

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

Legal Aid NSW submission to
the New South Wales Law
Reform Commission

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Legal Aid
NEW SOUTH WALES 

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About Legal Aid NSW

The Legal Aid Commission of New South Wales (Legal Aid NSW) is an independent statutory body established under the *Legal Aid Commission Act 1979* (NSW). We provide legal services across New South Wales through a state-wide network of 25 offices and 243 regular outreach locations, with a particular focus on the needs of people who are socially and economically disadvantaged. We offer telephone advice through our free legal helpline LawAccess NSW.

We assist with legal problems through a comprehensive suite of services across criminal, family and civil law. Our services range from legal information, education, advice, minor assistance, dispute resolution and duty services, through to an extensive litigation practice. We work in partnership with private lawyers who receive funding from Legal Aid NSW to represent legally aided clients.

We also work in close partnership with community legal centres, the Aboriginal Legal Service (NSW/ACT) Limited and pro bono legal services. Our community partnerships include 27 Women's Domestic Violence Court Advocacy Services, and health services with a range of Health Justice Partnerships.

The Legal Aid NSW Family Law Division provides services in Commonwealth family law and state child protection law. Specialist services focus on the provision of Family Dispute Resolution Services, family violence services through the specialist, multidisciplinary Domestic Violence Unit (**DVU**) and the early triaging of clients with legal problems through the Family Law Early Intervention Unit. Legal Aid NSW provides duty services at a range of courts, including the Parramatta, Sydney, Newcastle and Wollongong

Family Law Courts, all six specialist Children's Courts and in some Local Courts alongside the Apprehended Domestic Violence Order (**ADVO** or 'protection order') lists. Legal Aid NSW also provides specialist representation for children in both the family law and care and protection jurisdictions.

The Criminal Law Division assists people charged with criminal offences appearing before the Local Court, Children's Court, District Court, Supreme Court, Court of Criminal Appeal and the High Court. The Children's Legal Service (CLS) advises and represents children and young people involved in criminal cases in the Children's Court. CLS lawyers also visit juvenile detention centres and give free advice and assistance to young people in custody.

The Civil Law Division provides advice, minor assistance, duty and casework services from the Central Sydney office and 20 regional offices. It focuses on legal problems that impact on the everyday lives of disadvantaged clients and communities in areas such as housing, social security, financial hardship, consumer protection, employment, immigration, mental health, discrimination and fines. The Civil Law practice includes dedicated services for Aboriginal communities, children, refugees, prisoners, older people experiencing elder abuse, coronial law matters and mental health and related areas of disability law.

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Introduction

Legal Aid NSW welcomes the opportunity to provide a submission to the NSW Law Reform Commission's Consultation Paper on *Open Justice Court and tribunal information: access, disclosure and publication* (**Consultation Paper**). We note that we have provided a preliminary submission to the Terms of Reference for this inquiry, a copy of which is attached.¹

Legal Aid NSW acknowledges the fundamental importance of the principle of open justice to ensuring a fair and transparent legal system. We support the principle of open justice. This objective needs to be balanced with other important considerations, including the right of an accused to a fair trial and the protection of vulnerable people involved in court or tribunal proceedings.

In summary, Legal Aid NSW supports the following:

- Maintaining existing automatic statutory prohibitions on publishing or disclosing certain information about children and young people (in criminal, care and protection, adoption and civil proceedings) as well as for individuals involved in mental health proceedings.
- Existing automatic statutory prohibitions in relation to children and young people should be extended to prohibit publishing or disclosing certain information about children and young people in Apprehended Domestic/Personal Violence Order proceedings, circumstances before criminal proceedings commence (such as when a child is being investigated by police) and civil proceedings where the child or young person is the plaintiff/applicant.
- Strengthening the voice of domestic and family violence complainants in discretionary suppression and non-publication orders, for example, by expanding section 8(3) of the *Court Suppression and Non-Publication Orders Act 2010* (NSW) to include domestic and family violence complainants.
- Extending the existing automatic statutory prohibitions relating to individuals involved in mental health proceedings to related proceedings in the NSW Civil and Administrative Tribunal and the Supreme Court of NSW.
- Individuals over the age of 18 should be consulted in the course of determining access to information and on specific prohibitions on publishing and disclosure that aim to protect their identity or health information. Further, they should not be prohibited from disclosing information about their own proceedings or their own experiences.

¹ Legal Aid NSW, *Submission to the NSW Law Reform Commission Open Justice Review – Terms of Reference*, (June 2019), < https://www.legalaid.nsw.gov.au/__data/assets/pdf_file/0020/31961/Legal-Aid-NSW-submission-Open-Justice.pdf>

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- Victims of domestic and family violence should have greater access to information regarding proceedings which concern them, and their access should be free of charge.
 - Access to Children’s Court criminal and care and protection files and records should be clarified and restricted.
 - Current factors impacting on decisions regarding access to Coroner’s Court records should be expanded to include the wishes of the deceased’s family.

We respond to the specific questions in the Consultation Paper below.

Non-disclosure and suppression: statutory prohibitions

Question 3.1: Statutory prohibitions on publishing or disclosing certain information

As a matter of principle, should there ever be automatic statutory prohibitions on publishing or disclosing certain information? Why or why not?

Depending on the nature of the proceedings, and an individual’s role in them, there are different reasons why, as a matter of principle, existing automatic prohibitions should be maintained. We provide further detail below in respect of specific individuals and proceedings.

Protections for children and young people

We refer to our preliminary submission regarding the need to protect and prioritise children and young people’s privacy, safety, welfare, and wellbeing in both criminal and care and protection proceedings.² We note that current prohibitions on publication and disclosure of information relating to these types of proceedings are necessary to prevent harm and stigmatisation of children and assist with their rehabilitation and reintegration. We elaborate on these issues further in the section below on “*Protections for children and young people*”.

Protections for individuals involved in mental health proceedings

Legal Aid NSW supports maintaining automatic statutory prohibitions on the publication and disclosure of certain information regarding patients in proceedings before the Mental Health Review Tribunal (**MHRT**). We note that it is important that patients feel comfortable disclosing very sensitive information to their treating teams. In our experience, if there were no statutory prohibition on publication or disclosure of this type of information, patients would disclose less information to mental health professionals because they

² Legal Aid NSW, *Submission to the NSW Law Reform Commission Open Justice Review – Terms of Reference*, (June 2019), 10-12 <
https://www.legalaid.nsw.gov.au/__data/assets/pdf_file/0020/31961/Legal-Aid-NSW-submission-Open-Justice.pdf>

would be aware that this information would be discussed in future MHRT hearings and, in turn, discussed outside of the hearing room in a manner where the patient could be identified. The less open patients are with their treating teams, the greater the risk of harm to the patient and the broader community. This would run counter to the principles for the care and treatment of people with a mental illness or mental disorder, under the *Mental Health Act 2007 (Mental Health Act)*,³ and would not be in the best interests of mental health patients, nor the community at large.

Removal of automatic restrictions on publication and disclosure of information identifying forensic patients could have significant impacts not only on their rehabilitation and future reintegration back into the community, but on their safety, the safety of their family and friends as well as other patients, and staff at forensic hospitals where they are providing care and treatment.

Question 3.2: Current statutory prohibitions on publishing or disclosing information

- (1) Are the current statutory prohibitions on publishing or disclosing certain information appropriate? Why or why not?**
- (2) What changes, if any, should be made to the current statutory prohibitions?**

While on the whole, current statutory prohibitions are appropriate, we note that there are areas where existing prohibitions should go further, or be clarified to ensure they achieve their stated goals.

Mental health proceedings

Section 162 of the Mental Health Act prohibits, except with the consent of the MHRT, the publication of the names of any person subject to proceedings before the MHRT, any witness before the MHRT or 'anyone mentioned or otherwise involved in any proceedings under this Act or the *Mental Health (Forensic Provisions) Act 1990*'. Section 162(3) clarifies that 'a reference to the name of a person includes a reference to any information, picture or material that identifies the person or is likely to lead to the identification of the person'.

As identified in the Consultation Paper, the Supreme Court is currently not bound by prohibitions contained in section 162 of the Mental Health Act when considering an application for an extension order under Schedule 1 of the *Mental Health (Forensic Provisions) Act 1990*.⁴

In proceedings for extension orders, a substantial amount of material that was previously presented to the MHRT is admitted into evidence. Publication of this information whilst before the MHRT is prohibited, yet when the same information is presented before the Supreme Court, that information is not prohibited from being published as section 162

³ *Mental Health Act 2007* s 68.

⁴ Soon to be Part 6 of the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020*.

does not apply. As a result, the only alternative is for forensic patients to make an application under the *Court Suppression and Non-Publication Orders Act 2010* (**Court Suppression and Non-Publication Orders Act**) to have the information suppressed, a process which in our experience often results in varying, and inconsistent outcomes. Accordingly, Legal Aid NSW supports Supreme Court proceedings also being subject to the prohibition contained in section 162 of the Mental Health Act. We raise similar concerns with respect to the publication of information in Supreme Court high risk offender proceedings. This is detailed further below.

Legal Aid NSW also supports amending section 162 of the Mental Health Act in a way that will clarify the type and nature of information that it seeks to protect from publication. That is, whether the aim is to protect the identity of the participants in the proceedings, or the identity and medical/health information of patients appearing before the MHRT. The current wording of the provision does not make this clear. In our view, once the aim of the prohibition is made clear, it will be easier to adopt a consistent approach across different jurisdictions.

We note that the predecessor to section 162, section 273 of the *Mental Health Act 1990*, only contained a prohibition on the publication of the name of a person who is the subject of a matter heard before or being reviewed by the MHRT. Against that background, the present focus of section 162 of the Mental Health Act on non-publication of names of various individuals involved in mental health proceedings seems unnecessarily broad and confuses the purpose of the prohibition. Apart from registered victims, most witnesses in proceedings before the MHRT are medical professionals, and it is not clear why their identity needs to be protected or what goal is thereby achieved.

Legal Aid NSW suggests that any amendment to section 162 of the Mental Health Act be focussed on the contents or evidence of MHRT hearings, rather than the individual participants, thereby bringing the focus back to protecting sensitive medical and health information. The reason there should be greater emphasis on the content or evidence is that the criminal matter which resulted in the person becoming a forensic patient invariably occurred in open court. Therefore, if a person receives a limiting term or a finding of not guilty by reason of mental illness, the fact that the person will appear before the MHRT is information that is already publicly available, and their identity is already revealed. The prohibition therefore needs to relate to the publication of the person's medical and health issues, the protection of which is necessary to ensure full disclosure between the patient and their treating team, and to support the patient's recovery and reintegration.

We would further suggest that any amendment to section 162 of the Mental Health Act should clearly direct the MHRT to matters which they should consider in deciding whether an individual should be permitted to publish or broadcast information otherwise subject to the prohibition. At present, the provision is silent on what factors the MHRT should take into consideration when deciding whether to give consent to the publication. In our view, the MHRT should be required to consider whether the patient consents to the publication or broadcast, the potential harm to the patient from any publication and the potential harm to the community by any publication. In our experience, some forensic and civil mental health patients want to share their story with the broader community in order to advocate

for reform of the mental health system and remove the stigma surrounding mental illness. The prohibition should therefore not be so onerous as to prohibit such publication or broadcasting.

In the alternative, section 162 of the Mental Health Act could be amended in a way that does not prohibit the patient from publishing or broadcasting information relating to their own proceedings before the MHRT, or identifying themselves as a patient, except in so far as their own publication does not disclose the identity of a registered victim without prior approval from the MHRT. The prohibition for others on publishing and broadcasting about such matters (without approval of the MHRT) would remain.

High risk offender proceedings

Individuals who have been or are subject to orders made by the MHRT may subsequently be subject to proceedings under the *Crimes (High Risk Offender) Act 2006* (NSW) and the *Terrorism (High Risk Offender) Act 2017* (NSW). Rehabilitation of relevant offenders is an important objective of both regimes. Another key feature of these quasi-criminal regimes is the compulsory nature of psychological and psychiatric risk assessments by court appointed experts that offenders are required to undergo, resulting in the disclosure of sensitive personal and health related information.

However, as these matters are dealt with in the civil jurisdiction of the Supreme Court, material that has been subject to suppression orders in the MHRT can only continue to be protected from publication following a successful application in the Supreme Court. We suggest consideration be given to adopting a principle that where the matter has been protected in MHRT proceedings, the order effectively travels with/attaches to the material, rather than the jurisdiction. With limited exceptions, and in the experience of our High Risk Offender Unit, it is very difficult to obtain suppression orders for those subject to high risk offender applications, and the consequences of dissemination of sensitive personal information can damage their prospects of rehabilitation and reintegration in the community, particularly in the social media age. Occasionally, a suppression order can be justified due to risk to the offender, but the it is a very high bar, as demonstrated by the case of *State of New South Wales v Bowdidge (No 2) (Application by Nationwide News Pty Ltd)*.⁵

Question 3.3: Additional statutory prohibitions that may be needed

What further information, if any, should be protected by automatic statutory prohibitions on publication or disclosure?

Apart from forensic patients' personal medical and health information, which should be protected in Supreme Court proceedings, Legal Aid NSW would support additional statutory protections for complainants in domestic and family violence matters. This issue is further explored in the section below on '*Victims and witnesses: privacy protections and access to information*'.

⁵ [2020] NSWSC 159.

Question 3.4: Types of action a statute may prohibit

- (1) Is the existing variety of types of action that a statute may prohibit justified? Why or why not?**
- (2) What changes, if any, should be made?**
- (3) Should a standard provision setting out the types of action that a statute may prohibit be developed? If so:**
 - (a) what should the provision say**
 - (b) how should key terms be defined, and**
 - (b) when should it apply?**

Legal Aid NSW supports insertion of clear definitions of the terms ‘publish’ and ‘broadcast’ under the Mental Health Act to provide further certainty around the type of actions which are prohibited under the Act. These definitions should be consistent with other statutory prohibitions.

Question 3.5: Duration of the statutory prohibition

- (1) Should the statutory prohibitions on publishing or disclosing certain information always specify the duration of the prohibition? Why or why not?**
- (2) What changes, if any, should be made to the existing duration provisions attached to statutory prohibitions on publishing or disclosing information?**
- (3) What prohibitions, if any, should include a duration provision that do not already? What should these duration provisions say?**

We submit that statutory prohibitions under the Mental Health Act should be indefinite. The principles underlying the need for the prohibition do not cease to exist at any future date, except perhaps following the death of a patient.

Question 3.6: Application of the statutory prohibition to related proceedings

In what circumstances, if any, should statutory prohibitions that protect the identities of people involved in proceedings apply in appeal or other related proceedings?

Legal Aid NSW submits that prohibitions relating to mental health and guardianship proceedings should extend to appeals, for the same reasons that the prohibitions should extend to extension order proceedings in the Supreme Court. We note that the same principles underlying the need for the prohibition apply irrespective of whether the proceedings take place before the MHRT, the NSW Civil and Administrative Tribunal or the Supreme Court.

Question 3.7: When publication or disclosure of information should be permitted

- (1) Are the existing exceptions attached to statutory prohibitions on publishing or disclosing information appropriate? Why or why not?**

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- (2) **What changes, if any, should be made to the existing exceptions?**
 - (3) **What prohibitions, if any, should include exceptions that do not already? What should these be?**
 - (4) **Should standard exceptions apply to all (or most) statutory prohibitions on publishing or disclosing information? If so, what should they be and in what circumstances should they apply?**
 - (5) **Where exceptions allow a court to permit disclosure of protected information, what criteria, if any, should guide that court?**

As mentioned above, Legal Aid NSW submits that, subject to not revealing the identity of a registered victim, a patient should not be restrained from publishing or broadcasting information relating to their own proceedings before the MHRT or identifying themselves as a patient.

Proceedings before the Coroner's Court of NSW

Legal Aid NSW previously made submissions not supporting a proposal to repeal the non-publication provisions under section 74 of the *Coroners Act 2009* (NSW) (**Coroners Act**) and extend the Court Suppression and Non-Publication Orders Act in its place.⁶ Legal Aid NSW supports the continuation of the Coroner's discretion based on 'public interest' to close the court and prevent publication of material. Unique features of the coronial jurisdiction, such as the need to avoid re-traumatising families and protect sensitive material from dissemination, or the practice whereby witnesses are allowed to sit in court before giving their evidence, are matters which differentiate the Coroners Court from other forums. This is recognised elsewhere in Australia. For example, while Victoria has a standard regime applicable to all courts under the *Open Courts Act 2013* (Vic), a differentiation is maintained whereby grounds for making suppression orders do not apply to the Coroners Court.⁷

Following the conclusion of an inquest, findings are published online on the Coroners Court NSW website. Legal Aid NSW supports the continuation of section 75 of the Coroners Act, which prohibits publishing a report of the coronial proceedings in which there was a finding of suicide, unless the coroner expressly permits publication. In our experience, in practice Coroners seek the input of families and are guided by their wishes. It is our experience that families usually ask for findings to be published on the Coroner's website in the interests of open justice, but some will elect for a pseudonym to protect their deceased relatives' identity. This may be to avoid cultural embarrassment or shame, or because the deceased completed suicide in custody. Families may also want to protect

⁶ Legal Aid NSW, *Submission to the NSW Department of Justice – Statutory Review of the Coroners Act 2009: Draft proposals for legislative change*, (September 2016), 16-18, <https://www.legalaid.nsw.gov.au/__data/assets/pdf_file/0004/25492/Legal-Aid-NSW-Submission-to-Coroners-Act-Statutory-Review-September-2016-.pdf>

⁷ *Open Courts Act 2013* (Vic) s 18.

any children of the deceased from finding out distressing information about the suicide online or through peers.

Non-disclosure and suppression: discretionary orders

Question 4.2: Types of information that may be subject to an order

- (1) Are the current provisions that identify the types of information that may be the subject of a suppression or non-publication order, adequate? Why or why not?**
- (2) What changes, if any, should be made to these provisions?**

We consider that although the Court Suppression and Non-Publication Orders Act provides that the court can make a suppression or non-publication order about identity information and evidence, Legal Aid NSW is concerned that in practice, identifying information about complainants in domestic and family violence proceedings is not always accurately suppressed. For example, in our experience, information about a complainant's cultural affiliations and location may not be suppressed and may sufficiently identify the victim.⁸ We provide further information below, in response to question 4.3, about possible amendments to address these concerns.

Question 4.3: Consent to publication or disclosure

What provision, if any, should be made about making an order where a person consents to the publication of information that would reveal their identity?

The experience of domestic and family violence can be disempowering for victims and can be compounded by the complexities of navigating the legal process.

Legal Aid NSW strongly supports victims of domestic and family violence having autonomy over when, and if, their experiences and involvement in domestic and family violence proceedings are shared. The ability to share experiences of domestic and family violence on their own terms promotes the dignity and autonomy of victims and may assist recovery from trauma. From a public policy perspective, it is important that with the consent of the victim, these stories are reflected in the media to encourage other victims to come forward, reduce stigma, and promote understanding of domestic and family violence.

Legal Aid NSW considers that if a victim consents to the publication of information which would reveal their identity, this should continue to be respected.

Legal Aid NSW solicitors representing victims of domestic and family violence consider that there could be merit in introducing automatic publication restrictions for domestic and family violence complainants, in the same way that protections currently apply to

⁸ Victim is used in this submission to denote a person who is the victim or complainant or alleged victim of domestic and family violence or sexual violence. Some people who experience violence prefer the term 'victim' and others prefer the term 'survivor'. In this submission, the term 'victim' is intended to be inclusive of both victims and survivors. This submission acknowledges every person's experience is unique and individual to their circumstances.

complainants in prescribed sexual offence proceedings. As acknowledged in the discussion paper, this may go some way towards encouraging reporting of domestic violence offences, and aims to protect complainants from re-traumatisation, stigma and shame when entering the court process. Legal Aid NSW agrees with the submissions made to the preliminary inquiry, as summarised in the Consultation Paper, that an automatic prohibition on publication may not only encourage reporting of domestic and family violence offences to the police, but also protect complainants from re-traumatisation, stigma, and shame during the court process.⁹ In our experience, victims would be more motivated to report domestic and family violence if they can do so without fear of their privacy being encroached. Additionally, the automatic nature of the prohibition would remove the onus on the victim to make the application for a suppression or non-disclosure order.

Fear of media exposure can be used by perpetrators not only to discourage victims from reporting offences, but also from participating in the court process. Furthermore, when domestic and family violence is reported by media and shared on social media, victims can be subject to pressure from family, friends and the public, discouraging them from participating in proceedings.

However, there are other important countervailing factors to consider. The definition of domestic relationship in section 5 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) is very broad, as is the nature of offending behaviour. Domestic violence proceedings – both the civil and criminal regimes – constitute a significant proportion of cases heard in the Local Court across NSW. An automatic suppression order in all ADVO cases and criminal proceedings for domestic violence offences would be a significant departure from the principle of open justice in NSW. The prohibition – and the associated offence provision, would risk criminalisation of many defendants, including for inadvertent breach, such as where a defendant communicates through text message about their ADVO or matter. This would be captured by the broad definition of “publish”. We also note that many defendants in ADVO proceedings and breach ADVO matters in the Local Court will not be represented by Legal Aid NSW given its limited eligibility policies around domestic violence matters. Such defendants will not have access to the same level of advice and assistance as defendants in sexual assault proceedings.

We also acknowledge the discussion in the Consultation Paper, reflecting on the recent Victorian Law Reform Commission report on Contempt of Court, which recommended against an automatic prohibition on publishing information in family violence proceedings. The Report stated that an automatic prohibition was contrary to the trend of recent law reform, which recognises the value of raising awareness about the nature and prevalence of sexual offending and family violence, and in countering the stigma attached to victims.¹⁰

Given these complexities, a preferable approach to an automatic suppression order in domestic violence proceedings could be to strengthen the voice of complainants in discretionary orders. This could be achieved by expanding section 8(3) of the Court

⁹ Consultation Paper, 46.

¹⁰ Consultation Paper, 48.

Suppression and Non-Publication Orders Act to include domestic and family violence complainants.¹¹ This would ensure that the court is specifically turning its mind as to whether the application relates to a domestic and family violence matter, as a ground for making the order. Greater assistance and practical guidance should also be provided to victims to make an application for a suppression or non-publication order. In the experience of our solicitors, many victims are not aware of these provisions, and would find it difficult to complete the form without legal advice. Additional training for judicial officers, to notify victims that they are able to make an application under the Court Suppression and Non-Publication Orders Act, would also be of great assistance.

Question 4.9: Grounds for making orders

- (1) *Are the grounds for making suppression and non-publication orders under the Court Suppression and Non-publication Act 2010 (NSW) and other NSW statutes appropriate? Why or why not?***
- (2) *What changes, if any, should be made to them?***

Legal Aid NSW suggest that the review consider the operation of section 578A of the Crimes Act, where the victim consents to publication, and how that might interact with an order made by the court under section 8(3) of the Court Suppression and Non-Publication Orders Act, to prevent publication on the application of the defendant, particularly where such an order is of unlimited duration. Legal Aid NSW submits that the review should consider the impact this may have on a victim's ability to share their story at a later time, if appropriate, and how the two provisions interact with each other more broadly.

Access to information

Access to information regarding domestic and family violence proceedings

As identified in Legal Aid NSW's preliminary submission to the this consultation, it is vital for the operation, quality and efficiency of Legal Aid NSW's service that Legal Aid NSW continues to have quick access to various kinds of court information, including information about Apprehended Domestic Violence Orders (**ADVO**).

In our experience, victims of domestic and family violence should be afforded better access to information about proceedings which concern them. For example, in our experience, victims of domestic and family violence often experience difficulty in getting copies of relevant documents from the Court, such as a copy of the ADVO, they have difficulty getting in touch with police to get updates on their matter or for example, when a defendant's bail conditions are changed. There is also an overall lack of consistency in the approach from court registries regarding what documents are provided to victims. Their access to court information should also be provided free of charge, recognising that

¹¹ Subsection (d) currently requires a court to consider whether a suppression order is necessary to avoid causing undue distress or embarrassment to a party to or witness *in criminal proceedings involving an offence of a sexual nature*.

victims often experience extreme financial distress and adding a fee would be punitive, in addition to being disempowering and presenting as another barrier to them fully engaging in the justice system.

Legal Aid NSW understands there is a current pilot, operating in South West Sydney, trialling an online portal for both victims and defendants, that gives them access to information about their court matter. If this pilot is successful, the NSW Government might consider a state-wide roll out, as a way to facilitate victims having easy access to information regarding domestic and family violence proceedings, including copies of ADVOs, next court dates and the defendant's bail conditions.

Access to Children's Court records

We submit that the rules regarding access to Children's Court records in both criminal and care and protection proceedings should be clarified and tightened. In 2018, Legal Aid NSW provided a submission to the Review of the Children's Court Rule and supported introduction of rules or practice notes governing access to Children's Court records.¹² This remains our position.

We note that there is currently no legislative provision which allows a non-party (other than the media) to access court records in criminal proceedings. Our position remains that, in criminal proceedings, non-parties who are not the media should not be able to access Children's Court records.

In addition, we consider that there should be no access to Children's Court records by non-parties in care matters, or the media in criminal matters, without the leave of the Court. Although we recognise the principle of open justice, we consider that in Children's Court proceedings, this principle must always be balanced with the rights and interests of children who are the subject of those proceedings. In our view, that balancing exercise is appropriately undertaken by the presiding Children's Court Magistrate or Judge, with knowledge of the matter.

Non-party access to documents to which a suppression order or non-publication order relates should be expressly prohibited, as should access to court records by persons who have not been allowed to remain in court during proceedings.

Access to information in Coronial proceedings

Legal Aid NSW supports the current Coroners Court regime under section 65 of the Coroners Act in considering the release of, or restrictions on, access to material on the Coroner's file. The Coronial Information and Support Service, which operates at Lidcombe Coroner's Court, provides support to families who wish to access and view distressing material. As noted in the Consultation Paper, Legal Aid NSW supports an amendment

¹² Legal Aid NSW submission to the Children's Court of NSW, *Review of the Children's Court Rule 2000* (NSW) (February 2018), < https://www.legalaid.nsw.gov.au/__data/assets/pdf_file/0018/28503/Legal-Aid-NSW-submission-to-review-of-the-Childrens-Court-Rule-Feb-20.pdf>

section 65(b) of the Coroners Act to require the Coroner or Assistant Coroner to consider “the impact on and the wishes of the relatives of the deceased person of allowing or restricting access”. This would allow family members to have a say in the release of material that they may in fact wish to see released in the public interest.

Publication of daily court lists

Legal Aid NSW is concerned about the current practice of regional newspapers publishing lists of individuals appearing in daily Local Court lists.

The lists of individuals appearing each day in Local Courts across New South Wales appear to be taken directly from the Department of Communities and Justice’s online registry website (**ORW**). The list is then published in the relevant local community newspaper. Publication in this way enables an individual’s name to be searched via Google and to be more readily identified by a newspaper reader than by searching the ORW. The articles also contain links to enable easy distribution of the list to Twitter, Facebook and to email recipients.

This practice is deeply concerning. It undermines the presumption of innocence of those appearing in criminal courts, and may stigmatise the individual concerned, regardless of the outcome of the proceedings. It may have lifelong consequences for those who are charged with a criminal offence, including those whose matters are withdrawn, dismissed or dealt with without conviction. A prospective employer, for example, can now simply search an individual’s name and readily ascertain that they have appeared as a defendant in criminal proceedings.

While Legal Aid NSW acknowledges and supports the principle of open and transparent justice, this must be appropriately balanced with the privacy rights of those appearing in NSW criminal courts and broader public confidence in the fair administration of justice.

Protections for children and young people

Criminal proceedings

Question 7.1: Criminal proceedings – prohibition on the publication and disclosure of identifying information

- (1) Should there continue to be a general prohibition on publishing or broadcasting the identities of children involved in criminal proceedings in NSW? Why or why not?***
- (2) What changes, if any, should be made to the existing prohibition and the exceptions to it?***

Legal Aid NSW strongly supports the continued prohibition on publishing or broadcasting the identities of children in criminal proceedings. As outlined in our preliminary submission, and explored in more detail in a 2008 NSW Legislative Council Standing Committee

Report¹³ (“the Standing Committee”) special protections for children in the criminal justice system are widely acknowledged as necessary to prevent harm and stigmatising of children, and to avoid negatively impacting on rehabilitation and reintegration.¹⁴ Such protections are internationally accepted minimum standards for the administration of juvenile justice.¹⁵ We would not support weakening suppression and non-publication provisions that relate to children, including the identification of adults convicted of offences committed as children.

Legal Aid NSW does not agree with comments from some stakeholders, as noted in the Consultation Paper, that the “community has a right to know about and to access court proceedings involving children, particularly if they have committed serious crimes”.¹⁶ Although the public may have a legitimate reason to know that a crime has been committed, we do not agree that there is a public interest in knowing the individual identity of that young person. Legal Aid NSW agrees with the Standing Committee that whilst the naming of juvenile offenders or victims may be “of” public interest, it is not “in” public interest.¹⁷ ‘Naming and shaming’ of juvenile offenders in this way can be counterproductive to their rehabilitation, and the principles of punishment and deterrence are better achieved within current sentencing principles. It only serves to further stigmatise and compromise the safety and rehabilitation prospects of the young person.

Further, Legal Aid NSW supports the extension of the publication prohibition to apply before criminal proceedings commence (such as when a child is being investigated by police), as this is often when there is most media interest and a child’s safety may also be at risk. We note that the Standing Committee also recommended this in 2008.¹⁸

We also maintain that child victims of crime need to have their identity protected. For example, Legal Aid NSW recently assisted a client who was a victim of crime and had their identity published in the mainstream media because the client posted a video on social media showing their injury. After their post, the client, their family, and friends were harassed by journalists at their homes, by phone and over social media. A number of media outlets published the video that our client had posted to their own social media page alongside their personal information in their reporting of the incident. Our client’s mental health suffered as a result.

Although in this case the original publication came from our client, the subsequent publication by the media had unintended and far-reaching consequences. We would suggest that the child’s right to privacy is not necessarily waived by virtue of a single

¹³ New South Wales Parliament. Legislative Council Standing Committee on Law and Justice, *The prohibition on the publication of names of children involved in criminal proceedings*, Report 35 (April 2008)

¹⁴ *Ibid.* Ch 3.

¹⁵ Rule 8 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules). The UN Convention on Rights of Child, Article 40(2)(vii).

¹⁶ Consultation Paper, 160 at 7.3.

¹⁷ New South Wales Parliament. Legislative Council Standing Committee on Law and Justice, *The prohibition on the publication of names of children involved in criminal proceedings*, Report 35 (April 2008) at 5.55.

¹⁸ *Ibid.* Recommendation 4.

publication online. It illustrates how a child's privacy can be breached with serious consequences and little legal remedy. It also illustrates that although children may have agency and capacity to post information to their friends and family, they may lack the capacity to consider the broader impact that this has on their privacy. In this case, Legal Aid NSW helped the client file a complaint with the Australian Press Council regarding several of these online newspapers, but only one agreed to deidentify our client from their article.

Effective compliance with existing statutory protections for child victims requires resources, training and awareness by police and court Registry staff as to the scope of the protections. In several cases we are aware of, a lack of scrutiny of police fact sheets has led to the online publication of court lists containing names of defendants in child sexual assault proceedings, in breach of section 15A of the *Children (Criminal Proceedings) Act 1987* (NSW). Namely, where publication of a defendant's name has been likely to lead to the identification of the child victim (for example, where they are related), in contravention of section 15A(5).

Although publishing of the person's name of itself (on a court list or on the online registry) does not provide any details concerning the charges, a media article will invariably do so. A journalist may then publish a story using the accused person's name. In our experience, the resulting identification of the complainant by the local community is almost inevitable. More careful consideration of the facts sheet, including the relationship between any child complainant and the defendant, would in part address this situation and the damage it causes.

Care and protection proceedings

Question 7.5: Care and protection proceedings – prohibition on the publication and disclosure of identifying information

- (1) Is the prohibition on publishing or broadcasting the identities of children involved in care and protection proceedings appropriate? Why or why not?**
- (2) What changes, if any, should be made to the existing prohibition and exceptions?**

Legal Aid NSW considers the current provisions to be sufficient and consistent with the overarching principle of the *Children and Young Persons (Care and Protection) Act 1998* (**Care and Protection Act**) to make decisions that are consistent with the safety, welfare and wellbeing of the child or young person. We also note that there are a number of exceptions to the application of sections 105(1) and (1AA) of the Care and Protection Act, which allow for publication and note that appropriate checks and balances, including the Court's power to consent to publication, already exist in relation to these proceedings, consistent with the principles of open justice.

Nevertheless, the decision of the *Secretary, Department of Family and Community Services v Smith* [2017] NSWCA 206 illustrates the complexity and competing interests

that can be at play in relation to the publication and disclosure of identifying information of children who are in foster care.

Legal Aid NSW agrees that there is a substantial public interest in the out-of-home care system and that proceedings and decisions made under Care and Protection Act be subject to scrutiny. However, our position remains that the priority must be to ensure the safety, welfare and wellbeing of vulnerable children who are the subject of these proceedings.

Section 9 of the Care and Protection Act provides that the Act is to be administered under the principle that in any action or decision concerning a particular child or young person, the safety, welfare and wellbeing of the child or young person is paramount.

Further, article 16 of the Convention on the Rights of the Child provides:

‘(1) No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation. (2) The child has the right to the protection of the law against such interference or attacks.’¹⁹

As referred to in the *Smith* case, changes to the current prohibitions in relation to broadcasting or publishing the identity of children may deprive already vulnerable children of their ability to control who they may want to have knowledge of their care status.²⁰ These changes might also expose children and young people to stigma, the consequences of which could have a significant impact on the psychological wellbeing and welfare of these vulnerable children.

Question 7.6: Care and protection proceedings – closed court orders

- (1) Are the existing provisions relating to the exclusion of people (including the child or young person themselves) from court and non-court proceedings under the Children and Young Persons (Care and Protection) Act 1998 (NSW) appropriate? Why, or why not?**
- (2) What changes, if any, should be made to these provisions?**

Currently the Care and Protection Act contains a number of provisions identifying different classes of persons, and gives the Court discretion as to whether these classes of persons can remain in Court. This discretion must always be exercised consistently with the objects and principles of the Act.²¹

It is the experience of our lawyers that persons who are not parties to proceedings regularly attend and remain within the Court during the proceedings.²² It is uncommon for objections to be taken to persons who attend with a party, and it is very unusual for a child who is the subject of the proceedings to not be permitted to participate. It is our experience

¹⁹ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577

²⁰ *Secretary, Department of Family and Community Services v Smith* [2017] NSWCA 206, [22].

²¹ *Children and Young Persons (Care and Protection) Act 1998* Chapter 2.

²² This occurs under sections 102 or 104A Care and Protection Act.

that these provisions are appropriate and that the discretion of the Court is exercised appropriately and in line with the objects and principles of the Act.

However, Legal Aid NSW submits that there may be other ways to ensure greater transparency and accountability in care proceedings and the out of home care system.

The Family is Culture Review Report 2019 raises significant concerns about the lack of transparency around the way decisions are made in the Children's Court in relation to the removal and restoration of children.²³ This report makes a number of recommendations as to how open justice can be achieved in proceedings under the Care and Protection Act.²⁴ There are particular concerns raised around the decisions of case workers and Department of Communities and Justice more broadly being subject to very little public scrutiny, which undermines public confidence in the decisions being made by the Children's Court. This issue is also touched upon in the *Smith* decision.

As recommended in the Family is Culture Report, Legal Aid NSW supports the Children's Court of NSW being appropriately resourced to enable it to publish all of its final judgments online in a de-identified and searchable format,²⁵ as well as the Court preparing and publishing annual statistics regarding its operations in the care and protection jurisdiction.²⁶

Adoption proceedings

Question 7.7: Adoption proceedings

- (1) Should there continue to be restrictions on the publication or disclosure of material that identifies people involved in adoption proceedings? Why, or why not?**
- (2) What changes, if any, should be made to the existing restrictions and exceptions?**
- (3) Should adoption proceedings continue to be held in closed court? Why, or why not?**
- (4) What changes, if any, should be made to the existing closed court provisions?**

Legal Aid NSW supports continued restriction on the publication or disclosure of material that identifies people involved in adoption proceedings. Adoption proceedings involve many different people: the child who is the subject of the application, the proposed adoptive parents (and sometimes their children), birth parents, siblings, grandparents etc.

²³ Professor Megan Davis, Family is Culture: Independent Review into Aboriginal Out-Of-Home Care In NSW, (October 2019) 122-138
https://www.familyisculture.nsw.gov.au/__data/assets/pdf_file/0011/726329/Family-Is-Culture-Review-Report.pdf

²⁴ Ibid, Recommendations 12-14.

²⁵ Ibid, Recommendation 12.

²⁶ Ibid, Recommendation 13.

Information filed in adoption proceedings involving children in out of home care is usually very sensitive. Publication or disclosure of material could potentially impact on a broad range of people, hence the need for restrictions on publication of such information.

Legal Aid NSW supports amendments which would enable a copy of an adoption order to be given to the parties to the proceedings without a specific order (and not just the plaintiff). The rule could be “unless otherwise ordered”. There are some cases where the parent is joined as a party but then later elects to have the matter dealt with on the papers or in Chambers, and is then unable to receive a copy of the order that is made. Where parents participate in the proceedings, they have usually been served with the Summons and a copy of the orders sought, so it does not make sense not to provide them with the final order. There are also some practical problems, as the parent may need a copy of the order registering the adoption plan to commence post adoption proceedings if they wish to review or enforce the plan after the order is made.

Any proposal to allow a person affected by an adoption order to consent to publication raises complex issues and requires very careful consideration. On the one hand, people should be able to speak about their experiences of the adoption process and there is an interest in the public being informed about this complex area of policy. On the other hand, publication by one person can lead to the public disclosure of highly sensitive and personal information about other persons, for example, if a sibling group has been adopted, and only one of the siblings wishes to consent to publication. If there are to be any changes, all of these competing considerations would need to be carefully balanced.

Question 7.9: Other proceedings

What further protections, if any, should there be against the publication and disclosure of, or public access to, types of legal proceedings involving children other than those to which protections already apply?

Civil proceedings

Legal Aid NSW considers that there are strong policy reasons for protecting the identity of children involved in other civil proceedings. We note that legal proceedings are inherently stressful for any person, but particularly for children. This stress is undoubtedly exacerbated by media coverage, which identifies the children involved.

In some instances, litigation involving children will involve disclosure of sensitive and traumatic material. Relevantly for Legal Aid NSW and our young clients, this would occur in personal injury and intentional tort claims against the State by children in out of home care or in police or youth justice custody, intentional tort claims by children or matters concerning sexual harassment in the context of education or employment. It would be potentially re-traumatising and stigmatising if information about the child or young person’s background and treatment were to be publicly disclosed.

In our experience young people are also acutely aware of reputational damage that could follow from their involvement in legal proceedings where their identities are revealed and then reported through social media, and may be deterred from taking appropriate legal

action in order to protect their reputation. For example, Legal Aid NSW advised a group of young clients to make a claim for damages against the State for intentional torts committed against them by NSW police officers. Although the clients each had strong claims based on objective evidence in the form of CCTV footage, they were particularly concerned about damage to their reputations and being tarnished as miscreants if the case went to court. They therefore had a strong desire to put the experience behind them. Consequently, they chose to settle their claims against the State without going to court for an amount which was arguably lower than the value of their claims as assessed by Legal Aid NSW.

We acknowledge that there is an existing framework to apply to the court for a suppression order under the Court Suppression and Non-Publication Orders Act. However, that framework requires the applicant to make a separate application for a suppression or non-publication order and to satisfy the court that the order is necessary in accordance with section 8 of the Act.²⁷ The age of the applicant is not a recognised ground for seeking a suppression or non-publication order and instead, more compelling reasons are needed. In our experience, it is not a simple process and one that can result in contested interlocutory hearings and inconsistent outcomes for vulnerable individuals.

On the other hand, where civil proceedings relate to, or arise out of, proceedings in which the disclosure or publication of the child's identity is automatically prohibited, that prohibition may carry over into the civil proceedings as well. For example, where the child or young person was the defendant, victim or a witness in criminal proceedings and their name is suppressed by virtue of operation of section 15A of the *Children (Criminal Proceedings) Act 1987* (**Children (Criminal Proceedings) Act**), their identity may also be suppressed in civil proceedings which arise out of the same set of circumstances which resulted in the criminal proceedings. Similar prohibitions would apply where the child was in out of home care and the civil proceedings relate to an incident which occurred in that context.²⁸

However, identifying automatic prohibitions which might apply in particular circumstances through the operation of different pieces of legislation can cause confusion. This was illustrated in the matter of *DC v State of New South Wales* [2010] NSWCA 15.²⁹ In this case, the primary judge made a non-publication and a non-disclosure order and issued the applicants with pseudonyms, pursuant to the since repealed section 72 of the *Civil Procedure Act 2005* (**Civil Procedure Act**). However, the Court of Appeal noted that as the applicants gave evidence at the stepfather's criminal trial in relation to offences he committed against them as children, section 11(1), (being the predecessor to the current section 15A) of the *Children (Criminal Proceedings) Act* had the effect, that the names of the applicants could not "be published or broadcast in a way that connects them with the criminal proceedings,"³⁰ hence there was no need to make a separate order under the *Civil Procedure Act*. This case demonstrates the confusion that exists, where provisions for

²⁷ Court Suppression and Non-Publication Orders Act 2010 s8.

²⁸ *Children and Young Persons (Care and Protection) Act 1998* s105.

²⁹ *DC v State of New South Wales* [2010] NSWCA 15 at [18]-[23].

³⁰ *DC v State of New South Wales* [2010] NSWCA 15 at [20].

suppression and non-publication are contained in various pieces of legislation, and causes confusion even amongst the legal profession and the judiciary.

We accordingly submit that consideration should be given to introducing a statutory prohibition to provide a better framework and a more consistent approach to such matters, with some exceptions, for example where the child upon turning 18 consents. Consideration may also need to be given to situations where the child is under 18 years of age and has a guardian, and the impact this may have on their decision-making capacity.

Such an approach would be consistent with the recommendations of the NSW Parliament Inquiry into *'The prohibition on the publication of names of children involved in criminal proceedings'*. This Inquiry, while not considering the issue of the publication of names of children in civil proceedings in detail, acknowledged that there were comparable issues to the strong reasons against publication in criminal proceedings, and recommended that the NSW Government consider the feasibility of applying the protections of section 11 of the *Children (Criminal Proceedings) Act 1987 (NSW)* to civil matters'.³¹ That Inquiry heard evidence that provided a similar example of a child in civil proceedings, seeking compensation for a significant injury that has resulted in psychosexual problems for the child, and the significant damage that the child would face if such details about their injury were published.³²

Apprehended Domestic and Personal Violence Order proceedings

Legal Aid NSW also supports extending existing statutory prohibitions in relation to children and young persons involved in criminal proceedings to children and young persons involved in apprehended domestic and personal violence order proceedings.

We note that under *Crimes (Domestic and Personal Violence) Act 2007 (Domestic and Personal Violence Act)* a child is defined 'as a person under the age of 16 years'.³³ Section 45 prohibits publishing or broadcasting the name of a 'child' who is involved in the proceedings as either the person in need of protection, the defendant, or a witness. The prohibition therefore only covers individuals under the age of 16 and only 'before the proceedings are commenced or after the proceedings have been commenced and before they are disposed of'. Therefore, the protection ceases to have effect upon conclusion of the proceedings.³⁴

On the other hand, section 41AA provides that proceedings involving young persons', defined as a person who is 16 years of age or over but who is under the age of 18 years,³⁵

³¹ New South Wales Parliament. Legislative Council Standing Committee on Law and Justice, *The prohibition on the publication of names of children involved in criminal proceedings*, Report 35 (April 2008), recommendation 7.

³² *Ibid* 84.

³³ *Crimes (Domestic and Personal Violence) Act 2007* s 3.

³⁴ *Crimes (Domestic and Personal Violence) Act 2007* s 45(1).

³⁵ *Crimes (Domestic and Personal Violence) Act 2007* s 41AA(2).

are to be held in the absence of the public, but does not otherwise prohibit publishing or broadcasting their names.

We submit that the distinction between the protections afforded to children and young persons below and over the age of 16 is unfair and creates an unhelpful disparity. In our view, the same policy reasons discussed above in favour of additional protections for children and young persons involved in other legal proceedings, justify the same protections applying in apprehended domestic and personal violence order proceedings. The protections should also be indefinite, rather than only having effect until the proceedings are concluded.

Coronial proceedings

We would also support the power of the Coroner's Court to make orders protecting the identity of a child or young person.

Victims and witnesses: privacy protections and access to information

Question 8.2: Current protections for specific types of victims and witnesses

(1) Are the privacy protections for specific types of victims and witnesses in NSW appropriate? Why or why not?

(2) What changes, if any, should be made?

Legal Aid NSW acknowledges recent changes to the *Criminal Procedure Act 1986* (NSW) (**Criminal Procedure Act**), which seek to enhance privacy protections for victims of domestic violence by providing a complainant with a right to give evidence in a closed court unless the court otherwise directs, and through alternative means of giving evidence, such as via AVL or with the use of a screen.³⁶ The legislation also provides that the court may direct that the evidence of the complainant be heard in open court, at the request of a party, and if special reasons in the interest of justice require the part of proceeding to be held in open court, or the complainant consents to giving their evidence in open court.

Legal Aid NSW considers that this provision unduly restricts the Court's discretion. We submit that the provision should be amended to allow certain persons to be present in court. Such an approach would reflect the very broad definition of domestic relationship in the *Crimes (Domestic and Personal Violence Act) 2007* and the nature and volume of domestic violence proceedings heard in the Local Court. However, in the experience of Legal Aid NSW solicitors representing victims of domestic and family violence, we are concerned that the exemption could be undermined or misused by the accused in order to continue to exercise control and undermine a victim's privacy or participation in the proceedings. This is an issue that Legal Aid NSW will continue to monitor. On the other hand, Legal Aid NSW supports complainants being able to make an application under this Part to have the evidence given in open court. It is important that at all stages of

³⁶ *Criminal Procedure Act 1986* Part 4B, Div. 5 ss 289UA and 289V.

proceedings victims of domestic and family violence have as much autonomy as possible and can share their experiences if they choose to do so.

The changes also allow the court, on its own motion or request of a party to the proceeding to direct, in certain circumstances, that other parts of the proceeding also be held in closed court. These circumstances include the need for the complainant to have a person excluded from the proceedings, or have any person present in the proceedings, or where it would otherwise be in the interests of justice to do so.³⁷ We note that the provisions do not specifically cover other witnesses that are not the complainant.

Given the recent commencement of the amendments we are unable to comment on the impact of the changes at this stage and will continue to monitor their operation.

We note however that generally speaking, closed court rooms do not prevent complainants' names and details being published by the media and that further protections are needed. As complainants and victims are often unrepresented during criminal proceedings, the legal process they must embark upon on their own to have their personal details suppressed is complex. Additionally, in high profile cases the parties' details are often published in the media before the matter reaches court for its first mention. Legal Aid NSW supports strengthening the voice of complainants in discretionary suppression and non-publication order applications, for example, by expanding section 8(3) of the Court Suppression and Non-Publication Orders Act to include domestic and family violence complainants.

Question 8.4: Access to court information by victims

(1) Are the current arrangements governing access to court information by victims appropriate? Why or why not?

(2) What changes, if any, should be made?

In the experience of our solicitors, victims of domestic and family violence often have difficulty obtaining information from courts about their proceedings. This can depend on their personal circumstances, including their access or availability to attend court to access information, or their ability to pay any associated fees. This information is often required to support applications for social assistance and is relevant to family law proceedings. Victims should be able to easily access information about the proceedings in which they are the complainant. An inability to access information can further disempower victims. We consider that there needs to be a consistent approach across courts which provides easier access for victims to information about the proceedings perhaps through a system such as the online information portal being trialled in South West Sydney. This process should be streamlined, simple and free of charge.

³⁷ *Criminal Procedure Act 1986* s 289UA.

Protections for sexual offence complainants

Question 9.1: The prohibition on publishing the identities of sexual offence complainants

(1) Is the prohibition on publishing the identities of complainants in sexual offence proceedings and the exceptions to the prohibition appropriate? Why or why not?

(2) What changes, if any, should be made?

Legal Aid NSW strongly opposes any weakening of the prohibition on publishing the identities of complainants in sexual offence proceedings. As stated in our preliminary submission, the automatic prohibition on publication that identifies victims of certain sexual offences is a protection highly valued by complainants. The current protections ensure that there is no unnecessary exposure to distress and humiliation, and encourage the reporting of offences and participation of victims in the justice system.

Other proposals for change

Question 13.1: A register of order

(1) Should there be a publicly accessible register of suppression and non-publication orders made by NSW courts? Why or why not?

(2) If so:

(a) who should be able to access the register,

(b) what details should be included in the register, and

(c) who should build and maintain the register?

We reiterate comments made in our preliminary submission in favour of creating a register of suppression and non-publication orders in NSW. A register may assist avoiding erroneous publications and enforcement of orders where there is a breach. As well as monitoring the overall use of suppression and non-publication orders in NSW, such a register would be particularly useful in keeping account of matters where the very existence of a case is suppressed. A register was also recommended in the Victorian review of the *Open Courts Act 2013* (Vic).

We also suggest that the NSW Law Reform Commission consider the availability of relief for people who are the subject of publication or identification contrary to an order. In our experience, there is limited ability to obtain real and effective relief for people who are the subject of such publication, particularly where publication has occurred online and/or via social media.