

# NSW Law Reform Commission (LRC) Draft Proposals Paper

## Open Justice: Court and tribunal information: access, disclosure and publication

### Background

YJNSW responded to the LRC's Consultation Paper released in December 2020 which invited comments on identified issues. YJNSW notes the confirmation of strong arguments in favour of prohibition of publication and disclosure of information likely to lead to the identification of children and the necessity to protect children involved in criminal proceedings.

The table below sets out YJNSW feedback on specific proposals and related questions in the Draft Proposals Paper

Proposal Number	Proposal	YJNSW Response
<b>Uniform definitions in existing schemes and new act</b>		
3.1	Uniform definitions of “non-publication order”, “suppression order”, “exclusion order” and “closed court order”	Agreed, particularly given the uncertainty related to the effect of closing the court with respect to suppression (referred to in para 1.23).
3.3	Definition of “party”	Agreed, noted party is to include “protected person” for the purposes of the proposals, but that “protected persons” would not be included as a party for the purposes of the proposals to amend the access framework in part 10
3.5	Information likely to lead to the identification of a person	Agreed. YJNSW supports the inclusion of a non-exhaustive list that might under the relevant circumstances be information likely to lead to the identification of a person. This would guide the court’s discretion but allow it to determine that a particular item on the list is not identifying in the particular circumstances (to respond to the issue raised in para 3.24)
3.9	Definition of “official report of proceedings”	Agreed, and ensure that it is clear the information likely to lead to the identification of a young person or child continues to be suppressed
<b>Statutory prohibitions on publication or disclosure i.e. legislation that automatically prohibits the publication or disclosure of certain information without the court needing to make an order</b>		
5.5	Prohibitions on publication of identifying information in relation to children and young people do not apply if the person has deceased AND the publication does not identify another living person whose identity must not be published	Do not agree. The prohibition on identifying information should continue to apply after the person has deceased. There does not appear to be a rationale or public interest to do so. Additionally, naming of deceased people is often prohibited under customary Aboriginal law and therefore is culturally inappropriate. Publication of the deceased child’s name also impacts on the privacy interests of their family and kin.
5.7	Exception for official reports of proceedings	Agreed so long as the prohibition of publication of identifying information for children and young people is preserved