

## **Explanatory note**

This explanatory note relates to this Bill as introduced into Parliament.

### Overview of Bill

The object of this Bill is to confer on courts the power to make suppression orders (which prohibit or restrict the disclosure of information) and non-publication orders (which prohibit or restrict the publication of information) in civil or criminal proceedings.

The Bill authorises the making of these orders for the purpose of preventing or restricting the publication or other disclosure of the identity of a party or witness to proceedings and their associates, or of evidence or information about evidence given in proceedings.

The Bill specifies the grounds on which such an order can be made.

The Bill also repeals certain provisions of other laws that confer powers on courts to make suppression and non-publication orders.

### Outline of provisions

#### **Part 1 Preliminary**

**Clause 1** sets out the name (also called the short title) of the proposed Act.

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**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** contains definitions for the purposes of the proposed Act.

The definition of ***court*** limits the application of the proposed Act to the Supreme Court, Land and Environment Court, Industrial Court, District Court, Local Court, Children's Court and any court, tribunal, person or body that has the power to act judicially and is prescribed by the regulations as a court for the purposes of the proposed Act.

The definition of ***proceedings*** includes both civil and criminal proceedings within the scope of the proposed Act.

**Clause 4** provides that the proposed Act does not limit or otherwise affect a court's inherent jurisdiction to regulate its proceedings or to deal with contempt of the court.

**Clause 5** provides that the proposed Act does not affect the operation of a provision of any other Act that directly prohibits or restricts the publication or disclosure of information in connection with proceedings or that authorises a court to do so.

#### **Part 2 Suppression and non-publication orders**

**Clause 6** provides that, when making a suppression or non-publication order, a court must take into account that a primary objective of the administration of justice is to safeguard the public interest in open justice.

**Clause 7** confers on a court the power to make a suppression or non-publication order on the grounds permitted by the proposed Act in respect of information tending to reveal the identity of or otherwise concerning any party or witness to proceedings and information that comprises evidence or information about evidence in proceedings.

**Clause 8** provides for the grounds on which a court may make a suppression or non-publication order.

**Clause 9** provides for the procedure by which a court may make a suppression or non-publication order, including identifying the persons who are entitled to make an application for such an order, the persons who are entitled to appear and be heard by a court on such an application, when such an order may be made and that an order may be subject to certain conditions or exceptions and must specify certain information.

**Clause 10** provides that a court may make an interim suppression or non-publication order in certain situations without determining the merits of the application until the

application is determined.

**Clause 11** provides for the circumstances in which a suppression or non-publication order may apply outside New South Wales. In order for a court to make an order apply outside of New South Wales, it must be satisfied that such a course of action is necessary for achieving the purpose for which the order has been made.

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**Clause 12** makes provision in relation to the duration of a suppression or non-publication order.

**Clause 13** provides that a court may review a suppression or non-publication order made by that court on its own initiative or on the application of a person, outlines the persons entitled to apply for such a review and allows a court to confirm, vary or revoke such an order.

**Clause 14** sets out the procedure for appeal against either a decision of a court to make or not to make a suppression or non-publication order or a decision of a court in relation to a review of such an order.

**Clause 15** provides for an exception to a suppression order made by a court for court officials in circumstances where the disclosure is not by publication and is in the course of the performance by that officer of functions or duties or in exercising powers in a public official capacity in connection with the conduct of proceedings, the recovery or enforcement of a penalty imposed in proceedings, or in compliance with any procedure adopted by a court.

**Clause 16** provides for the circumstances in which a person commits an offence under the proposed Act in relation to a contravention of a suppression or non-publication order.

### **Part 3 General**

**Clause 17** provides that proceedings for an offence under the proposed Act are to be determined summarily either by the Local Court (which may only impose a maximum monetary penalty of 100 penalty units for an individual or 500 penalty units for a body corporate) or the Supreme Court in its summary jurisdiction.

**Clause 18** provides a general regulation-making power.

### **Schedule 1 Savings, transitional and other provisions**

**Schedule 1** enacts a savings and transitional regulation-making power and a transitional provision to continue the operation of the provisions repealed by Schedule 2 in respect of orders and directions made under those provisions before their repeal.

### **Schedule 2 Amendment of Acts**

**Schedule 2** repeals existing provisions in various Acts that currently confer on courts the power to make suppression and non-publication orders.