



Communities
& Justice

Chairperson
NSW Law Reform Commission
Department of Communities and Justice
GPO Box 31
SYDNEY NSW 2001
By email: nsw-lrc@justice.nsw.gov.au

Dear Mr Cameron AO

Submission on Draft Proposals – Open Justice review

Thank you for the opportunity to comment on the Draft Proposals contained the NSW Law Reform Commission (LRC) paper Court and tribunal information: access, disclosure and publication in relation to its Open Justice review.

I attached for your consideration, responses from Courts, Tribunals and Service Delivery (CTSD) to the Draft Proposals.

While our responses focus mainly on how the Draft Proposals might impact court operations, they include feedback from the legal and policy arms of the Department as well as our media staff.

We look forward to having the opportunity to consider and comment upon the LRC's final proposals in due course.

Should you require any further information, please do not hesitate to contact my office.

Yours sincerely



Catherine D'Elia
Deputy Secretary

NSW Law Reform Commission – Open Justice

Court and tribunal information: access, disclosure and publication

Draft Proposals

Overview

CTSD is the business area within the Department of Communities and Justice (DCJ) that is responsible for providing administrative and operational support to courts and tribunals in New South Wales.

Accordingly, this submission is primarily focused on the identification of operational and resource impacts upon the provision of court services that are likely to arise should particular Draft Proposals be implemented. Where possible, internal feedback on the Draft Proposals has been sought from operational staff. However, given the timeframe for submissions, capacity for input has been limited by the need to prioritise the management of court operations given the evolving Covid-19 situation.

Comments on specific issues and Draft Proposals raised in the paper are as follows:

Chapter 2 Application of proposals to courts and tribunals

The coronial jurisdiction

The Draft Proposals are not intended to apply to the Coroners Court.

Any proposals (e.g. Draft Proposal 4.1) and references in the LRC's final report should refer to the coronial jurisdiction as a whole rather than the Coroners Court.

While coronial proceedings in metropolitan Sydney and matters where a senior coroner has exclusive jurisdiction are centralised at the State Coroners Court at Lidcombe, in rural and regional areas of NSW the coronial jurisdiction is exercised by Magistrates of the Local Court with administrative support from staff in regional Local Court registries. This includes open justice functions such as the management of applications for access to coronial records. Procedural guides are in place to support these functions.

The Drug Court

We note that the Draft Proposals would apply to the Drug Court, which is described in the paper as a "sub-jurisdiction of the District Court". However, the Drug Court is constituted as a separate court under s 19 of the *Drug Court Act 1998*. It may receive referrals of criminal proceedings from both the Local Court and the District Court and exercises the jurisdiction of the referring court (s 24).

CTSD's Programs, Specialist Courts and Judicial Support team assists the Drug Court with a range of operational matters including responses to subpoenas and access to court records. Procedures are reflective of the therapeutic nature of the Court, which is fundamentally different from traditional criminal proceedings and has stated objects (s 3) including the reduction of participants' drug dependency.

For instance:

- Section 31 of the *Drug Court Act* provides that “protected information” relating to a participant’s treatment program is not admissible in evidence in any proceedings other than Drug Court proceedings (or related judicial review proceedings), and a person is not compellable in any proceedings to disclose information or produce any document that contains the information.
- In practice, extensive disclosures of other personal information (beyond “protected information”) are often made by participants, treatment partners and legal representatives the course of these proceedings. While proceedings are generally open to the public, to protect the therapeutic nature of the participant’s program, the Court has sought to prevent the publication of any information that would identify a participant. In practice the media has respected this approach. However, a recent procedural review has identified that clarification of the Court’s capacity to make non-publication orders and/or the insertion of an automatic non-publication provision in the *Drug Court Act* would assist the Court to give effect to its objects.

We suggest that consultation be undertaken with the Drug Court to assess the extent to which the Draft Proposals should apply in that jurisdiction and/or whether appropriate standalone provisions within the *Drug Court Act* are needed.

Chapter 3 Uniform definitions

It should be clear that the definition of a “party” (Draft Proposal 3.3) also applies to children and young people who are appointed a legal representative. This would be relevant in Children’s Court, District Court and Supreme Court matters where lawyers are appointed to represent children.

This happens as a matter of course in care proceedings and in secure care applications and can occur in adoption proceedings. The law on whether these children are “parties” is not clear and is currently the subject of an appeal to the Court of Appeal.

Chapter 4 A new Act

Status of existing Acts

Chapter 4 proposes the enactment of a new Act modelled on the *Court Suppression and Non-publication Orders Act 2010* (CSNPO Act), with certain modifications. The new Act would set out general frameworks for the making of orders that depart from open justice and access to court records.

Though not expressly stated, it is assumed that the proposed enactment of a new Act would negate the ongoing operation of the CSNPO Act and/or the commencement of the *Court Information Act 2010* (which is not referred to in the paper).

It would assist to better understand the impact of the new Act if the future status of the CSNPO and *Court Information Act* is addressed.

We do not support the commencement of the *Court Information Act*.

Draft proposals affecting the Children's Court

Draft Proposal 4.9(2) provides that if the original decision was made in the Children's Court that the appeal should be heard by the District Court. The President of the Children's Court is a judge of the District Court and appeals of his decisions are heard by the Supreme Court.

In matters involving children, including secure care matters and other matters where the Supreme Court exercises its *parens patriae* jurisdiction, the court is usually closed to protect the interests and privacy of the children who are the subjects of the proceedings. This is because these proceedings usually discuss very personal information about very vulnerable children. The proposed grounds in Proposal 4.22 do not seem to accommodate this situation.

Consideration should also be given to criminal cases where a child is deceased and the subject of criminal proceedings – for example if the child was murdered by their parents. Often these children have siblings and the publication of the name of the deceased child has a negative impact on the siblings of the deceased child and in many cases allows the identity of the siblings to be ascertained.

Impact on court services

Access to court records

CTSD is generally supportive of the overall approach proposed in Chapter 10 for a new legislative framework which regulates access to court records by journalists and other non-parties and which would replace the current dual application routes via s 314 of the *Criminal Procedure Act 1986* ('CPA') and rules of court.¹

However, for the proposed framework to be effective in practice, the following issues require further consideration or clarification:

- **Capacity of courts to make further and specific rules:** CTSD supports the proposal in Draft Proposal 10.1(2)(b) that the framework be supplemented by individual court rules, policies or practice notes. The drafting of any such framework should be sufficiently flexible to expressly accommodate departures from the framework where necessary to protect the interests of vulnerable parties in particular types of proceedings. For instance, current procedures for managing access to court records recognise that a decision to grant leave to access court records should be approached with particular care in:

- Children's Court criminal proceedings:

The principle of open justice operates within the context of provisions in the *Children (Criminal Proceedings) Act 1987* that enable the media to be present and report on proceedings but not identify any child involved. In practice, the availability, method and extent of media access to court records of these proceedings requires careful assessment of the circumstances of the individual case, as the inadvertent identification of children involved in such proceedings via news reports can have devastating consequences. For example, the circumstances of an alleged offence may be so distinctive that any report is likely to identify the child involved, or there may be material about an alleged offence that is already in the public domain such that the publication of

¹ Local Court Rules 2009 r 8.10; District Court Rules 1973 pt 52 r 3

information contained in the court record may enable the identification of the child ('jigsaw' identification).

- AVO proceedings:

How an application for media access to court records involving AVO proceedings may depend on the procedural arrangements applying to those proceedings, for example, whether it is a closed court, non publication orders apply. As noted in the paper, there are various restrictions in the *Crimes (Domestic and Personal Violence) Act 2007* and CPA which require or enable the court to be closed in certain circumstances and/or limit the publication of information identifying parties or participants in the proceedings. While the media may make an application as a non-party to access court records in such matters, a grant of leave is required. As with Children's Court proceedings, the availability, method and extent of media access needs to be carefully assessed. In such matters a relevant consideration for the decision-maker is whether the AVO application or any other document on the court record contains untested allegations that are ultimately not relied upon or admitted in court. However, Draft Proposal 10.4(1)(1)(a)(iv) appears to entitle the media to obtain access to an application in AVO proceedings in all cases. In our view the proposed general access framework should be able to be modified by rules of court, policies or practice for these proceedings.

- **Identification of the decision maker:** CTSD supports the principle of open justice by providing timely and appropriate access to court records. To ensure that this can continue, in our view it is important that the decision-making process under any new framework be as simple as possible.

In NSW courts and across the various jurisdictions, most access applications are determined by registrars.

However, the Draft Proposals mostly refer only to a decision by a 'court'. While we have assumed, for the purpose of our response that this includes determinations either by a registrar or judicial officer, for clarity it would assist if the LRC could confirm whether this assumption is correct.

- **Impact of non-publication orders and provisions upon access:** Under the current provisions a significant area of uncertainty amongst registrars is the question of how a non-publication order or statutory provision should affect media access to court records.

While s 314(4) of the CPA prevents the registrar from making a document available to the media for inspection if an order or provision would prevent the publication of information contained in the document, leave to access the document can still be granted under the applicable rules of court.

In practice, there is some divergence of opinion about whether (and if so how) the existence of a non-publication provision or order and the limitation in s 314(4) should be taken into account when determining whether to grant leave to access court records under the Rules. One view is that leave should be refused in order to prevent access to information that cannot lawfully be published; the other is that leave should be granted because a non-publication order or provision is in place to prevent unlawful publication and there are no limits on other disclosure.

It would assist for this issue to be examined more closely by the LRC. The proposed access framework would create an entitlement for journalists and a new

category of researchers to access a specified range of court records, but still require a grant of leave to access any other record on the court file (Draft Proposals 10.4 and 10.5). However, in all applications (whether the applicant is entitled to access certain records or requires a grant of leave), the court is able to impose any conditions considered appropriate (Draft Proposal 10.11). This includes a condition on the use of a record, including disclosure or publication.

From an operational perspective, this condition is too broad. It would place an unnecessary and onerous burden on registrars determining applications to have to assess the likely use of the records and whether any limitations on use are appropriate. Any limitation on publication should be the subject of a non-publication order made by a judicial officer.

The better approach in our view would be to include a provision in the new access framework which specifically addresses the impact of a non-publication order or provision on a journalist's entitlement to access to court records. Such a provision could be to the effect that:

- a. The existence of a statutory provision or court order that would prevent the publication (but not the disclosure) of information contained in a court record does not of itself operate to prevent an applicant who is a journalist from obtaining access to the court record, or prevent court staff from giving access to such a court record to the applicant;
 - b. Responsibility for compliance with any statutory provision or court order that operates to prevent the publication of information in a court record lies with the applicant; and
 - c. Court staff may require the provision of an undertaking from an applicant that they will comply with any statutory non-publication provision or non-publication order that is in force relating to the court record before providing access.
- **Imposition of conditions:** Draft Proposal 10.11 would enable the court to impose any conditions considered appropriate in relation to an application. In practice, adding a discretionary component to the decision-making process in many instances where it is not currently required will add unnecessary time and complexity to the process.

In the course of an internal review of our current procedures for managing access to court records, CTSD has obtained advice that the media access provisions in s 314 CPA confer an entitlement to inspect certain court documents in certain circumstances, resulting in very limited scope for an exercise of discretion by the registrar to grant or refuse an application.

Where a journalist applicant seeks only to inspect rather than obtain a copy of a court record, and provided the non-publication issue above is addressed, CTSD's preference is for an approach that does not require the exercise of discretion as this will enable access applications and the provision of inspection access to be handled promptly. To facilitate this, it may be useful for:

- a. Draft Proposal 10.8 be amended to provide that a written application is to contain details of the method of access being sought; and
- b. Draft Proposal 10.9 be amended to provide that a journalist or researcher may obtain a copy of a court record with leave.

- **Removal of information from court documents:** It is further proposed that the court be able to impose a condition that an applicant be provided with access to a copy of a record from which personal identification information has been removed (Draft Proposal 10.10(1)(d)). Fees would be prescribed by regulation for the provision of access to a record on a court file, and for the redaction of personal identification information from a record (Draft Proposal 10.11).

It is assumed that these proposals seek to respond to concerns raised in consultation that courts do not presently have the resources to undertake the removal of information from court records in response to access applications.

While the capacity to redact court documents was a key issue for courts in not supporting the commencement of the *Court Information Act*, the ability to impose fees does not make this proposal operationally feasible as it will not resolve underlying resource issues (both in terms of time, skills and the technology required) and risks associated with redaction.

However, if the potential provision of redacted court documents is pursued, then in our view:

- The inclusion in Draft Proposal 10.10 of an option to impose a condition of access to a redacted court document is preferred to any proposal for mandatory redaction of court records.
- The inclusion in Draft Proposal 10.4(4)(b) of capacity for the court to refuse access to a record where redaction is not reasonably practicable is necessary and appropriate. In practice, if the imposition of a condition requiring access to be given to a redacted copy of a document is contemplated, the capacity to undertake the removal of information would need to be assessed on a case-by-case basis. Any fee may not cover the entire cost and effort required to undertake the removal of information. Relevant considerations include the nature and extent of the information to be removed, the time required, and the availability of resources and suitable staff. CTSD's Reporting Services Branch, which is responsible for preparation of transcripts of proceedings, has indicated that to respond to a request for a redacted transcript, would be reliant on the court confirming the specific personal identification, details or other information required to be removed.
- Concerns remain as to the efficacy and security of any methods for undertaking redaction of court records. Effective manual redaction requires specific skills and expertise, including an understanding of relevant legislative privacy and personal information protection regimes. Effective electronic redaction would require an assessment of security issues including the availability of software or other methods with capacity to remove electronically applied redactions.

Impact on court staff

As noted above, Chapter 4 of the paper proposes a new Act that would set out court powers and procedures in greater detail, including provisions for the making of interim orders departing from open justice, the review of orders, and the parties entitled to apply and be heard in relation to orders. In addition, Chapters 6 to 8 contain proposals for other subject-specific legislation containing standalone provisions to make orders departing from open justice to be amended where possible to align with the new Act.

The Draft Proposals in these Chapters, if fully implemented, would result in significant changes to legislation. Subject to the views of heads of jurisdiction, it appears these changes may have the potential to increase both the volume and complexity of proceedings involving the making and/or review of orders departing from open justice. This would have a consequent impact on the administrative workload of court registries and would require further assessment of the resources necessary to support these changes.

JusticeLink case management system

In particular, if the Draft Proposals in Chapters 4, 6 7 and 8 are fully implemented extensive changes to the JusticeLink case management system will be required. CTSD's Digital Portfolio Team has undertaken a preliminary high-level assessment of the Draft Proposals and identified the overall likely impact as medium to high and affecting all jurisdictions.

At least 6 months lead time would be required prior to the commencement of any new Act and other amendments, to undertake a full analysis and clarification of requirements, as well as communication to and training of staff.

Likely impacts include:

- Reconfiguration of JusticeLink to accommodate provisions of a new Act setting out general powers to make orders departing from open justice, including the creation or updating the availability of types of orders (e.g. interim orders; exclusion orders; pseudonym orders), activities (e.g. review proceedings), and categories of individuals within a proceeding (e.g. victims/complainants and journalists) who would have standing to apply and appear before the court for or in relation to various types of orders. Similar changes would be needed to accommodate amendments to standalone provisions in other subject-specific legislation.
- The need for an assessment of the capacity to accommodate certain events or information and/or development of supporting processes, including in relation to:
 - a. The expiry of orders departing from open justice upon the occurrence of a future event (Draft Proposals 4.17, 4.20, 6.3, 6.9), and
 - b. The identification of "information likely to lead to the identification of a party" rather than a party's name (Draft Proposals 3.5, 4.6(1)(a)).

In addition to the above impacts, Draft Proposal 9.5 proposes the establishment of an online register of non-publication, suppression and closed court orders. Such a register would likely rely upon JusticeLink and the source of details of orders and updates to orders. This would require the development of an information transfer mechanism such as an automated feed. Any such process would require separate funding. Draft Proposal 9.5 is discussed further below.

Accreditation of journalists

Draft Proposal 3.8 is that DCJ maintain a list of accredited journalists, which could be used by each court to identify and accredit journalists who are allowed certain entitlements including access to court records and proceedings subject to an order excluding the general public.

To establish and maintain such a register within DCJ would require dedicated resources. Further, it is not clear that an accreditation process would deliver any significant benefits compared with existing arrangements to determine a journalist's credentials.

Feedback from media liaison staff is that current arrangements for identifying journalists are generally operating effectively. Most journalists who attend court regularly report on proceedings and are known to court staff. On occasions where an individual is not known to court staff (for example, freelance journalists, journalists assigned to report on a one-off case, or journalists from interstate or overseas), they will be asked to provide proof of media credentials.

This can generally be ascertained reasonably easily through sources such as endorsement by a commissioning editor or publisher, provision of a suitable record of publications and professional history as a journalist, proof of membership of a professional body such as the Media, Entertainment and Arts Alliance, and/or production of media accreditation from another jurisdiction.

When attending a court registry to seek access to court records, an individual who identifies as a journalist in their application is required to provide photo identification and proof of employment. If the registrar is not satisfied of a person's media credentials, assistance is sought from media liaison staff. Where an individual is not able to demonstrate media credentials (for instance, they may be a citizen journalist or journalism student), they may still seek access to court records under the applicable rules of court that allow non-party access upon leave being granted.

If the Draft Proposal is to be pursued, the potential benefits of DCJ maintaining a media accreditation process would need to be balanced against consideration of whether such a process would create unnecessary complexity and/or be overly onerous to maintain compared with current arrangements, together with the availability of appropriate resources to support such a process.

For instance:

- Accreditation could have a practical benefit to court officers and registry staff in quickly and easily identifying an individual as a journalist.
- The inclusion of training and education for new reporters as part of an accreditation process could be beneficial. Although the training of journalists should be the primary responsibility of news media organisations, consideration could be given to developing further resources for journalists about court proceedings, conduct in courtrooms, and media entitlements when accessing and reporting on proceedings. Some information and contact points are already available online.²
- On the other hand, processes to apply for and determine accreditation and issuance of identification could impact upon the timeliness of access.
- Certain categories of accreditation or conditions attached to an accreditation might be required, such as where access is only sought for a particular case or where a journalist changes employer.
- Consideration may need to be given to whether (and if so, how) an accreditation decision would be reviewable given its impact upon an individual's entitlement as a journalist to access court proceedings (see Draft Proposals 7.3 and 7.5) and records (see Draft Proposal 10.4).

² See Supreme Court - https://www.supremecourt.justice.nsw.gov.au/Pages/sco2_newscarousel/media_resources.html,c=y.aspx; District Court - <https://www.districtcourt.nsw.gov.au/district-court/practice-and-procedure/media-resources.html>; CTSD - <https://courts.nsw.gov.au/courts-and-tribunals/media-contacts-and-information.html>

CTSD is aware that media accreditation is undertaken by courts in other jurisdictions and, if the Draft Proposal is pursued, would be interested to understand the operational impacts and how they are managed in other jurisdictions.

Transcription of reasons

Several Draft Proposals (4.8, 6.4, 7.9 and 8.5) propose that a court that makes an order departing from open justice should be required to provide reasons for the making of the order upon the request of a party or other person with a sufficient interest, including a journalist or news media organisation.

In many instances, particularly in the Local Court, reasons for a decision are delivered orally. It would assist to clarify whether these Draft Proposals envisage the provision of a transcript where reasons for an oral decision are requested.

Transcripts are prepared by CTSD's Reporting Services Branch, which advises that provision of a transcript of reasons delivered orally would rely upon the court or applicant providing specific details of what information is required to be transcribed (for instance, only the part of a proceeding relating to the reasons for an order). Without this information, additional transcription may be provided and gives rise to a risk of unauthorised disclosure of information depending on the type of order the subject of the request and/or the identity of the applicant. For instance, where a journalist seeks reasons for the making of a suppression order, compliance with the order may require provision of a redacted transcript to prevent the disclosure of information suppressed by the order that is referred to in the course of the reasons and/or proceedings more broadly.

As commented earlier, the provision of a redacted transcript carries risks around the availability of suitably skilled staff to prepare the transcript and quality checking to ensure suppressed information is not mistakenly disclosed. The time required to undertake these tasks may not be fully recouped in any prescribed fee paid by the applicant.

CTSD's preferred approach would be that any requirement to provide reasons in the form of a transcript should be subject to

- provision of specific and detailed particulars that identify the information required to be redacted in accordance with the order or provision, and
- RSB's capacity to accept a request based on an assessment of the time and resources required to prepare a transcript and the availability of suitably qualified staff to undertake the preparation and review.

This would broadly accord with the current approach to assessing a transcript request.

Monitoring and enforcement of orders departing from open justice

Draft Proposal 9.5 is for a register of non-publication, suppression and closed court orders made by NSW courts and tribunals. Under Draft Proposal 9.6, maintenance and updating of the register would be the responsibility of a Court Information Commissioner or other existing body (such as the Prothonotary of the Supreme Court), which would have other functions including monitoring, investigating and prosecuting breaches of orders, liaising with publishers and content hosts to remove breaching content, and producing educational material. It is noted in the paper that such a body would require appropriate resourcing.

Apart from the likely resource impact of these proposals, it should be noted:

- **Register of orders:** In practice there are many proceedings in which no court order is made due to the application of a statutory non-publication provision. Two of the most commonly applying provisions are the prohibitions on the publication of information that would identify a complainant in prescribed sexual offence proceedings (s 578A of the *Crimes Act 1900*) or a child involved in criminal proceedings (s 15A of the *Children (Criminal Proceedings) Act 1987*). Monitoring and enforcement of breaches of these provisions would be outside the scope of the proposed register.
- **Court Information Commissioner:** CTSD is not presently persuaded that the establishment of a Commissioner with the functions described in Draft Proposal 9.6 would provide a significant benefit where other more cost-effective options may be available.

For instance, rather than establishing specific body to investigate potential breaches of court orders, clear pathways for the referral of potential breaches to a prosecuting agency should be defined. For instance, in the event of court and registry staff becoming aware of a potential breach, an authorised person within the Department of Communities and Justice could be delegated with the authority to notify the Office of the Director of Public Prosecutions and/or NSW Police of the breach. This would also have the benefit of enabling breaches of statutory provisions to be referred for investigation and/or prosecution.

Further, CTSD does not support the functions of such a body (which include investigation and prosecution of potential breaches) being undertaken by the Prothonotary of the Supreme Court, noting that it is also proposed that offence proceedings under a new Act would be dealt with summarily before the Supreme Court in its summary jurisdiction (Draft Proposal 4.12).

Chapter 11 Technological issues and open justice

Draft Proposal 11.1 is for the establishment of a clear process for journalists and the public to access court and tribunal proceedings virtually. Processes have recently been established in the District Court to facilitate virtual access to court proceedings by journalists in response to the ongoing impact of the Covid pandemic.³

Preliminary feedback is that the additional workload for media liaison staff in coordinating arrangements for virtual court access is significant and cannot be sustained in the long term without additional resourcing. A key issue is the availability of staff to meet the 24-hour work cycle of the media.

CTSD further understands that processes for access to virtual courts have been developed in other jurisdictions such as the Federal Circuit Court, which may be instructive.

³ [https://www.districtcourt.nsw.gov.au/content/dam/dcj/ctsd/districtcourt/documents/covid-19-communications/Media - Virtual Court Fact Sheet July 2021.pdf](https://www.districtcourt.nsw.gov.au/content/dam/dcj/ctsd/districtcourt/documents/covid-19-communications/Media_-_Virtual_Court_Fact_Sheet_July_2021.pdf)

Impacts on Children’s Court proceedings

Draft Proposal 5.10 – Consent exception amended in certain provisions protecting the identity of children and young people

DCJ often relies upon the exception in section 105(3)(b)(iii) of the *Children and Young Persons (Care and Protection) Act 1998* to provide consent for publication. Removing this exception will mean that DCJ would need to make a court application on behalf of a child to have information published. This may not always be in a child’s best interests, as they are children who are frequently the subjects of litigation.

A recent example is when children aged 12 and 15 provided a television interview in relation to their time in care. It was important to these children to be able to share their story and the Secretary of the Department was able to provide consent for this to occur. If this exception was removed it would require DCJ having to say to the children that they couldn’t speak about their time in care until DCJ made an application to the court and the court provided this consent. These children’s lives are already heavily litigated and additional litigation is not be in their best interests.

Draft Proposal 7.3 – Requirement to make an exclusion order in certain proceedings concerning children

- **7.3(a):** Allowing the media to be present during adoption proceedings is a significant change from the current position. The views of DCJ’s Open Adoption and Permanency Services, Accredited Adoption Service Providers, the Crown Solicitor’s Office and the Supreme Court should be specifically sought as they have valuable experience in these proceedings.

Adoption proceedings that involve children are extremely personal, it is changing their family to another family. Often these hearings are extremely emotional, akin to a significant family event like a birth or marriage. Allowing a journalist to be present makes the proceedings less personal and private.

In non-contested matters children are often present for the orders being made and are unlikely to understand the “public interest” in having a journalist present. Nor is it likely to be in the child’s best interests for a journalist to be present.

- **7.3(b)** Currently s119 of the *Adoption Act 2000* is procedurally easy to work with; the court is “closed” automatically and the court may “permit” non-parties to be present “if it considers it to be appropriate”. Under the draft proposal the court would be required to make an exclusion order for the proceedings to be ‘closed court’ (the court would need to be prompted to do this) and the court could then “direct” that a person could stay “if ... satisfied that special reasons in the interests of justice require them to be present in the whole or any part of the proceedings”.

This could prove cumbersome, for example, for non-contested adoptions matters DCJ might need to seek both an order that the court make an exclusion order and seek a direction for each friend/ family member to be able to attend because “special reasons in the interests of justice require them”.

Further, some adoptions, especially non-contested adoptions are akin to a significant family event and often a child might want their best friend or grandmother or other significant person to be in attendance. This is unlikely to reach the threshold and may have the unintended consequence of limiting close family and friends from being present at a significant family event.