Judicial College of Victoria

Whether or not to make an order under the *Open Courts Act 2013*

STEP 1

Has the applicant given 3 business days' notice of the making of the application to the court or tribunal and to the parties? **(s 10(1))**

NO → Is there a good reason for the notice not being given within the time period or is it in the interests of justice to hear the application without notice? **(s 10(3))**

NO → **REFUSE APPLICATION**

YES → **STEP 2**

YES → **STEP 2**

STEP 2

Does a provision listed in **s 8(2)** prohibit or restrict, or authorise a court to prohibit or restrict, the publication of the information?

YES → **REFUSE APPLICATION (s 8(2A))**

NO → **STEP 3**

STEP 3

Identify, for the type of order sought, what grounds are available to the court or tribunal:

Proceeding suppression orders (s 18) and closed court orders (s 30)

All courts except the Coroners Court. Where the order is necessary to:

a. prevent a real and substantial risk of prejudice to the proper administration of justice that cannot be prevented by other reasonably available means;
b. prevent prejudice to the interests of the Commonwealth or a State or Territory in relation to national or international security;
c. protect the safety of any person;
d. avoid causing undue distress or embarrassment to a complainant or witness in any criminal proceeding involving a sexual offence or a family violence offence; or
e. avoid causing undue distress or embarrassment to a child who is a witness in any criminal proceeding

VCAT additional grounds. Where the order is necessary:

a. to avoid the publication of confidential information or information the subject of a certificate under **ss 53 or 54** of the ***VCAT Act***; or
b. for any other reason in the interests of justice.

Coroners Court grounds. For proceeding suppression orders, where the order is necessary:

a. because disclosure would prejudice the fair trial of a person; or
b. because disclosure would be contrary to the public interest.

For closed court orders, where the order is necessary:

a. in the public interest, having regard to the matters specified in Part 2 of the ***Coroners Act 2008***.

Broad suppression orders

Supreme and County Court

In the exercise of the Supreme Court's inherent jurisdiction (which is granted to the County Court in criminal proceedings) where the order is necessary to prevent prejudice to the administration of justice **(see ss 5 and 25).**

Magistrates' Court

Where the order is necessary in order not to:

a. prejudice the administration of justice; or
b. endanger the safety of any person **(s 26(1)).**

STEP 4

For at least one ground, has the applicant demonstrated, **by evidence or sufficient credible information** (s 14(1)), and having regard to the primacy of the principle of open justice, free communication and disclosure of information **(ss 4 and 28)**, that it is **necessary** to make the order to achieve the purpose set out in that ground?

NO → **ORDER IS NOT NECESSARY. REFUSE APPLICATION.**

STEP 5

Can the concern be addressed by other reasonably available means?

Consider giving specific directions to the jury, closing the court, excluding specific persons from court, redacting a judgment or transcript, or making a combination of less intrusive orders

YES → **REFUSE APPLICATION & ADDRESS CONCERN WITH OTHER MEANS.**

NO →

The order is necessary – make the order and give reasons for the order (s 14A).

See the decision-making flowchart for drafting considerations and restrictions for suppression orders