribunal's own motion, the application for review is made by a party who is a victim or an alleged victim of an offence involving a sexual offence or a family violence offence; and
 - (b) the court or tribunal is satisfied that the party—
 - (i) gives permission to that disclosure; and
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- (ii) is 18 years of age or over; and
 - (c) it is otherwise appropriate in all the circumstances for the order to be revoked.
- (1C) A court must not revoke a suppression order under subsection (1B) if the revocation of the order would result in the disclosure of the identity of any person against whom a sexual offence or family violence offence was allegedly committed and that was dealt with in the same proceeding—
- (a) who does not give permission to that disclosure; or
 - (b) who is under 18 years of age; or
 - (c) if it is not appropriate in all the circumstances for the identity to be disclosed.
- (2) Each of the persons specified in subsection (1)(b) or (1A)(b) is entitled to appear and be heard by the court or tribunal on the review of a suppression order.
- (3) On a review under subsection (1) or (1A), the court or tribunal—
- (a) may confirm, vary or revoke the suppression order; and
 - (b) in addition, may make any other order that the court or tribunal may make under this Act including, in the case of a review under subsection (1A), any order that the court or tribunal which made the suppression order could have made.

16 Duty to publish reasons, judgments or decisions

Nothing in this Act, other than section 14A, limits or otherwise affects any duty of a court or tribunal to publish reasons for judgment or decisions,

subject to the court or tribunal editing those reasons to the extent necessary to comply with any order of a court or tribunal or statutory provision restricting the publication of information.

Note

See also section 24(3) of the **Charter of Human Rights and Responsibilities Act 2006**.

Part 3—Proceeding suppression orders

17 Court or tribunal may make proceeding suppression order

A court or tribunal on one or more of the grounds specified in section 18 may make a proceeding suppression order to prohibit or restrict the disclosure by publication or otherwise of—

- (a) a report of the whole or any part of a proceeding;
- (b) any information derived from a proceeding.

18 Grounds for proceeding suppression order

(1) A court or tribunal other than the Coroners Court may make a proceeding suppression order if satisfied as to one or more of the following grounds—

- (a) the order is 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;

Example

Another reasonably available means may be directions to the jury.

- (b) the order is necessary to prevent prejudice to the interests of the Commonwealth or a State or Territory in relation to national or international security;
 - (c) the order is necessary to protect the safety of any person;
 - (d) the order is 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;
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- (e) the order is necessary to avoid causing undue distress or embarrassment to a child who is a witness in any criminal proceeding;
- (f) in the case of VCAT, the order is necessary—
 - (i) to avoid the publication of confidential information or information the subject of a certificate under section 53 or 54 of the **Victorian Civil and Administrative Tribunal Act 1998**;
 - (ii) for any other reason in the interests of justice.
- (2) The Coroners Court may make a proceeding suppression order in the case of an investigation or inquest into a death or fire if the coroner constituting the Coroners Court reasonably believes that an order is necessary because disclosure would—
 - (a) be likely to prejudice the fair trial of a person; or
 - (b) be contrary to the public interest.

19 Procedure for making a proceeding suppression order

- (1) A court or tribunal may make a proceeding suppression order—
 - (a) on its own motion; or
 - (b) on the application of—
 - (i) a party to the proceeding concerned; or
 - (ii) any other person considered by the court or tribunal to have a sufficient interest in the making of the order.
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- (2) Each of the following persons may appear and be heard by the court or tribunal on an application for a proceeding suppression order—
 - (a) the applicant for the order;
 - (b) a party to the proceeding concerned;
 - (c) the Attorney-General;
 - (d) the Attorney-General of another State or Territory or of the Commonwealth;
 - (e) a news media organisation;
 - (f) any other person who, in the opinion of the court or tribunal, has a sufficient interest in the question of whether the order should be made.
- (3) Subject to rules of court (if any) or unless the court or tribunal otherwise orders, an applicant for a proceeding suppression order is not required to give notice of the application to a person referred to in subsection (2)(a), (c), (d), (e) or (f).
- (4) A proceeding suppression order may be made—
 - (a) at any time during a proceeding;
 - (b) after a proceeding has concluded.
- (5) A proceeding suppression order may be made subject to any exceptions and conditions that the court or tribunal thinks fit and specifies in the order.

20 Interim orders

- (1) If an application is made to a court or tribunal for a proceeding suppression order, the court or tribunal may make an interim order in respect of that application.
 - (2) An interim order may be made without determining the merits of the application under section 18.
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- (3) An interim order has effect until—
 - (a) the substantive application is determined; or
 - (b) the interim order is revoked by a court or tribunal.
- (4) If a court or tribunal makes an interim order, the court or tribunal must determine the substantive application for the proceeding suppression order as a matter of urgency.

21 Where a proceeding suppression order applies

- (1) A proceeding suppression order or an interim order applies only to the publication or disclosure of information in a place where the order applies, as specified in the order.
- (2) Subject to subsection (3), a proceeding suppression order or an interim order is not limited to applying in Victoria and may be made to apply anywhere in Australia.
- (3) A proceeding suppression order or an interim order must not be made to apply outside Victoria unless the court or tribunal is satisfied that having the order apply outside Victoria is necessary for achieving the purpose for which the order is made.

22 Exceptions for conduct of proceeding, enforcement or informing persons of existence of proceeding suppression orders or interim orders

A proceeding suppression order or an interim order does not prevent a person from disclosing information if the disclosure is in the course of performing functions or duties or exercising powers in a public official capacity—

- (a) in connection with the conduct of any proceeding or the recovery or enforcement of any penalty imposed in a proceeding; or

- (b) in compliance with any procedure adopted by a court or tribunal for informing a person of the existence and content of a proceeding suppression order or an interim order made by the court or tribunal.

23 Offence to contravene proceeding suppression order or interim order

- (1) A person must not engage in conduct that constitutes a contravention of a proceeding suppression order or an interim order that is in force if that person—
 - (a) knows that the proceeding suppression order or interim order, as the case requires, is in force; or
 - (b) is reckless as to whether a proceeding suppression order or an interim order, as the case requires, is in force.

Penalty: in the case of an individual, level 6 imprisonment (5 years maximum) or 600 penalty units, or both;
in the case of a body corporate,
3000 penalty units.

- (2) For the purposes of subsection (1), in the absence of evidence to the contrary, a person is taken to be aware that a proceeding suppression order or an interim order is in force if a court or tribunal has electronically transmitted notice of the order to the person.

Part 4—Broad suppression orders

24 Application of this Part

An order under this Part must not be made in respect of any information which could be the subject of a proceeding suppression order.

25 County Court may grant injunction restraining publication in relation to criminal proceeding

- (1) The County Court has the same jurisdiction, and may exercise the same powers and authority, to grant an injunction in a criminal proceeding restraining a person from publishing any material or doing any other thing to ensure the fair and proper conduct of the proceeding as the Supreme Court has and may exercise in respect of a criminal proceeding in the Supreme Court.
- (2) The power of the County Court referred to in subsection (1) is exercisable by making an order, whether interlocutory or final, either unconditionally or on such terms and conditions as the Court thinks just.

26 Magistrates' Court may make order prohibiting publication of specified material

- (1) The Magistrates' Court may make an order prohibiting the publication of any specified material, or any material of a specified kind, relevant to a proceeding that is pending in the Court if the Court is satisfied that—
 - (a) the order is 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; or

S. 26(1)
substituted by
No. 55/2014
s. 177.

- (b) the order is necessary in order to protect the safety of any person.
- (2) An order under subsection (1) applies only to the publication of material in a place where the order applies, as specified in the order.
- (3) Subject to subsection (4), an order under subsection (1) is not limited to applying in Victoria and may be made to apply anywhere in Australia.
- (4) An order under subsection (1) must not be made to apply outside Victoria unless the Magistrates' Court is satisfied that having the order apply outside Victoria is necessary for achieving the purpose for which the order is made.
- (5) An order under subsection (1) does not prevent a person from disclosing information if the disclosure is in the course of performing functions or duties or exercising powers in a public official capacity—
 - (a) in connection with the conduct of any proceeding or the recovery or enforcement of any penalty imposed in a proceeding; or
 - (b) in compliance with any procedure adopted by the Magistrates' Court for informing a person of the existence and content of an order made under subsection (1) by the Court.

27 Offence to contravene order under section 26(1)

- (1) A person must not engage in conduct that constitutes a contravention of an order under section 26(1) that is in force if that person—
 - (a) knows that the order is in force; or
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(b) is reckless as to whether an order under that section is in force.

Penalty: in the case of an individual, level 6 imprisonment (5 years maximum) or 600 penalty units, or both;

in the case of a body corporate,
3000 penalty units.

(2) For the purposes of subsection (1), in the absence of evidence to the contrary, a person is taken to be aware that an order is in force if a court or tribunal has electronically transmitted notice of the order to the person.

Part 5—Closed court orders

28 Principle of open justice and hearings in open court

- (1) In determining whether to make any order, including a closed court order, a court or tribunal must have regard to the primacy of the principle of open justice and the free communication and disclosure of information which require the hearing of a proceeding in open court.
- (2) A court or tribunal should only make a closed court order—
 - (a) that the whole or any part of a proceeding be heard in closed court or closed tribunal; or
 - (b) that only specified persons or classes of persons may be present during the whole or any part of a proceeding—

if the specific circumstances of a case make it necessary to override or displace the principle of open justice and the free communication and disclosure of information which require the hearing of a proceeding in open court.

~~28 Presumption in favour of open court~~

~~To strengthen and promote the principle of open justice, there is a presumption in favour of hearing a proceeding in open court to which a court or tribunal must have regard in determining whether to make any order, including an order under this Part—~~

- ~~(a) that the whole or any part of a proceeding be heard in closed court or closed tribunal; or~~
- ~~(b) that only specified persons or classes of persons may be present during the whole or any part of a proceeding.~~

29 Jurisdiction and powers of courts and tribunals to regulate proceedings

- (1) Subject to section 28, nothing in this Part limits or affects any jurisdiction or any power that a court or tribunal has apart from this Act to regulate its proceedings.
- (2) In this section—
jurisdiction includes any implied jurisdiction and, in the case of the Supreme Court, its inherent jurisdiction;
power includes any power at common law.

30 Power to close proceeding to the public

- (1) Subject to subsections (2) and (3), a court or tribunal—
 - (a) may order that the whole or any part of a proceeding be heard in closed court or closed tribunal; or
 - (b) may order that only persons or classes of persons specified by it may be present during the whole or any part of a proceeding.
- (2) A court or tribunal other than the Coroners Court may make a closed court order if satisfied as to one or more of the following grounds—
 - (a) the order is 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;

Example

Other reasonably available means may include directions to the jury, making a proceeding suppression order, or orders excluding only certain persons or a more limited class of persons from the court or tribunal.

- (b) the order is necessary to prevent prejudice to the interests of the Commonwealth or a State or Territory in relation to national or international security;
 - (c) the order is necessary to protect the safety of any person;
 - (d) the order is 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) the order is necessary to avoid causing undue distress or embarrassment to a child who is a witness in any criminal proceeding;
 - (f) in the case of VCAT, the order is necessary—
 - (i) to avoid the disclosure of confidential information or information the subject of a certificate under section 53 or 54 of the **Victorian Civil and Administrative Tribunal Act 1998**;
 - (ii) for any other reason in the interests of justice.
- (3) The Coroners Court may make a closed court order if the coroner constituting the Coroners Court reasonably believes that an order is necessary in the public interest, having regard to the matters specified in Part 2 of the **Coroners Act 2008**.

31 Requirement to post notice of closed court order on door of court or tribunal

If a closed court order has been made, the court or tribunal must cause a copy of the order to be posted—

- (a) on a door of the court or tribunal; or
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- (b) in another conspicuous place where notices are usually posted at the place where the court or tribunal is being held.

32 Offence to contravene closed court order

A person must not engage in conduct that constitutes a contravention of a closed court order that is in force if that person—

- (a) knows that the closed court order is in force;
or
(b) is reckless as to whether a closed court order is in force.

Penalty: in the case of an individual, level 6 imprisonment (5 years maximum) or 600 penalty units, or both;
in the case of a body corporate,
3000 penalty units.

Part 6—General

33 Regulations

- (1) The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) The regulations may—
 - (a) be of general or limited application;
 - (b) differ according to differences in time, place or circumstances;
 - (c) confer a discretionary authority or impose a duty on a specified person or body or class of persons or bodies;
 - (d) provide in a specified case or class of cases for the exemption of persons or things or a class of persons or things from any of the provisions of the regulations—
 - (i) whether unconditionally or on specified conditions; and
 - (ii) either wholly or to any extent that is specified.

Part 7—Transitional provisions

34 Transitional

This Act applies in relation to a proceeding (including any interlocutory proceeding)—

- (a) that is commenced in, or transferred to, a court or tribunal on or after the commencement of section 17; or
- (b) that has commenced in a court or tribunal but has not been heard and determined by the court or tribunal immediately before the commencement of section 17.

35 Power to resolve transitional difficulties in proceeding

- (1) If any difficulty arises because of the operation of this Act in relation to a proceeding referred to in section 34, a court or tribunal may make any order it considers appropriate to resolve the difficulty.
- (2) An order made under subsection (1)—
 - (a) may be made on application of a party to the proceeding or on the court's or tribunal's own motion, as the case requires; and
 - (b) has effect despite any provision to the contrary made by or under any Act (other than the **Charter of Human Rights and Responsibilities Act 2006**).

S. 36
repealed by
No. 58/2013
s. 36(4).

* * * *

Pt 8
(Headings
and ss 37–67)
repealed by
No. 58/2013
s. 67.

* * * *

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current Versions of legislation and up-to-date legislative information.

Minister's second reading speech—

Legislative Assembly: 27 June 2013

Legislative Council: 5 September 2013

The long title for the Bill for this Act was "A Bill for an Act to reform and consolidate provisions for and powers relating to suppression orders and closed court orders, to make consequential amendments to various Acts and for other purposes."

The **Open Courts Act 2013** was assented to on 22 October 2013 and came into operation on 1 December 2013: section 2(2).

INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

Open Courts Act 2013
No. 58 of 2013
Endnotes

2 Table of Amendments

This publication incorporates amendments made to the **Open Courts Act 2013** by Acts and subordinate instruments.

Open Courts Act 2013, No. 58/2013

Assent Date: 22.10.13
Commencement Date: Ss 36(4), 67 on 1.12.13: s. 2(2)
Note: S. 67 repealed Pt 8 (ss 37–67) on 1.12.14; s. 36(4) repealed s. 36 on 1.12.15
Current State: This information relates only to the provision/s amending the **Open Courts Act 2013**

Criminal Organisations Control and Other Acts Amendment Act 2014, No. 55/2014

Assent Date: 26.8.14
Commencement Date: Ss 176, 177 on 27.8.14: s. 2(1)
Current State: This information relates only to the provision/s amending the **Open Courts Act 2013**

Sex Offenders Registration Amendment Act 2016, No. 21/2016

Assent Date: 26.4.16
Commencement Date: S. 23 on 1.2.17: s. 2(2)
Current State: This information relates only to the provision/s amending the **Open Courts Act 2013**

Confiscation and Other Matters Amendment Act 2016, No. 27/2016

Assent Date: 31.5.16
Commencement Date: S. 44 on 1.6.16: s. 2(1)
Current State: This information relates only to the provision/s amending the **Open Courts Act 2013**

National Domestic Violence Order Scheme Act 2016, No. 53/2016

Assent Date: 18.10.16
Commencement Date: S. 110 on 25.11.17: Special Gazette (No. 388) 15.11.17 p. 1
Current State: This information relates only to the provision/s amending the **Open Courts Act 2013**

Serious Offenders Act 2018, No. 27/2018

Assent Date: 26.6.18
Commencement Date: S. 361 on 3.9.18: Special Gazette (No. 356) 31.7.18 p. 1
Current State: This information relates only to the provision/s amending the **Open Courts Act 2013**

3 Amendments Not in Operation

There are no amendments which were Not in Operation at the date of this publication.

4 Explanatory details

No entries at date of publication.