

Open Courts Act 2013

Review – Amended Terms of Reference

The *Open Courts Act 2013* commenced on 1 December 2013. The second reading speech stated that the Act "...reinforces the primacy of open justice and the free communication of information in relation to proceedings in Victorian courts and tribunals".

The Act has now been in operation for over two years. Media reporting has been critical of the Act and argued that there has been little if any change in the use of suppression orders in Victoria.

The purpose of this review is to consider whether the Act is striking the right balance between the need for open and transparent justice, and the need to protect the legitimate interests of victims, witnesses and accused persons, and to preserve the proper administration of justice?

What, if any, changes should be made to the Act or the procedures supporting the Act in order for it to fulfil its aim, as stated in the second reading speech, of establishing:

...a clear, fair and effective regime that reinforces the importance of open justice and confines exceptions to those limited circumstances where exceptions are justified.

The review is asked to consider the following aspects of the Act:

- The notice requirements and their impact on the courts, and on the rights of other parties, including the media, to be heard;
- The grounds for a proceeding suppression order and whether they are adequate for the breadth of matters that come before the courts;
- The requirements that a suppression order must clearly specify the information to which the order applies;
- The requirement that a suppression order must operate for no longer than is reasonably necessary.

If the review concludes that the Act is not achieving its purpose, then the review is invited to make recommendations on what steps could or should be taken to improve the operation of the Act. If further training for courts and tribunals would be helpful, the review is asked to consider what type of training would be effective.

It has been suggested that there should be a contradictor in applications for suppression orders, who could make submissions on public interest grounds. The review is asked to consider this idea and comment on whether it would be helpful.

Other Acts

The *Open Courts Act* does not affect other laws that restrict or prohibit publication. Several provisions are listed in s8(2) to emphasise that they continue to operate as originally intended. The review is asked to consider whether this remains the appropriate outcome.

The *Serious Sex Offenders (Detention and Supervision) Act 2009* makes it an offence to publish any evidence given in a proceeding under the Act, or the content of any report or other document put before the court. The review is asked to consider, in general terms, what is the appropriate

level of suppression to afford these proceedings? What is the appropriate balance between the need to preserve the privacy of a person who may be subject to post-sentence supervision, and the right of the public to know the details of these proceedings? The review should note that the *Serious Sex Offenders (Detention and Supervision) Act 2009* is currently being reconsidered after the Harper review of the post-sentence supervision scheme for serious sex offenders.

The review is also asked to consider whether there should be overarching consistent principles that can be applied to all Acts that contain provisions that restrict or prohibit publication.

- Are there principles that could usefully be applied to any new request for such provisions?
- Should existing provisions be reviewed in light of these principles?

The review is asked to report within eight months of commencement.