

2 August 2021

Mr Alan Cameron AO  
Chairperson  
NSW Law Reform Commission

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Dear Mr Cameron

### **MIGA submission – NSWLRC open justice draft proposals**

Following its submission to the Commission's open justice consultation paper, MIGA welcomes the chance to comment on the Commission's draft open justice proposals.

MIGA supports the Commission's proposals to exclude the NSW Civil and Administrative Tribunal (NCAT) and the Coroners Court from new non-publication, suppression, exclusion and closed court regimes. Existing regimes in those forums are tailored to their context and work well. It also supports clarifying terminology and scope of powers in tribunal legislation to reflect the intent of existing regimes and reduce uncertainty.

It opposes NCAT being prohibited from making indefinite non-publication or suppression orders. There are a range of contexts, including professional disciplinary and guardianship matters, where indefinite non-publication or suppression of certain information (such as identities) may be appropriate. There is no proper basis for a blanket prohibition in those contexts. The current regime should remain in place.

In considering non-party access to information held by courts, MIGA continues to support a distinction between information that has emerged in open court, and that which has not. In healthcare matters, there remains no proper basis to provide non-party access to information before it emerges in open court. The timetabled, staggered nature of filing information with a court in those matters and its often personal, sensitive nature means it is inappropriate to provide point-in-time access before the court itself has had a chance to consider the material.

Consequently MIGA supports the Commission's proposals to exclude from the proposed access regime material produced under subpoena, statements and affidavits not admitted into evidence. This distinction should be drawn more broadly, at least in civil healthcare matters, to restrict access to material not yet admitted into evidence or not already having emerged in open court, including filed documents (such as pleadings) and other material. If the Commission maintains its recommendation to permit access to a range of filed documents not yet admitted into evidence or which have not yet emerged in open court, this should only be by leave of the court, with notice to the parties in order to provide an opportunity to object.

If you have any questions or would like to discuss, please contact Timothy Bowen, [REDACTED] / [REDACTED].

Yours sincerely



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