PART THREE: THE JUDICIAL PROCEEDINGS REPORTS ACT

Chapter 9: Prohibitions on publication under the Judicial Proceedings Reports Act.

36. Indecent matter and public morals

Section 3(1)(a) of the Judicial Proceedings Report Act 1958 (Vic). Having read the noted section, we believe it shall not be repealed. It shall stand as, is.

37. Divorce and related proceedings

Section 3(1)(b) of the Judicial Proceedings Report Act 1958 (Vic). We believe that the restrictions on publication of reported of judicial proceedings i.e. for the dissolution of marriage and related proceedings shall stand as, is.

39. Victims of sexual offences

Section 4(1A) Judicial Proceedings Report Act 1958 (Vic)

We believe that the statutory prohibition on identifying victims of sexual offences under section 4(1A) of the Judicial proceeding Reports Act 1958 (Vic) to be adequate.

In addition

(a) In reference to further guidance in respect to the scope of the prohibition provided

- Other victim survivors and victim support agencies
- Mental health practitioners and other mental health agencies
- Medical profession
- Migrant communities
- Australian Bureau of Statistics

- And the office of the Department of Public Prosecutions

(b) We believe that the Judicial Proceedings Report Act should extended provisions to the following

- Modern Slavery Act 2015 (Vic)
- Disability Act 2006 DHHS (Vic)
- Mental Health Act 2014 (Vic)
- Privacy and Data Protection Act (Vic)
- Sex Work Act 1994 (Vic)

40. A victim's ability to speak

In addressing the issue of how the law should accommodate a victim's ability to speak – if the induvial is unable to speak for themselves due to stress or the effects of the crime perpetrated upon them, provisions should be made for a qualified advocate (one that is appointed by the court) to act as a third party on behalf of the victim. Media networks can be accolated for victims to speak on their behalf

41. In reference to consent to publication of identifying materiel.

The victim should be afforded the opportunity to consent to publication of identifying material as soon as proceedings begin, with certain limits attached. If the person allows for consents to identifying material but not to their name and address being published, then some form of identification number may be needed to address the issue of credentials.

(a) We don't believe the courts supervision and permission is required. Only the legal representative and the person involved.

(b) Provide a qualified child advocates, preferably one that is appointed by the courts, to act as independent third party. Age-related linguistic, ethnic, religious, social and gender issues, with attention to children from disadvantaged groups or children with learning difficulties. Appropriate adult-child communication skills, including a child-sensitive approach; Interview and assessment techniques that minimize distress or trauma to children while

maximizing the quality of information received from them, including skills to deal with child victims and witnesses in a sensitive, understanding, constructive and reassuring manner.

42. Temporary restrictions – sex offences and family violence

(a) The persons previous offences.

The persons previous offences should be noted every time the person reoffends on the sex registrar. Sex register can be utilised by legal representatives to better inform their clients. How the courts concluded in handing down their rulings. The name of the presiding judge. All should be permitted to be published.

The discretion to order that additional or less information be published.

There is often too much discretion afforded when handing down sentences. It is often discretion that allows for lower rulings. Discretion process often leads to the uncertainty of the law and leaves the communities questioning. It is important for people to have faith in the system. A lack in faith can lead to scepticism of the judiciary. There needs to be a direct and definite process concerning information, particularly when it warrants the safety of the community.

(b) Temporary prohibition applies can only apply when the case is in process. Once the case has been conducted and finalised, the temporary prohibition can therefore be lifted.

(c) It is in our belief that temporary prohibition is best utilised in cases where the accused has been charged with sexual or family criminal abuse. There is a 'need to know' reason, why temporary prohibition is important when dealing with sexual and family criminal abuse. Sexual predators are dangerous to the safety of the community. Those who have perpetrated such crimes are viewed too often by victims of crime as protected under the guise of prohibition. There is a sense that prohibition protects the perpetrator. And, often the length of prohibition is unknown.

PART FOUR: ENFORCEMENT

Chapter 10 Enforcing laws that restrict publication

43. The terms publish and publication

The terms publish and publication is clearly defined in legislation. We believe that there is no need to change the terminology.

44. Are there any other issues arising out of the definitions of 'publish' and 'publication' that should also be addressed?

No. There are no further issues that that need to be addressed in regard to the definition of publish a publication.

46. What reforms, if any, should be made to address the liability of online intermediaries for the publication of prohibited and restricted information?

It can be somewhat problematic for online providers to control the flow of information that pass as evidence. Recently, various sites such as Facebook and Twitter have been fined for on-line third-party offences. The fines were due to third-party subscribers' online negative input (but, not necessarily defamatory comments). Website providers are fined heavily if they refuse or don't enforce the user's good behaviour. The onus is placed upon the website providers rather the individual themselves.

47. Should the law seek to enforce prohibitions and restrictions on publication:

(a) in other Australian states and territories?

No. We believe any law which seeks to enforce prohibition and restriction on publication in other Australian states and territories to be flawed. Information is fluid it cannot be controlled purely because governments and the legal profession want to control the narrative. People will find ways to combat the prohibitions and restrictions on any publication.

(b) in foreign jurisdictions? If so, how should this be achieved?

Unless there is a universal law (i.e. international law that backs such legislation) any rule seeking to enforce prohibitions and restrictions on publication in foreign jurisdictions is near impossible. Communities will veto such legislation, as the need to know will often out way any government interference.

49. Should there be a system for monitoring compliance with prohibitions and restrictions on publication?

If so:

(a) How should such compliance be monitored?

- A code of ethics and training
- Periodic reviews to ensure compliance
- A mechanism for reporting improper conduct
- Instructions that encourage employees to report
- Internal and/or external audits, as appropriate
- Disciplinary action for improper conduct
- Timely reporting to the Government
- Full cooperation with Government agencies responsible for either investigation or corrective actions

(b) Who should be responsible for monitoring such compliance?

The Department of Public Prosecutions should have responsibility for monitoring the compliances

50. Who should be responsible for instituting proceedings for breach of prohibitions and restrictions on publication?

The Department of Department of Public Prosecutions

51. Should the 'DPP consent' requirements under the Judicial Proceedings Reports Act 1958 (Vic) be retained?

Yes. We believe the DPP consent requirement under the Judicial Proceedings Report Act 1958 (Vic) should be retained. It is vital to the integrity of the role of the Department and the importance to the judicial process.

52. Should liability arise where there is a lack of awareness of the relevant prohibition or restriction on publication?

No. But, that's not to say that people who are employed in the processes of gathering, maintaining and distribution of information should evade prosecution; measures concerning the gathering and distribution of relevant prohibition or restriction on publication already exists in various state and commonwealth laws and in everyday practice i.e. policy and procedures

53. Are the existing exceptions for information-sharing agencies appropriate? Alternatively, do they inhibit information-sharing? If so, how should these barriers be addressed?

Information between different parties are often difficult to obtain. Individual agents or agencies must follow strict rules that governs their role. There needs to be a universal approach on how legislation is composed.

If so, how should these barriers be addressed?

Individuals can choose agencies of their choice to share appropriate information; only the data shared within the agencies will have the material. The courts will maintain the documentations. For, any further information-sharing the person will require to contact the courts. Information will only be limited to the individual and the case to which they are involved.

54. What defences, if any, should be available to people who have published information which is prohibited or restricted?

There are certain restricted defences that are afforded individuals in regards to published information that are prohibited or restricted. In order to publish information, which is prohibited or restricted, there must be proof of intent. People who are employed in the processes of gathering, maintaining and distribution of information should not evade prosecution; measures concerning the gathering and distribution of relevant prohibition or restriction on publication already exists in various state and commonwealth legislation.

55. Are the existing penalties and remedies for breaches of prohibitions and restrictions on publication appropriate? If not, what penalties and remedies should be provided?

Yes. We believe both the Commonwealth and State government have sufficient penalties on prohibitions and restrictions on publications.

57. Should a court be able to issue an order for internet materials to be taken down ('take-down order')? If so:

(a) Should the process for seeking and making such orders be embodied in legislation?

(b) Who should be responsible for monitoring the internet (and social media) for potential 'take-down' material?

(c) Who should be responsible for making applications for take-down orders?

(d) Should such applications be conducted on an adversarial or ex parted basis?

a), b), c), and d)

There already exists legislation in regards to the flow of information on the internet. To control the information on the internet is near impossible. Individuals are able to view restricted content on international websites and independent news media i.e. George Pell court case.

To take-down material and monitoring of the internet is crude and in effective.

Because of public pressure Facebook have formulated ways to take-down material that they deemed offensive and punish those who have. The question remains, "What is offensive"? What I consider as offensive may be funny to others.

59. Should there be provisions in the Open Courts Act 2013 (Vic), or another statute, which specify the duration of legacy suppression orders?

If so: (a) Should there be a deeming provision in the Open Courts Act 2013 (Vic), or another statute, which provides that legacy suppression orders are deemed to have been revoked from a particular date, subject only to applications from interested parties to:

i. vary the order?

ii. continue the order for a further specified time?

iii. revoke the order at an earlier date?

(b) Should there be provisions in the Open Courts Act 2013 (Vic), or another statute, which specify procedures for notification of legacy suppression orders and applications for continuation or revocation of such orders?

a) I, Janine Greening placed a submission into the Open courts Act 2013 (Vic). I had a meeting with Justice Vincent.

b) Yes. I discussed with Justice Vincent the issue of time-limitation on suppression orders. There are no provisions in the suppression orders; no one in government of the judiciary that can make orders, or can tell victims who live under such orders. My own grand-daughter who is eighteen years of age asked, "Why, am I under these orders. Who are they protecting?

There are 3 generations under the same suppression orders. There are many of us in the same situation.

Legacy suppression orders - we who live under them, call them Intergenerational Suppression orders. Legacy suppression orders just continue on; people still under these orders from 40 years ago. There is no time frame, and no one seems to understand these type of suppression orders.

Submission CONTEMPT OF COURT

When you ask someone in the Department of Justice they don't know, even the lawyers don't seem to know and we the families that have to live under them i.e. 3 generations, we were told if we went out publicly and named the two sex offenders, killers of my mother we would get 9 years jail. We already have 19 years under suppression orders the offenders got less time.

LEGACY SUPPRESSION ORDERS

Legacy Suppression orders/Intergenerational Suppression Orders where never thought out and never been looked at, the Legacy Suppression orders/Intergenerational Suppression Orders are put away and forgotten like the many living under them. The offenders who are protected get to serve a sentence; they have a time frame - not many spend life in jail for the term of their natural life so why are we sentenced for life.

In my mother's case {Marie Greening Zidan} the two youth offenders where aged 15 and 16 years of age when they violated our mother (a grandmother and great grandmother) on 15th October 2000 in front of her disabled son (my brother).

The triple effect it has on each generation the trauma living under these orders Is a nightmare. These suppression orders were put in order because of the offenders age. In regard to rehabilitating the offenders (referred to as G.A.S and S.J.K in the Judicial system) their rehabilitation was considered more important than my mother, my brother, my family and the safety of the community.

1. The two offenders (who were unsupervised at the time of the incident) residing at Melbourne Juvenile Centre rang me up with two phone calls one was answered by a family member-the offender left a death threat, then a second message left on answering machine the two offenders singing dirty sexual song and laughing.

2. The eldest offender attacked a girl who was on work placement in the juvenile centre again unsupervised

Submission CONTEMPT OF COURT

3. The two offenders would threaten staff at the Juvenile centre

4. When younger offender was on parole, he would be seen in areas he was not allowed to be in. He was reported to Authorities but weeks later they would go to look at cameras in the area at the train station which had been changed by then

5. Elder offender broke parole was caught and sent to prison for two years

6. Elder offender broke parole again, he was not sent back to prison.

Did not matter how many times that these offenders reoffend rehabilitation would be bought up.

Court of Appeal 2002 Supreme Court Chief Justice John Philips and Justice Alex Chernov and Justice Frank Vincent said in their 23-page Judgement

that the sentences imposed in April 2002 had been manifestly inadequate

'It is not possible to equate the sentences imposed with the gravity of the crime ' the judgement said' It is likely to think, that the learned Judge gave little weight to the aspect of rehabilitation of the youthful respondents 'we are not aware of a manslaughter accomplished by such a degree of callousness 'they said The sexual assault exhibited a profound contempt of Mrs Greening Zidan dignity as a human being the judges found that there was little evidence that the two boys had reasonable prospects of rehabilitation .

Article in the age 23 /8/2002

In 2004 High court in Canberra the Judges named the offenders in the court and they asked what was wrong with Victoria.

More work and education need to be done and Information as for the last 19 years to trying to navigate the system regarding these orders and not one person could give me an answer how can it pushed aside, leaving many of us in limbo.

Where do we have a voice and how can we have a voice when those who make the law don't know themselves?

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The Herald Sun took the case back to the Supreme Court with Justin Quill representing the Herald sun. Justice Gillard would not give permission to be able to go to the Children's court to arrange to get suppression order off.

The judge was talking about rehabilitation. I was told it was not about my mother and none of the offenders have been talked about and their offending crimes as if it did not matter, in other words the offenders can reoffend and continue on reoffending; their offences do not come into the equation.

Then the Department of Public Prosecutions took it back in 2011 where the judge who put on the suppression order from the start was not interested in the offenders reoffending, he said it is not in the community's interest to know

In regards to suppression order also you have to have a trial , suppression order put on to protect witness and victim we have had no trial , a plea bargain was put in place so there is no witness, no victim my mother dead, my brother is in care and the offenders are now adults. I believe youth offenders of serious crime and no evidence of rehabilitation who keep reoffending should be named once they reach 18 years of age. I was told that these Legacy Suppression orders /Intergenerational orders are for 99 years.

Who do these suppression orders protect not my family, not the community?

Our voices should matter.

FAMILY VIOLENCE

Children, and students are not getting the support needed. Regarding the courts and services the information is conflicting and causes added trauma i.e. children are told by the court they don't have to turn up at court, whereas DHS tell them they have to turn up and the police will tell them something else; information is conflicting and confuses them and most don't want to go to court but feel forced. Many say they don't want to go to court they don't trust the system.

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And, when they go to court, they spend the whole day there or at a police station, hours and hours go by. They are told they have rights they need information that's not all over the place and to have faith in a system that is failing them

Kind regards

Carla Rech and Janine Greening

FORGETMENOT FOUNDATION INC

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