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NSW Law Reform Commission

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Preliminary submissions – Open Justice

Dear Commissioners,

Thank you for the opportunity to make a preliminary submission to the NSW Law Reform Commission's 'Open Justice Review'. We look forward to the opportunity to provide more comprehensive submissions after consideration of the consultation paper(s) later this year.

The terms of reference and notified issues for consideration regarding open justice relate strongly to matters involving the participation of the Public Defenders in the administration of justice. Public Defenders are salaried barristers independent of the government who appear in serious criminal matters for accused persons granted Legal Aid.

The following preliminary submissions are put forward in the context of strongly supporting the principle that open justice is foundational to our criminal justice system and an important element of accountability. To cite even a small sample of authoritative judicial statements to this effect gives context to the weight this principle deserves.[1] As will be referred to further

[1] *Hogan v Hinch* (2011) 243 CLR 506 at [20] per French CJ; *State of South Australia v Totani* (2010) 242 CLR 1 per French CJ at [62]; *Commissioner of the Australian Federal Police v Zhao* (2015) 316 ALR 378 per French CJ, Hayne, Kiefel, Bell and Keane JJ at [44]; *Lodhi v R* (2006) 163 A Crim R 508, NSWSC per Whealy J at [10]; *John Fairfax Publications Pty Ltd and Anor v District Court of NSW and Ors* (2004) 61 NSWLR 344 at [18]-[19], [39]-[40] per Spigelman CJ citing *John Fairfax & Sons Pty Ltd v Police Tribunal of New South Wales* (1986) 5 NSWLR 465 at 476-477 per McHugh JA. The leading common law case on the principle of open justice is *Scott v Scott* [1913] AC 417 (House of Lords). See also a summary of the history of open court in *Raybos Australia Pty Ltd v Jones* (1985) 2 NSWLR 47 per Kirby P.

below, amendments to law in this area have been this year proposed in Victoria, in response to the *Open Courts Act Review* conducted by The Hon. Frank Vincent AO QC (September 2017, Victoria) ('the Victorian review'). Pages 82 – 104 of the Victorian report describe clearly the importance of the principle of open justice – particularly in the context of criminal law, and particularly as an essential aspect of a democracy.

The first two terms of reference, and the eighth, are dealt with together.

a) Any NSW legislation that affects access to, and disclosure and publication of, court and tribunal information, including:

- **The *Court Suppression and Non-Publication Orders Act* 2010 (NSW);**
- **The *Court Information Act* 2010 (NSW); and**
- **The *Children (Criminal Proceedings)* Act 1987**

b) Whether the current arrangements strike the right balance between the proper administration of justice, the rights of victims and witnesses, privacy, confidentiality, public safety, the right to a fair trial, national security, commercial / business interests, and the public interest in open justice

h) The findings of the Royal Commission into Institutional Responses to Child Sexual Abuse regarding the public interest in exposing child sexual abuse offending.

It is proposed at this stage to focus on the *Court Suppression and Non-Publication Orders Act* 2010 (NSW). The *Children (Criminal Proceedings) Act* 1987 will be dealt with mainly by reference to the questions arising from term of reference (d). It is understood that the *Court Information Act* has not been proclaimed. In the Supreme Court access to pleadings, transcripts and exhibits is normally granted under the Supreme Court Practice Note SC Gen 2 Par 7 unless the judge considers the material should be kept confidential, as in Harrison J's decision in *R v Wran* [2016] NSWSC 1026. There is not understood to be any problem with the current regime of access to information but any problems revealed by the review will be given consideration.

With the enactment of the *Court Suppression and Non-Publication Orders Act* 2010, NSW was the first state to implement the recommendation of model law endorsed by the Standing

Committee of Attorneys-General proposed in May 2010. It was enacted federally, with some variations, as the *Access to Justice (Federal Jurisdiction) Amendment Act 2012* (Cth). Of relevance in understanding the recent Victorian review, the model legislation was not implemented in Victoria. A detailed consideration of the comparable interstate positions is set out in the Victorian review and not repeated here. According to the Victorian review, all other states operated pursuant to the common law, with some powers granted by statute in similar terms to the law in Victoria prior to the *Open Courts Act 2013* (Vic).

Section 6 of the NSW Act provides that 'In deciding whether to make a suppression order or non-publication order, a court must take into account that a primary objective of the administration of justice is to safeguard the public interest in open justice.' The grounds for making an order impinging upon this, set out in s 8, are all founded upon necessity. These are specified and limited grounds, which must be stated – and in practise in the District and Supreme Courts, this is done with articulation of reasons.

Despite media complaints, examples and / or empirical data supporting any proposition that the NSW Act does not strike a fair balance are unknown. As the recent Victorian review reveals, NSW has had a more highly regulated system than have other states. It is accordingly important to keep focus specifically on NSW. The judgment of the Court of Criminal Appeal in *AB (A Pseudonym) v R (No 3)* [2019] NSWCCA 46 sets out a disturbing history of inaccurate and unfair reporting, on, amongst other things, the very issue of alleged cover up of material by the courts.

The submission is put forward by the Public Defenders that this legislation strikes a fair balance between the principles of open justice and potentially conflicting interests such as the administration of justice, national security, personal safety, or undue stress or embarrassment – particularly after the strengthening of restriction of publication on the grounds of stress or embarrassment in relation to defendants in criminal proceedings made in 2018.

The preliminary submissions for the DPP refer on page 7 to an instance where a trial judge refused a Crown application on behalf of a complainant to suppress identifying details of a sexual offence. The view is expressed that s 8(3) is being given too much weight. Without knowing about the particular reasons for judgment, s 8(3) should have had nothing to do with such an application. Section 8(3), introduced last year, provides that 'Despite subsection (1)(d), a court may make a suppression order or non-publication order on the grounds that the order is necessary to avoid causing undue distress or embarrassment **to a defendant** in

criminal proceedings involving an offence of a sexual nature only if there are exceptional circumstances' (emphasis added). Although all grounds for suppression turn on necessity, and this has been interpreted as a high threshold, and as being 'exceptional' in its departure from the usual need for open justice,[2] the particular emphasis on 'exceptional circumstances' before undue stress or embarrassment can be taken into account does not apply to victims and witnesses.

A high or exceptional threshold is imposed by "necessity" and it is not enough that the Court finds that the proposed order is convenient, reasonable or sensible: *Rinehart v Welker* [2011] NSWCA 403; 93 NSWLR 311 [27] – [32]. The Court must also consider whether the orders sought will be effective or lack utility, be futile, ineffective or impossible: *Fairfax Digital Australia & New Zealand Pty Ltd v Ibrahim* (2012) 83 NSWLR 52 at [76], [78]-[80] per Basten JA. There is a now settled position in NSW that the correct approach to "necessity" is the "calculus of risk" approach: *AB (A Pseudonym) v R (No 3)* [2019] NSWCCA 46 at [56] – [60], *Darren Brown (a pseudonym) v R* (No 2) [2019] NSWCCA 69 at [26] - [27], [36] - [37]. This is an understandable and workable test.

Section 9(5) stipulates that the order must specify the information to which the order applies with sufficient particularity to ensure that the order is limited to achieving the purpose for which the order is made. The order must be the least intrusive of the public interest in open justice as can be made in the circumstances: *Qaumi and Ors (No.15)* [2016] NSWSC 318 per Hamill J at [72]

Necessary orders under the legislation arise in circumstances such as: offenders who have given assistance to the authorities; Crown witnesses who have given assistance to authorities for reward, as a criminally concerned person or as an informant; in conjunction with other suppressive legislation such as the operation of the *Witness Protection Act;* where disclosure of information could compromise the operation of the Australian Security and Intelligence Operation; and other miscellaneous necessary aspects of the administration of justice.

An example of necessary aspect for the administration of justice was an order for suppression sought by the Prosecution in high profile committal proceedings for murder (likely to be the subject of media attention without order) where the point of the prosecution calling of witnesses in the Local Court, before the Supreme Court trial, was to hear their best evidence

[2] *Rinehart v Welker* (2011) 93 NSWLR 311 [27]–[28].

unaffected by each having heard what other witnesses were saying. This was limited in time to the conclusion of the committal proceedings. The issue arises as well when there would otherwise be pre-trial publicity of evidence and results of prior proceedings, as in *R v Quami & Ors (No 15) (Non-publication order)* [2016] NSWSC 318; and on appeal *Nationwide News Pty Limited v Quami* [2016] NSWCCA 97.

The Victorian review has raised some potentially important matters regarding complainants and witnesses who could be potentially caused significant embarrassment, which is harmful not only for the individual but the prospect of similar people coming forward. The need to provide greater protection to victims of sexual offending at the preliminary stage of bail hearings of alleged offenders was recommended (recommendation 17).

There seems merit in considering some of issues raised in the preliminary submissions of Mr Howard Brown AOM, Victims' Advocate and the DPP regarding the mechanisms by which witnesses / victims are enabled to have the benefit of appropriate protections. The Victorain review at [268] noted the finding that victims' groups said they were rarely consulted as to whether they wished for their identities to be suppressed.

The public interest in exposing child sexual abuse offending means that assumptions should not be made about the way in which an individual complainant / victim wishes to have their history exposed. It is important that the ability to seek suppression orders or to not do so is canvassed. Section 578A of the *Crimes Act* also relates to this issue.

The Victorian review made recommendations regarding adults who were the victim of offending as a child being able to consent to identifying information: see for example at [271] where the offender's name was suppressed because it would reveal the victim's (who was an adult at the time of sentence although a child at the time of offending) and this was strongly opposed by the victim, who wanted the offender's name published. The NSW legislation already permits an adult to consent to identification in such circumstances, as is discussed in further detail below regarding child offenders, witnesses and victims.

(d) The appropriateness of legislative provisions prohibiting the identification of children and young people involved in civil and criminal proceedings, including prohibitions on the identification of adults convicted of offences committed as children and on the identification of deceased children associated with criminal proceedings.

The Public Defenders oppose any expansion of the currently existing legislation which allows for orders permitting the naming of offenders committing 'serious children's indictable offences' as set out in s 15C of the *Children (Criminal Proceedings) Act*.

The Public Defenders are likely to wish to contribute in a meaningful way, and with experience, to the special provisions relating to non-disclosure of the identity of child offenders and the rationale for this. The likely stigmatisation and detrimental effect on rehabilitation is contrary to the interests of community protection, not just the individual child's circumstances. The 2008 Report of the Standing Committee on Law and Justice is a useful starting point in examining the issues.[3] Briefly, it was stated in the report's executive summary that:

> *The existence of separate juvenile justice systems is based on the recognition that children warrant different treatment to adults involved in criminal proceedings. Children, due to the continuing development of the frontal lobes that does not culminate until the early to mid-twenties, exhibit behavioural and emotional deficits compared to adults. They have less capacity for forward planning, delaying gratification and for regulating impulse. Impulsivity is a commonly observed element in juvenile offending and raises questions as to the culpability of juveniles in relation to criminal behaviour.*

The report sets out a number of international instruments containing principles relevant to the administration of juvenile justice generally, including Rule 8 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985, which stresses the importance of the juvenile's right to privacy, and the importance of protection from the adverse effects that may result from the publication of information about the case.[4] The predominant opinion of experts was that labelling a young person as 'deviant' or 'delinquent' often contributes to the development of a consistent pattern of undesirable behaviour by young persons. The report sets out the potentially negative impacts on rehabilitation of young offenders by naming, such as reducing viability of employment, accommodation, pro-social community involvement; and increasing stigmatisation, vigilantism and negative self-identity. The report referred to stigmatisation and the role of the internet (page 31 ff.) which is an issue far more problematic now than it was in 2008.

[3] *The prohibition on the publication of names of children involved in criminal proceedings* Report by the Standing Committee on Law and Justice, Report 35, April 2008.
[4] *The prohibition on the publication of names of children involved in criminal proceedings* Report by the Standing Committee on Law and Justice, Report 35, April 2008 page 12

There are numerous authorities dealing with the principles relevant to sentencing juvenile offenders. Some of these importantly recognise the concept quoted above, namely the continuing development of the brain into the early and mid-twenties. In *BP v R* [2010] NSWCCA 159; 201 A Crim R 379 Hodgson JA (with whom Rothman J agreed) said at [5]:

> *Second, while I agree with the statements in KT at [26] that the weight to be given to considerations relevant to a person's youth diminishes the closer the offender approaches the age of maturity, and that a "child offender" of almost 18 years cannot expect to be treated substantially differently from an offender who is just over 18 years of age, it does not follow that the age of maturity is 18 (albeit that for certain purposes the law does draw a line there: Children (Criminal Proceedings) Act 1987). In my understanding, emotional maturity and impulse control develop progressively during adolescence and early adulthood, and may not be fully developed until the early to mid twenties: see R v Slade [2005] 2 NZLR 526 at [43], quoted by Kirby J in R v Elliott [2006] NSWCCA 305; (2006) 68 NSWLR 1 at 27 [127]. As shown by R v Hearne [2001] NSWCCA 37; (2001) 124 A Crim R 451, youth may be a material factor in sentencing even a 19 year old for a most serious crime.*[5]

Section 15C allows the Court to order that the name of a person who was under 18 years of age at the time of committing a 'serious children's indictable offence' be published. A serious children's indictable offence is defined in s 3 to be an offence of homicide, one of a number of serious sexual assaults, serious firearms offences, or offences carrying maximum penalties of greater than 25 years imprisonment. Section 15C sets out a number of factors the court is to take into account in determining whether to make the order.

Section 15C is not understood to have been utilised other than in very serious instances of offending: see for example *R v Moustapha Dib* [2012] NSWSC 1431 where Barr AJ permitted publication of the name of the offender. Relevant considerations were that the offender was close to adulthood when he committed the crimes, one of them (the murder of Ms Vrzina) had seriously affected her immediately family, and where – in circumstances where the offender planned and perpetrated a public execution - weight must be given to general deterrence in imposing sentence for such offences. See also *R v (Mathew) Milat* [2012] NSWSC 634. The number of instances in which the section (and its predecessor s 11(4B)) has been used is not known.

A case currently attracting public attention is the murder by 'DL' of a school girl whom the Court of Criminal Appeal has been permitted in publication to be called 'Tania': *DL v R* [2017] NSWCCA 57. It appears that no application was made when DL was sentenced in

[5] 'KT' was a reference to KT v R [2008] NSWCCA 51; (2008) 182 A Crim R 571

2008 by RS Hulme J, or in the Court of Criminal Appeal on resentence on 21 December 2018, for the publication of DL's name (there is no reference to any such application): *R v DL* [2008] NSWSC 1199, *DL v R* [2018] NSWCCA 302.

There seems to be absent from the representation of this matter in the media any reference to the fact that the law already exists to have permitted publication of DL's name if an application to the court to do so had been made. The same applies to the 'Ashfield rapists' who have also been discussed in a number of media reports on this issue.

The preliminary submission of Mr Howard Brown AOM, Victims Advocate, does recognise the existence of s 15C. Mr Brown has suggested that the criteria set out in s 15C for the Court to take into account are not helpful. This is not the perspective of the Public Defenders.

Prospects of rehabilitation is certainly difficult to forecast with precision but is nonetheless an important matter a sentencing court is required to take into account as a purpose of sentencing. Good prospects of rehabilitation and / or unlikelihood of reoffending are mitigating factors to be proved on the balance of probabilities by an offender. If a sentencing judge has been so satisfied, this would be an important factor, telling against an order under s 15C being made. If good prospects of rehabilitation have not been established, other factors such as the seriousness of the offence may well carry more weight.

Mr Brown has suggested that s15C(3)(c) is problematic and predominantly a reason against naming as 'It is well known that General Deterrence when dealing with Juveniles is of little value as others of similar age are rarely aware of such Judgements and more importantly have such a small attention span, than such deterrence rarely has any effect.' This is not actually reflective of the law regarding general deterrence - in the process of sentencing young offenders nor the decision as to whether their name may be publicised. General deterrence is aimed at the impact on the general public, not the particular portion of the public in similar circumstances to the offender. It is because the general public is taken to understand that the sentence imposed on a child is not reflective of the sentence that would be imposed on a member of the general community committing the same offence that it is said that general deterrence is normally of reduced weight when sentencing juveniles. However in very broad terms this ameliorative principle decreases as the juvenile gets older, where the crime is more serious, and when it may be taken as reflective of acting like an adult – particularly with aspects of high level of organisation rather than of immaturity and impulsivity. To similar

effect is the potential role of general deterrence on a s 15C application – see comments of Barr AJ in *Moustapha Dib* referred to above.

To similar effect were obiter remarks of Spigelman CJ in *Application by John Fairfax Publications Pty Ltd re MSK, MAK, MMK and MRK* [2006] NSWCCA 386 (*'MSK'*). The Court of Criminal Appeal had no power to make an order permitting the naming of the juvenile offenders because they had already been sentenced. However his Honour (with whom Basten JA and Hislop J agreed) stated at [9]: 'The heinous nature of the systematic course of predatory conduct indicates that this is an appropriate case in which the additional element of public shaming could fulfil the function of retribution and also the function of general deterrence that criminal sentences are designed to serve. There may well be a strong case for the exercise of the discretion under s11(4B) of the Act, on the basis of the test set out in s11(4C).' Section 11(4B), introduced in 1999, was the predecessor of s 15C. His Honour was of course not seeking to pre-judge the result of any application that could have been made in that particular case, but indicating recognition of the factors, in that case, that could well have pointed towards an order to permit naming.

Accordingly it is submitted that the concept of general deterrence as referred to in s 15C(3) is a highly relevant issue which has not been shown to be interpreted in a problematic way.

The consideration of the impact on the victim or family of a deceased victim (s 15C(3)(b)) is an important issue to take into account. It is not accepted that the community's wishes (in the sense of the number of members of the public who believe a person should be named) should be placed before the Court on an application pursuant to s 15C. However the judicial officer determining the issue does so knowing that principles of open justice are an aspect of the accountability of the legal system to the general public, and that harm to the particular victim or family member is an aspect of harm to the community.

As with other aspects of this review, it seems that any problems arise not from the law, but its practical implementation. The Victorian review highlights the absence of prior knowledge of legislative prohibitions by victims, witnesses and their families. It seems possible that the family of Tania was not aware in 2008 or 2018 that an order could be made by the Court, on evaluation of all the evidence, to name DL. If this is the case then it would seem there needs to be organised support for victims, and families of deceased victims, where a serious children's indictable offence has been committed, so that they understand that the offender's name will not be published unless an order to the contrary is made by the Court.

It is for the DPP to advise as to whether the Crown Prosecutor's position in representing the state would be compromised in any way by conveying to the court any wish of the victim or family of the deceased victim, regarding publication of the offender's name. Alternatively amendment to the *Crimes (Sentencing Procedure) Act* s 28 could provide that the contents of a Victim Impact Statement / Family Victim Statement, in the case of a serious children's indictable offence, includes a statement as to whether the naming of the offender is sought and any reason as to why this is thought able to lessen the impact of the crime on the author. Alternatively again judicial officers could be encouraged to consider s 15C every time sentencing for a serious children's indictable offence. These prospective options would only be warranted if it is the case that the provision is not being adequately utilised.

These are potential options for the future. As to current or past cases, law cannot be passed to permit naming a particular person. Section 15C as it is currently framed is predicated on the application being made as part of the sentencing process. The predecessor to s 15C, s 11(4B) of the *Children (Criminal Proceedings) Act*, was predicated on application being made as part of the sentencing process: see *MSK*, above. There are good reasons for this to be so.

Any consideration of amendment to s 15C to allow applications to be made subsequent to the final sentencing process would be problematic. One reason is the principle of finality. Offenders have an entitlement to expect that, except as notified to the contrary (for example as is required regarding the prospect of extended detention / supervision orders) the curial proceedings against them have come to an end. Another is the practical difficulty of re-convening the same court that sentenced the offender to consider the issue. If not the same court, there is the problem of unnecessary waste of resources in considering the same material, and the risk of conflicting findings. There is the additional issue that the very decision to make an order permitting publication may itself be a relevant consideration on sentence. In *MSK* at [18] it was stated that 'That is to say where, as part of a distinct statutory process, public shaming is to occur, that could influence the sentencing judge to ameliorate the sentence that would otherwise be appropriate.'

If the ability to make application after sentence is to be considered at all, it should at least be limited to applications by the Crown, with leave, to the same Court that sentenced the offender, in circumstances where the victim or family of deceased victim was not aware of the operation of s 15A and s 15C of the Act, within a short fixed period after sentence was imposed. Consideration would have to be given as to whether further submissions as to

reduction in sentence if publication was to be permitted would be able to be made on behalf of the offender.

Otherwise, the issue of laws that clearly prevent the pre-charge publication of children's names is of interest to the Public Defenders.

There are sound policy reasons for the prohibition by s 15A of the publication of the names of children who are witnesses or victims. Section 15D provides a very important mechanism for an adult who was a child at the time to consent to information that identifies them. The Victorian Review has recommended introduction of similar legislation in Victoria to address the situation referred to above of an adult who was the victim of child sexual abuse who wants the offender's identity published even if it could identify himself or herself. Again, the NSW law is adequate but it is not clear that there are in place sufficient services to allow practical implementation of s 15D so that adults know of their capacity to consent.

Regarding deceased children, the law seems adequate. There are different considerations here as the deceased victim will not suffer embarrassment. In considering (since repealed) s 11 of the Act, RA Hulme J in *R v SW & BW (No 2)* [2009] NSWSC 595 determined to utilise the middle name of the deceased child, which would not impact on her siblings but would preserve some dignity for the deceased. Without here repeating the terrible circumstances in which the deceased died, his Honour's judgment at [19] – [25] reasoned:

> *This creates a problem because I do have a concern that relates to the deceased child herself. She died in the most atrocious circumstances…*
>
> *…*
> *In my view, having regard to this evidence there is a considerable interest in this poor little girl having some identity assigned to her. She should not be simply some anonymous person who endured what she endured, but a person with a name. She was the subject of the most profound neglect and abandonment for her short life. To my mind maintaining her anonymity would have the effect of perpetuating that abandonment. Dignity and respect for her life and her memory, very strongly militates in favour of allowing publication of something that would give to her an identity.*

The ability of a senior available next of kin (not charged in connection with the death) to consent, or the court where the senior available next of kin is so charged is now set out in s15E(5). In *R v PC & NLH* [2010] NSWSC 533 RA Hulme J stated at [9] that he was satisfied that there was a public interest favouring publication of the identity of the deceased child, but did not permit this because it was outweighed by the likely impact of publication on surviving siblings.

In *R v Xie (No 5)* [2014] NSWSC 588 Johnson J gave consent under s.15D(1)(a) of the *Children (Criminal Proceedings) Act 1987* to the publication of the names of the deceased children Henry Lin and Terry Lin. There was a living sibling of the children, and his Honour accepted that impact on her was appropriate to take into account where the court was considering consent, just as would be required of a senior available next of kin. However as there was no prohibition on the publication of the identities of her deceased parents this was not a consideration outweighing the public interest in publication of the boys' names.

The issue was considered again by RA Hulme J in *R v Maybir (No 8)* [2016] NSWSC 166. His Honour again expressed concern with disrespect to the memory of the deceased to completely anonymise him, and permitted reference to the deceased by his first name Levai. The anonomysing of siblings' names and their residence in another country was taken into account.

It was by reference to this strand of authority that in the first decision of the Court of Criminal Appeal in DL's case the determination was made that the deceased may be named as 'Tania'.

(e) Whether, and to what extent, suppression and non-publication orders can remain effective in the digital environment, and whether there are any appropriate alternatives.

Challenges do not warrant giving up. An order will not meet the necessity test if it is futile; however the inability of an order to completely restrict the publication of all relevant material may not necessarily prevent the making of the order. In *Debs* [2011] NSWSC 1248 at [43]-[44] RS Hulme J found there was utility in substantially reducing prejudice; see also *Perish* [2011] NSWSC 1102 at [43]-[46] per Price J. In *Nationwide News Pty Ltd v Qaumi* [2016] NSWCCA 97 at [89] take-down orders made by Hamill J in *Qaumi (No.16)* [2016] NSWSC 319 at [36]-[41] were set aside on the basis that in the circumstances they would be ineffective and therefore futile. The decision of the appeal court appears to be based on the facts of the case: "Notwithstanding the very careful consideration His Honour gave to the making of the orders, and the views expressed by experienced trial judges in *Perish* and *Deb*, we have come to the conclusion that the take down orders would not result in the articles being sufficiently removed from the internet for the orders to be effective." The merit in reduction of publication was referred to in *AB (A Pseudonym) v R (No 3)* [2019] NSWCCA 46.

The preliminary submission for ARTK has raised the issue of a consolidated register of orders. Consideration might be given to the Victorian review's analysis culminating in recommendation 7: that a central, publicly accessible register of suppression orders made by all Victorian courts and tribunals containing details of their terms and duration and, to the extent reasonably possible in the circumstances the reasons for them, be established.

It was proposed that the court or tribunal would be required in the absence of good reason to the contrary to transmit all orders for inclusion in a central, publicly accessible register. This was considered a more satisfactory arrangement than the present one under which each body separately informs media organisations or individuals on an email list of notice of an application for suppression or the contents of an order. Entry of the order on the register, supported by the reasons for its making, would be regarded as sufficient notice to any who may wish to disseminate the information that the order had been made.

The review states at [181] that the South Australian regime is notable for its notice and reporting requirements. This is described at [213]. The register must be freely available for inspection by the public.

The Victorian review noted at [194] that the Supreme Court NSW keeps a central database of its orders that was set up in August 2016, but that this is not used by other courts, citing Supreme Court of NSW, Consultation, *Open Courts Act Review*, 5 May 2017. Extension to other courts, access by the public, and education of the public (see United Kingdom paper referred to at page 4 of DPP preliminary submission) may address effectiveness. Some other preliminary submissions have set out other technical aspects of giving effect to orders.

Yours faithfully,

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