

Explanatory note

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

Overview of Bill

The object of this Bill is to establish a new system for the provision of access to information held by courts in New South Wales. The new system includes provision for the following:

- (a) open access to certain court information, known as open access information, unless the court otherwise orders in a particular case,
- (b) access to information, known as restricted access information (being information that is not open access information) if access is permitted by leave of the court or by the regulations,
- (c) access by news media organisations to certain restricted access information,
- (d) access by parties to proceedings to any court information relating to the proceedings,
- (e) the imposition of conditions on access to court information relating to the way the information is provided or that restrict the disclosure or use of the information,
- (f) the protection of privacy and safety of participants in court proceedings, including by limiting access to personal identification information,

Explanatory note page 2

Court Information Bill 2010

Explanatory note

- (g) the protection of court information from misuse and unauthorised access, use or disclosure,
- (h) methods of access to court information, including charging of fees for access.

Outline of provisions

Part 1 Preliminary

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

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

Clause 3 sets out the objects of the proposed Act, which are as follows:

- (a) to promote consistency in the provision of access to court information across NSW courts,
- (b) to provide for open access to the public to certain court information to promote transparency and a greater understanding of the justice system,
- (c) to provide for additional access to the media to certain court information to facilitate fair and accurate reporting of court proceedings,
- (d) to ensure that access to court information does not compromise the fair conduct of court proceedings, the administration of justice or the privacy or safety of participants in court proceedings, by restricting access to certain court information.

Clause 4 defines certain words and expressions used in the proposed Act. Personal identification information is defined to include information such as a person's tax file number, passport number, social security number, medicare number and personal telephone number.

Clause 5 provides for the types of court information that is open access information. Open access information is information that any person is entitled to access, unless the court otherwise orders in a particular case. Open access information includes the following:

- (a) in relation to criminal proceedings—indictments, court attendance notices, police fact sheets and statements of facts,
- (b) in relation to civil proceedings—originating processes and pleadings,
- (c) written submissions made by a party in proceedings,
- (d) transcripts of proceedings,

(e) statements and affidavits admitted into evidence, including expert reports,
(f) records of judgments and directions given in proceedings.

Clause 6 provides that court information that is not open access information is restricted access information. Restricted access information is information that a person is entitled to access only if permitted by leave of the court or by the

Explanatory note page 3

Court Information Bill 2010

Explanatory note

regulations made under the proposed Act. In addition, the provision specifies information that would otherwise be open access information but that is to be restricted access information, including:

- (a) personal identification information,
- (b) medical, psychiatric, psychological and pre-sentence reports,
- (c) criminal records,
- (d) victim impact statements,
- (e) letters of comfort provided by the prosecution in connection with criminal proceedings.

Clause 7 defines when proceedings are taken to be concluded for the purposes of the proposed Act. Civil proceedings are concluded when judgment is given or entered in the substantive proceedings or the substantive proceedings are withdrawn, dismissed or discontinued. Criminal proceedings are concluded when the accused person is discharged or acquitted or the court makes a finding (or accepts a plea) that the accused person is guilty or when the accused person is sentenced. Proceedings on an appeal against a decision are to be regarded as separate proceedings.

Part 2 Entitlement to access to court information

Clause 8 provides that a person is entitled to access to court information that is open access information unless the court otherwise orders in a particular case. The court can also impose conditions on access to open access information relating to the way in which the information is provided or that restrict the disclosure or use of the information to which access is provided.

Clause 9 provides that a person is entitled to access to court information that is restricted access information if access is permitted by leave of the court or by the regulations. When deciding whether to grant leave for access to restricted access information, the court may take certain matters into account, including the following:

- (a) the public interest in access to the information being provided,
- (b) the extent to which the principle of open justice will be adversely affected if access is not provided to the information,
- (c) the extent to which an individual's privacy or safety will be compromised by providing access to the information,
- (d) the extent to which providing access to the information will adversely affect the administration of justice.

A court may impose conditions on access to restricted access information granted by leave of the court and the regulations may impose conditions on access to restricted access information conferred by the regulations, but only conditions that relate to the way in which the information is provided or that restrict the disclosure or use of the information to which access is provided.

Explanatory note page 4

Court Information Bill 2010

Explanatory note

Clause 10 provides for a news media organisation to have access to certain court information that is restricted access information (in addition to access to open access information) unless the court orders otherwise in a particular case, including the following:

- (a) transcripts of proceedings in closed court or proceedings on a *voire dire*,

(b) transcripts of and evidence in proceedings on an application to a court for an order to prohibit or restrict the publication or disclosure of information,
(c) the brief of evidence in criminal proceedings.

It will be an offence with a maximum penalty of 250 penalty units for a news media organisation to publish any personal identification information except with the permission of the court or the person to whom the information relates.

A news media organisation is defined to mean a commercial enterprise that engages in the business of broadcasting or publishing news or a public broadcasting service that engages in the dissemination of news through a public news medium.

Clause 11 provides that a party to proceedings and the party's legal representative are entitled to access any court information (in addition to open access information) that relates to the proceedings unless the court orders otherwise in a particular case.

A court that makes an order under the proposed section may impose conditions on access but only conditions that relate to the way in which the information is provided or that restrict the disclosure or use of the information to which access is provided.

Clause 12 provides that the proposed Act is not intended to prevent or otherwise interfere with the giving of access to court information as permitted or required by or under any other Act or law that entitles a person to access to court information.

Clause 13 provides that there is no entitlement to access to court information under the proposed Act if providing that access would contravene a court order or a provision of another Act or law.

Part 3 How access to court information is provided

Clause 14 specifies the methods by which a person can be provided with access to court information, including:

- (a) by being given a reasonable opportunity to inspect the information,
- (b) by being provided with a copy of a court record that contains the information,
- (c) by any means provided for by the rules.

A court may refuse to provide access to court information in a particular case if providing access would require an unreasonable diversion of the court's resources or it is necessary to refuse access to ensure the safe custody and proper preservation of court records.

Clause 15 provides for the charging of fees for providing access to court information.

Explanatory note page 5

Court Information Bill 2010

Explanatory note

Part 4 Privacy protection

Clause 16 provides that the Privacy and Personal Information Protection Act 1998 and the Health Records and Information Privacy Act 2002 do not apply to the providing of access to court information under the proposed Act.

Clause 17 requires each court to publish on its website or by other appropriate means general information that promotes awareness of the potential for information provided by a party to proceedings to be accessed by other persons under the proposed Act and the court's practices and procedures for preventing or limiting access to personal information.

Clause 18 requires a court to ensure, to the maximum extent reasonably practicable, that court records that contain open access information do not contain personal identification information.

Part 5 Protection of court information

Clause 19 requires a court to take reasonable security safeguards to ensure court information is protected against misuse and unauthorised access, use or disclosure.

Clause 20 makes it an offence (with a maximum penalty of 100 penalty units or 2 years imprisonment or both) for a person to disclose or use court information obtained in the exercise of the person's functions as a court officer or in the execution

or administration of the proposed Act, except with the consent of the person from whom the information was obtained, in the exercise of those functions or in the execution or administration of the proposed Act, as authorised by the regulations or as otherwise authorised or required by law.

Clause 21 makes it an offence (with a maximum penalty of 100 penalty units) for a person who is provided with access to court information under the proposed Act to disclose or use the information for a purpose or in a manner that the person knows is contrary to any condition imposed by a court or the regulations on the person's access to the information.

Part 6 Miscellaneous

Clause 22 enables a senior judicial officer of a court to delegate functions of the court under the proposed Act to registrars or other officers of the court.

Clause 23 provides that an action for defamation or breach of confidence cannot be brought against the Crown, a court or a court officer in respect of the disclosure of court information pursuant to an entitlement under the proposed Act.

Clause 24 protects persons involved in the administration of the proposed Act acting in good faith from personal liability.

Clause 25 enables the Uniform Rules Committee under the Civil Procedure Act 2005 to make rules for the purposes of the proposed Act.

Explanatory note page 6

Court Information Bill 2010

Explanatory note

Clause 26 enables the Governor to make regulations for the purposes of the proposed Act.

Clause 27 provides that proceedings under the proposed Act are to be dealt with summarily before the Local Court.

Clause 28 provides for the review of the proposed Act in 2 years.

Schedule 1 Savings, transitional and other provisions

Schedule 1 enables regulations of a savings or transitional nature to be made and contains a transitional provision consequent on the enactment of the proposed Act.

Schedule 2 Amendments

Schedule 2 amends the legislation specified in the Schedule as a consequence of the enactment of the proposed Act.