

Authorised Version No. 001

Open Courts Act 2013

No. 58 of 2013

Authorised Version as at
1 December 2013

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The Parliament of Victoria enacts:

PART 1—PRELIMINARY

1 Purposes

The main purposes of this Act are to—

- (a) reform and consolidate provisions for suppression orders relating to information derived from proceedings applicable to the Supreme Court, the County Court, the Magistrates' Court, the Coroners Court, the Victorian Civil and Administrative Tribunal and other prescribed courts and tribunals;
- (b) reform and consolidate provisions for suppression orders relating to other information relevant to, but not derived from, certain proceedings in the County Court and the Magistrates' Court;
- (c) make general provisions applicable to all suppression orders made pursuant to the exercise of the inherent jurisdiction of the Supreme Court and by courts or tribunals under this Act;
- (d) reform and consolidate provisions for closed court orders applicable to the Supreme Court, the County Court, the Magistrates' Court, the Coroners Court, the Victorian Civil and Administrative Tribunal and other prescribed courts and tribunals.

2 Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act does not come into operation before 1 December 2013, it comes into operation on that day.

3 Definitions

In this Act—

business day means a day other than a Saturday, a Sunday or a public holiday within the meaning of the **Public Holidays Act 1993**;

child means a person under 18 years of age;

closed court order means an order made under Part 5;

corresponding interstate order has the same meaning as it has in the **Family Violence Protection Act 2008**;

corresponding New Zealand order has the same meaning as it has in the **Family Violence Protection Act 2008**;

court or tribunal means—

- (a) the Supreme Court;
- (b) the County Court;
- (c) the Magistrates' Court;
- (d) the Coroners Court;
- (e) VCAT;
- (f) any other prescribed court or tribunal;
- (g) a prescribed person or body;

family violence intervention order has the same meaning as it has in the **Family Violence Protection Act 2008**;

family violence offence means—

- (a) an offence where—
- (i) the accused is a person who, at the time of the alleged offence, is subject to a family violence intervention order, a family violence safety notice, a corresponding interstate order or a corresponding New Zealand order; and
 - (ii) the complainant or alleged victim is a person who is protected by the order or notice referred to in subparagraph (i); and
 - (iii) the conduct comprising the alleged offence, if established, includes conduct by the accused which is a contravention of the order or notice referred to in subparagraph (i); or
- (b) an offence where the conduct comprising the alleged offence, if established, constitutes family violence within the meaning of the **Family Violence Protection Act 2008** by the accused against the complainant or alleged victim and the conduct could reasonably have justified the making of a family violence intervention order or a family violence safety notice applying to the accused and protecting the complainant or alleged victim;

family violence safety notice has the same meaning as it has in the **Family Violence Protection Act 2008**;

information includes any document;

inquest has the same meaning as it has in the
Coroners Act 2008;

interim order means an order made under
section 20;

news media organisation means—

- (a) a commercial enterprise that engages in the business of broadcasting or publishing news;
- (b) a public broadcasting service that engages in the dissemination of news through a public news medium;

party to a proceeding includes—

- (a) in the case of a criminal proceeding, the complainant or victim or alleged victim;
- (b) any person named in evidence given in a proceeding;
- (c) in relation to a proceeding that has concluded, a person who was a party to the proceeding before the proceeding concluded;

proceeding means a civil proceeding or a criminal proceeding;

proceeding suppression order means an order made under section 17;

publish means disseminate or provide access to the public or a section of the public by any means, including by—

- (a) publication in a book, newspaper, magazine or other written publication;
or
- (b) broadcast by radio or television; or
- (c) public exhibition; or

(d) broadcast or electronic communication—

and *publication* must be construed accordingly;

sexual offence has the same meaning as it has in the **Criminal Procedure Act 2009**;

suppression order means—

- (a) a proceeding suppression order;
- (b) an interim order;
- (c) an order made under section 25 or 26;
- (d) an order made by the Supreme Court in the exercise of its inherent jurisdiction that prohibits or restricts the publication or other disclosure of information in connection with any proceeding, whether or not the information was derived from the proceeding.

4 Presumption in favour of disclosure of information

To strengthen and promote the principles of open justice and free communication of information, there is a presumption in favour of disclosure of information to which a court or tribunal must have regard in determining whether to make a suppression order.

5 Abrogation of common law and no implied jurisdiction

- (1) Nothing in this section limits or otherwise affects the inherent jurisdiction of the Supreme Court.
- (2) Any common law power to make an order prohibiting or restricting the publication of information in connection with any proceeding is abrogated.

- (3) A court or tribunal has no implied jurisdiction to make an order prohibiting or restricting the publication of information in connection with any proceeding.

6 Jurisdiction and powers of courts and tribunals to deal with contempt

- (1) This Act does not limit or otherwise affect any jurisdiction or any power that a court or tribunal has apart from this Act to deal with a contempt of the court or tribunal.

- (2) In this section—

jurisdiction includes any implied jurisdiction and, in the case of the Supreme Court, its inherent jurisdiction;

power includes any power at common law.

7 Admission of evidence and disclosure of information to a court or tribunal or party to a proceeding

This Act does not limit or otherwise affect—

- (a) the making of an order or decision by a court or tribunal that requires the disclosure of information in the course of, or in relation to, a proceeding;
- (b) any rule of law restricting the permitted use and disclosure of information referred to in paragraph (a);
- (c) the making of an order or decision by a court or tribunal regarding the admission into evidence of information;
- (d) the making of an order or decision by a court or tribunal that—
- (i) conceals the identity of a person by restricting the way the person is referred to in open court;

- (ii) restricts the way an event or thing may be referred to in open court;
- (iii) prohibits or restricts access to a court or tribunal file.

8 Other laws restricting or prohibiting publication not affected

- (1) This Act does not limit or otherwise affect the operation of a provision made by or under any other Act that—
 - (a) prohibits or restricts, or authorises a court or tribunal to prohibit or restrict, the publication or other disclosure of information for or in connection with any proceeding; or
 - (b) requires or authorises a court or tribunal to close any proceeding to the public.
- (2) Without limiting the generality of subsection (1), this Act does not limit the operation of the following provisions—
 - (a) section 121 of the **Adoption Act 1984**;
 - (b) section 534 of the **Children, Youth and Families Act 2005**;
 - (c) sections 17(3), (4) and (5), 36L(6), (7) and (8) and 37(9), (10) and (11) of the **Confiscation Act 1997**;
 - (d) section 75 of the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997**;
 - (e) Part 4 of the **Criminal Organisations Control Act 2012**;
 - (f) sections 32F or 42BQ of the **Evidence (Miscellaneous Provisions) Act 1958**;
 - (g) sections 166 or 167 of the **Family Violence Protection Act 2008**;

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- (h) section 43 of the **Major Crime (Investigative Powers) Act 2004**;
 - (i) section 133 of the **Public Health and Wellbeing Act 2008**;
 - (j) Division 1 of Part 13 of the **Serious Sex Offenders (Detention and Supervision) Act 2009**;
 - (k) section 12 of the **Terrorism (Community Protection) Act 2003**;
 - (l) section 43 of the **Victims of Crime Assistance Act 1996**;
 - (m) clause 37 of Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998**.

Note

Other Acts have specific suppression regimes that place statutory restrictions or prohibitions on the disclosure of information. For example, see sections 3 and 4 of the **Judicial Proceedings Reports Act 1958** and sections 77 and 78 of the **Juries Act 2000**.

PART 2—GENERAL PROVISIONS FOR SUPPRESSION ORDERS

9 Application of Part

This Part applies to any suppression order.

10 Notice of applications for suppression orders

- (1) Subject to subsection (3), an applicant for a suppression order must give 3 business days' notice of the making of the application to—
 - (a) the court or tribunal in which the application is to be made; and
 - (b) the parties to the proceeding to which the application relates.
- (2) Notice under subsection (1) must be in accordance with rules of court (if any) applying in the court or tribunal in which the application is made.
- (3) The court or tribunal may hear an application for a suppression order despite the failure of the applicant to give notice in accordance with subsection (1) if the court or tribunal is satisfied that—
 - (a) there was a good reason for the notice not being given or not being given within the required time period; or
 - (b) it is in the interests of justice that the court or tribunal hear the application without notice being given.
- (4) This section does not apply to the making of a proceeding suppression order by a court or tribunal on its own motion.

11 Notifications to relevant news media organisations

- (1) On receiving a notice under section 10(1), the court or tribunal must take reasonable steps to ensure that any relevant news media organisation

is notified of the application for a suppression order.

- (2) Notification under this section may be by electronic communication or any other means that the court or tribunal considers appropriate.
- (3) In this section, *relevant news media organisation* means a news media organisation which the court or tribunal would ordinarily ensure was sent notice of the making of a suppression order.

12 Duration of orders

- (1) The period for which a suppression order other than an interim order operates must be—
 - (a) determined by the court or tribunal in accordance with this section; and
 - (b) specified in the order.

Note

For interim orders, see section 20(5).

- (2) The period for which a suppression order operates may be specified by reference to—
 - (a) a fixed or ascertainable period; or
 - (b) subject to subsection (3), the occurrence of a specified future event.
- (3) If the period for which a suppression order operates is specified by reference to a future event that may not occur, the order must also specify a period from the date of the order (not exceeding 5 years) at the end of which the order expires unless sooner revoked.

Example

An order that is expressed to be in effect until further order of the court or tribunal would also need to specify a period not exceeding 5 years at the end of which the order expires unless sooner revoked.

- (4) The court or tribunal must ensure that a suppression order operates for no longer than is reasonably necessary to achieve the purpose for which it is made.

13 Scope of information covered by order and purpose of suppression order

- (1) A suppression order must specify the information to which the order applies with sufficient particularity to ensure that—
- (a) the order is limited to achieving the purpose for which the order is made; and
 - (b) the order does not apply to any more information than is necessary to achieve the purpose for which the order is made; and
 - (c) it is readily apparent from the terms of the order what information is subject to the order.
- (2) A suppression order—
- (a) must specify the purpose of the order; and
 - (b) in the case of a proceeding suppression order or an order under section 26(1), must specify the applicable ground or grounds on which it is made.

14 Order must be made on basis of evidence or sufficient credible information

- (1) In making a suppression order, a court or tribunal must be satisfied on the basis of evidence, or sufficient credible information that is satisfactory to the court or tribunal, that the grounds for making the order are established.
- (2) Subsection (1) does not apply to an interim order.

15 Review of orders

- (1) The court or tribunal that made a suppression order may review the order—
 - (a) on the court's or tribunal's own motion; or
 - (b) on the application of—
 - (i) the applicant for the order;
 - (ii) a party to the proceeding in connection with which the order was made;
 - (iii) the Attorney-General;
 - (iv) the Attorney-General of another State or Territory or of the Commonwealth;
 - (v) a news media organisation;
 - (vi) any other person who, in the opinion of the court or tribunal, has a sufficient interest in the question of whether the order should be confirmed, varied or revoked.
- (2) Each of the persons specified in subsection (1)(b) is entitled to appear and be heard by the court or tribunal on the review of a suppression order.
- (3) On a review under subsection (1), the court or tribunal—
 - (a) may confirm, vary or revoke the suppression order; and
 - (b) in addition, may make any other order that the court or tribunal may make under this Act.

16 Duty to publish reasons, judgments or decisions

Nothing in this Act limits or otherwise affects any duty of a court or tribunal to publish reasons for judgment or decisions, subject to the court or tribunal editing those reasons to the extent necessary to comply with any order of a court or tribunal or statutory provision restricting the publication of information.

Note

See also section 24(3) of the **Charter of Human Rights and Responsibilities Act 2006**.

PART 3—PROCEEDING SUPPRESSION ORDERS

17 Court or tribunal may make proceeding suppression order

A court or tribunal on one or more of the grounds specified in section 18 may make a proceeding suppression order to prohibit or restrict the disclosure by publication or otherwise of—

- (a) a report of the whole or any part of a proceeding;
- (b) any information derived from a proceeding.

18 Grounds for proceeding suppression order

(1) A court or tribunal other than the Coroners Court may make a proceeding suppression order if satisfied as to one or more of the following grounds—

- (a) the order is necessary to prevent a real and substantial risk of prejudice to the proper administration of justice that cannot be prevented by other reasonably available means;

Example

Another reasonably available means may be directions to the jury.

- (b) the order is necessary to prevent prejudice to the interests of the Commonwealth or a State or Territory in relation to national or international security;
- (c) the order is necessary to protect the safety of any person;
- (d) the order is necessary to avoid causing undue distress or embarrassment to a complainant or witness in any criminal proceeding involving a sexual offence or a family violence offence;

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- (e) the order is necessary to avoid causing undue distress or embarrassment to a child who is a witness in any criminal proceeding;
 - (f) in the case of VCAT, the order is necessary—
 - (i) to avoid the publication of confidential information or information the subject of a certificate under section 53 or 54 of the **Victorian Civil and Administrative Tribunal Act 1998**;
 - (ii) for any other reason in the interests of justice.
- (2) The Coroners Court may make a proceeding suppression order in the case of an investigation or inquest into a death or fire if the coroner constituting the Coroners Court reasonably believes that an order is necessary because disclosure would—
- (a) be likely to prejudice the fair trial of a person; or
 - (b) be contrary to the public interest.

19 Procedure for making a proceeding suppression order

- (1) A court or tribunal may make a proceeding suppression order—
- (a) on its own motion; or
 - (b) on the application of—
 - (i) a party to the proceeding concerned; or
 - (ii) any other person considered by the court or tribunal to have a sufficient interest in the making of the order.

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- (2) Each of the following persons may appear and be heard by the court or tribunal on an application for a proceeding suppression order—
- (a) the applicant for the order;
 - (b) a party to the proceeding concerned;
 - (c) the Attorney-General;
 - (d) the Attorney-General of another State or Territory or of the Commonwealth;
 - (e) a news media organisation;
 - (f) any other person who, in the opinion of the court or tribunal, has a sufficient interest in the question of whether the order should be made.
- (3) Subject to rules of court (if any) or unless the court or tribunal otherwise orders, an applicant for a proceeding suppression order is not required to give notice of the application to a person referred to in subsection (2)(a), (c), (d), (e) or (f).
- (4) A proceeding suppression order may be made—
- (a) at any time during a proceeding;
 - (b) after a proceeding has concluded.
- (5) A proceeding suppression order may be made subject to any exceptions and conditions that the court or tribunal thinks fit and specifies in the order.

20 Interim orders

- (1) If an application is made to a court or tribunal for a proceeding suppression order, the court or tribunal may make an interim order in respect of that application.
- (2) An interim order may be made without determining the merits of the application under section 18.

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- (3) An interim order has effect until—
 - (a) the substantive application is determined; or
 - (b) the interim order is revoked by a court or tribunal.
 - (4) If a court or tribunal makes an interim order, the court or tribunal must determine the substantive application for the proceeding suppression order as a matter of urgency.

21 Where a proceeding suppression order applies

- (1) A proceeding suppression order or an interim order applies only to the publication or disclosure of information in a place where the order applies, as specified in the order.
- (2) Subject to subsection (3), a proceeding suppression order or an interim order is not limited to applying in Victoria and may be made to apply anywhere in Australia.
- (3) A proceeding suppression order or an interim order must not be made to apply outside Victoria unless the court or tribunal is satisfied that having the order apply outside Victoria is necessary for achieving the purpose for which the order is made.

22 Exceptions for conduct of proceeding, enforcement or informing persons of existence of proceeding suppression orders or interim orders

A proceeding suppression order or an interim order does not prevent a person from disclosing information if the disclosure is in the course of performing functions or duties or exercising powers in a public official capacity—

- (a) in connection with the conduct of any proceeding or the recovery or enforcement of any penalty imposed in a proceeding; or

- (b) in compliance with any procedure adopted by a court or tribunal for informing a person of the existence and content of a proceeding suppression order or an interim order made by the court or tribunal.

23 Offence to contravene proceeding suppression order or interim order

- (1) A person must not engage in conduct that constitutes a contravention of a proceeding suppression order or an interim order that is in force if that person—
- (a) knows that the proceeding suppression order or interim order, as the case requires, is in force; or
 - (b) is reckless as to whether a proceeding suppression order or an interim order, as the case requires, is in force.

Penalty: in the case of an individual, level 6 imprisonment (5 years maximum) or 600 penalty units, or both;

in the case of a body corporate,
3000 penalty units.

- (2) For the purposes of subsection (1), in the absence of evidence to the contrary, a person is taken to be aware that a proceeding suppression order or an interim order is in force if a court or tribunal has electronically transmitted notice of the order to the person.

PART 4—BROAD SUPPRESSION ORDERS

24 Application of this Part

An order under this Part must not be made in respect of any information which could be the subject of a proceeding suppression order.

25 County Court may grant injunction restraining publication in relation to criminal proceeding

- (1) The County Court has the same jurisdiction, and may exercise the same powers and authority, to grant an injunction in a criminal proceeding restraining a person from publishing any material or doing any other thing to ensure the fair and proper conduct of the proceeding as the Supreme Court has and may exercise in respect of a criminal proceeding in the Supreme Court.
- (2) The power of the County Court referred to in subsection (1) is exercisable by making an order, whether interlocutory or final, either unconditionally or on such terms and conditions as the Court thinks just.

26 Magistrates' Court may make order prohibiting publication of specified material

- (1) The Magistrates' Court may make an order prohibiting the publication of any specified material, or any material of a specified kind, relevant to a proceeding that is pending in the Court if in its opinion it is necessary to do so in order not to—
 - (a) prejudice the administration of justice; or
 - (b) endanger the safety of any person.
- (2) An order under subsection (1) applies only to the publication of material in a place where the order applies, as specified in the order.

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- (3) Subject to subsection (4), an order under subsection (1) is not limited to applying in Victoria and may be made to apply anywhere in Australia.
 - (4) An order under subsection (1) must not be made to apply outside Victoria unless the Magistrates' Court is satisfied that having the order apply outside Victoria is necessary for achieving the purpose for which the order is made.
 - (5) An order under subsection (1) does not prevent a person from disclosing information if the disclosure is in the course of performing functions or duties or exercising powers in a public official capacity—
 - (a) in connection with the conduct of any proceeding or the recovery or enforcement of any penalty imposed in a proceeding; or
 - (b) in compliance with any procedure adopted by the Magistrates' Court for informing a person of the existence and content of an order made under subsection (1) by the Court.

27 Offence to contravene order under section 26(1)

- (1) A person must not engage in conduct that constitutes a contravention of an order under section 26(1) that is in force if that person—
 - (a) knows that the order is in force; or
 - (b) is reckless as to whether an order under that section is in force.

Penalty: in the case of an individual, level 6 imprisonment (5 years maximum) or 600 penalty units, or both;
in the case of a body corporate,
3000 penalty units.

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- (2) For the purposes of subsection (1), in the absence of evidence to the contrary, a person is taken to be aware that an order is in force if a court or tribunal has electronically transmitted notice of the order to the person.
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PART 5—CLOSED COURT ORDERS

28 Presumption in favour of open court

To strengthen and promote the principle of open justice, there is a presumption in favour of hearing a proceeding in open court to which a court or tribunal must have regard in determining whether to make any order, including an order under this Part—

- (a) that the whole or any part of a proceeding be heard in closed court or closed tribunal; or
- (b) that only specified persons or classes of persons may be present during the whole or any part of a proceeding.

29 Jurisdiction and powers of courts and tribunals to regulate proceedings

(1) Subject to section 28, nothing in this Part limits or affects any jurisdiction or any power that a court or tribunal has apart from this Act to regulate its proceedings.

(2) In this section—

jurisdiction includes any implied jurisdiction and, in the case of the Supreme Court, its inherent jurisdiction;

power includes any power at common law.

30 Power to close proceeding to the public

(1) Subject to subsections (2) and (3), a court or tribunal—

- (a) may order that the whole or any part of a proceeding be heard in closed court or closed tribunal; or
- (b) may order that only persons or classes of persons specified by it may be present during the whole or any part of a proceeding.

(2) A court or tribunal other than the Coroners Court may make a closed court order if satisfied as to one or more of the following grounds—

- (a) the order is necessary to prevent a real and substantial risk of prejudice to the proper administration of justice that cannot be prevented by other reasonably available means;

Example

Other reasonably available means may include directions to the jury, making a proceeding suppression order, or orders excluding only certain persons or a more limited class of persons from the court or tribunal.

- (b) the order is necessary to prevent prejudice to the interests of the Commonwealth or a State or Territory in relation to national or international security;
- (c) the order is necessary to protect the safety of any person;
- (d) the order is necessary to avoid causing undue distress or embarrassment to a complainant or witness in any criminal proceeding involving a sexual offence or a family violence offence;
- (e) the order is necessary to avoid causing undue distress or embarrassment to a child who is a witness in any criminal proceeding;
- (f) in the case of VCAT, the order is necessary—
- (i) to avoid the disclosure of confidential information or information the subject of a certificate under section 53 or 54 of the **Victorian Civil and Administrative Tribunal Act 1998**;

(ii) for any other reason in the interests of justice.

(3) The Coroners Court may make a closed court order if the coroner constituting the Coroners Court reasonably believes that an order is necessary in the public interest, having regard to the matters specified in Part 2 of the **Coroners Act 2008**.

31 Requirement to post notice of closed court order on door of court or tribunal

If a closed court order has been made, the court or tribunal must cause a copy of the order to be posted—

- (a) on a door of the court or tribunal; or
- (b) in another conspicuous place where notices are usually posted at the place where the court or tribunal is being held.

32 Offence to contravene closed court order

A person must not engage in conduct that constitutes a contravention of a closed court order that is in force if that person—

- (a) knows that the closed court order is in force; or
- (b) is reckless as to whether a closed court order is in force.

Penalty: in the case of an individual, level 6 imprisonment (5 years maximum) or 600 penalty units, or both;
in the case of a body corporate,
3000 penalty units.

PART 6—GENERAL

33 Regulations

- (1) The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) The regulations may—
 - (a) be of general or limited application;
 - (b) differ according to differences in time, place or circumstances;
 - (c) confer a discretionary authority or impose a duty on a specified person or body or class of persons or bodies;
 - (d) provide in a specified case or class of cases for the exemption of persons or things or a class of persons or things from any of the provisions of the regulations—
 - (i) whether unconditionally or on specified conditions; and
 - (ii) either wholly or to any extent that is specified.

PART 7—TRANSITIONAL PROVISIONS

34 Transitional

This Act applies in relation to a proceeding (including any interlocutory proceeding)—

- (a) that is commenced in, or transferred to, a court or tribunal on or after the commencement of section 17; or
- (b) that has commenced in a court or tribunal but has not been heard and determined by the court or tribunal immediately before the commencement of section 17.

35 Power to resolve transitional difficulties in proceeding

- (1) If any difficulty arises because of the operation of this Act in relation to a proceeding referred to in section 34, a court or tribunal may make any order it considers appropriate to resolve the difficulty.
- (2) An order made under subsection (1)—
 - (a) may be made on application of a party to the proceeding or on the court's or tribunal's own motion, as the case requires; and
 - (b) has effect despite any provision to the contrary made by or under any Act (other than the **Charter of Human Rights and Responsibilities Act 2006**).

36 Regulations dealing with transitional matters

- (1) The Governor in Council may make regulations containing provisions of a transitional nature, including matters of an application or savings nature, arising as a result of the enactment of this Act, including the repeals and amendments made by this Act.

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- (2) Regulations made under this section may—
- (a) have a retrospective effect to a day on or from the date that this Act receives the Royal Assent;
 - (b) be of limited or general application;
 - (c) differ according to differences in time, place or circumstances;
 - (d) leave any matter or thing to be decided by a specified person or specified class of persons;
 - (e) provide for the exemption of persons or proceedings or a class of persons or proceedings from any of the regulations made under this section.
- (3) Regulations made under this section have effect despite anything to the contrary—
- (a) in any Act (other than this Act or the **Charter of Human Rights and Responsibilities Act 2006**); or
 - (b) in any subordinate instrument.
- (4) This section is **repealed** on the second anniversary of the day on which it comes into operation.
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PART 8—CONSEQUENTIAL AMENDMENTS

**Division 1—Charter of Human Rights and Responsibilities
Act 2006**

37 Fair hearing

See:
Act No.
43/2006.
Reprint No. 1
as at
1 August
2011.
LawToday:
www.
legislation.
vic.gov.au

For the note at the foot of section 24(2) of the
**Charter of Human Rights and Responsibilities
Act 2006 substitute—**

"Note

See Part 5 of the **Open Courts Act 2013**."

Division 2—Coroners Act 2008

38 Coroners' powers at inquests

See:
Act No.
77/2008.
Reprint No. 1
as at
21 July 2011
and
amending
Act Nos
52/2012,
83/2012 and
5/2013.
LawToday:
www.
legislation.
vic.gov.au

(1) Section 55(2)(d) of the **Coroners Act 2008** is
repealed.

(2) At the foot of section 55(2) of the **Coroners Act
2008 insert—**

"Note

See Part 5 of the **Open Courts Act 2013**."

39 Publication of findings and reports

(1) At the foot of section 73(1) of the **Coroners Act
2008 insert—**

"Note

See Part 3 of the **Open Courts Act 2013**."

(2) Section 73(2) and (3) of the **Coroners Act 2008**
are **repealed.**

40 Rules of the Coroners Court

(1) After section 105(1)(f) of the **Coroners Act 2008** insert—

"(fa) any other matter or thing required or permitted by or under the **Open Courts Act 2013** to be dealt with by rules of the Coroners Court or otherwise necessary or required for the purposes of that Act;"

(2) In section 105(1)(jb) of the **Coroners Act 2008** omit "73(2),".

41 Registers to be kept by principal registrar

Section 116(1)(e) of the **Coroners Act 2008** is repealed.

42 New clause 22 inserted into Schedule 1

After clause 21 of Schedule 1 to the **Coroners Act 2008** insert—

"22 Savings—Open Courts Act 2013

- (1) Despite the repeal of section 55(2)(d) by the **Open Courts Act 2013**, an order made under section 55(2)(d) (as in force immediately before its repeal) and in force at the date of that repeal continues to apply on and after that repeal.
- (2) Despite the repeal of section 73(2) and (3) by the **Open Courts Act 2013**, section 73(2) and (3) (as in force immediately before their repeal) continue to apply on and after that repeal in relation to a proceeding commenced to be heard (but not determined) by the Coroners Court before that repeal."

Division 3—County Court Act 1958

43 Criminal jurisdiction of the County Court

Section 36A(3), (4) and (5) of the **County Court Act 1958** are **repealed**.

See:
Act No.
6230.
Reprint No. 15
as at
1 May 2013
and
amending
Act No.
6230.
LawToday:
www.
legislation.
vic.gov.au

44 Rules of Court

After section 78(1)(d) of the **County Court Act 1958** insert—

"(da) any other matter or thing required or permitted by or under the **Open Courts Act 2013** to be dealt with by rules of court or otherwise necessary or required for the purposes of that Act;"

45 Power to close proceedings to the public and circumstances in which order may be made under section 80

Sections 80 and 80AA of the **County Court Act 1958** are **repealed**.

46 Publishing particulars of issued summonses an offence

At the foot of section 80A of the **County Court Act 1958** insert—

"Note

The **Open Courts Act 2013** governs suppression orders and closed court orders generally in relation to the court."

47 New section 98 inserted

After section 97 of the **County Court Act 1958**
insert—

"98 Savings—Open Courts Act 2013

- (1) Despite the repeal of section 36A(3), (4) and (5) by the **Open Courts Act 2013**, section 36A(3), (4) and (5) (as in force immediately before their repeal) continue to apply on and after that repeal in relation to a proceeding commenced to be heard (but not determined) by the court before that repeal.
- (2) Despite the repeal of section 36A(3) by the **Open Courts Act 2013**, an order made under section 36A(3) (as in force immediately before its repeal) and in force at the date of that repeal continues to apply on and after that repeal.
- (3) Despite the repeal of sections 80 and 80AA by the **Open Courts Act 2013**, sections 80 and 80AA (as in force immediately before their repeal) continue to apply on and after that repeal in relation to a proceeding commenced to be heard (but not determined) by the court before that repeal.
- (4) Despite the repeal of section 80 by the **Open Courts Act 2013**, an order made under section 80 (as in force immediately before its repeal) and in force at the date of that repeal continues to apply on and after that repeal."

Division 4—Magistrates' Court Act 1989

48 Rules of Court

See:
Act No.
51/1989.
Reprint No. 17
as at
1 May 2013
and
amending
Act Nos
51/1989,
51/2006,
12/2010 and
31/2013.
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legislation.
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After section 16(1)(c) of the **Magistrates' Court Act 1989** insert—

"(ca) any other matter or thing required or permitted by or under the **Open Courts Act 2013** to be dealt with by rules of court or otherwise necessary or required for the purposes of that Act;"

49 Register

In section 18(3) of the **Magistrates' Court Act 1989** for "section 126" substitute "Part 3 of the **Open Courts Act 2013**".

50 Business to be conducted in open court

At the foot of section 125(1) of the **Magistrates' Court Act 1989** insert—

"Note

The **Open Courts Act 2013** governs suppression orders and closed court orders generally in relation to the Court."

51 Power to close proceedings to the public

Section 126 of the **Magistrates' Court Act 1989** is repealed.

52 New clause 52 inserted in Schedule 8

After clause 51 of Schedule 8 to the **Magistrates' Court Act 1989** insert—

"52 Savings—Open Courts Act 2013

(1) Despite the repeal of section 126 by the **Open Courts Act 2013**, section 126 (as in force immediately before its repeal)

continues to apply on and after its repeal in relation to a proceeding commenced to be heard (but not determined) by the Court before that repeal.

- (2) Despite the repeal of section 126 by the **Open Courts Act 2013**, an order made under section 126 (as in force immediately before its repeal) and in force at the date of that repeal—
- (a) subject to paragraph (b), continues to apply on and after that repeal;
 - (b) may be set aside or varied in accordance with section 126 as if that section had not been repealed."

Division 5—Private Security Act 2004

53 General provisions for hearing matters involving protected information

In section 150E(3) of the **Private Security Act 2004**—

- (a) in paragraph (a), for "sections 49 and 101" **substitute** "section 49";
- (b) after paragraph (a) **insert**—
"(ab) Part 5 of the **Open Courts Act 2013**;"

See:
Act No.
33/2004.
Reprint No. 1
as at
26 September
2007
and
amending
Act Nos
4/2008,
13/2008,
1/2010, 6/2010,
61/2010 and
79/2011.
LawToday:
www.
legislation.
vic.gov.au

Division 6—Supreme Court Act 1986

54 Power to close proceedings to the public and circumstances in which order may be made under section 18

See:
Act No.
110/1986.
Reprint No. 7
as at
1 January
2011
and
amending
Act Nos
50/2011,
26/2012,
68/2012,
80/2012 and
5/2013.
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legislation.
vic.gov.au

Sections 18 and 19 of the **Supreme Court Act 1986** are **repealed**.

55 Offence to publish certain information concerning proceedings

At the foot of section 20 of the **Supreme Court Act 1986** insert—

"Note

The **Open Courts Act 2013** governs suppression orders and closed court orders generally in relation to the Court."

56 Rules of Court

After section 25(1)(ae) of the **Supreme Court Act 1986** insert—

"(af) any other matter or thing required or permitted by or under the **Open Courts Act 2013** to be dealt with by rules of court or otherwise necessary or required for the purposes of that Act;"

57 New section 152 inserted

After section 151 of the **Supreme Court Act 1986** insert—

"152 Savings—Open Courts Act 2013

- (1) Despite the repeal of sections 18 and 19 by the **Open Courts Act 2013**, sections 18 and 19 (as in force immediately before their repeal) continue to apply on and after that repeal in relation to a proceeding commenced to be heard (but not determined) by the Court before that repeal.
- (2) Despite the repeal of section 18 by the **Open Courts Act 2013**, an order made under section 18 (as in force immediately before its repeal) and in force at the date of that repeal continues to apply on and after that repeal."

Division 7—Victorian Civil and Administrative Tribunal Act 1998

58 Secrecy

In section 34(6) of the **Victorian Civil and Administrative Tribunal Act 1998**, after "private" insert "or that is the subject of a closed court order under Part 5 of the **Open Courts Act 2013**".

See:
Act No.
53/1998.
Reprint No. 8
as at
24 January
2013
and
amending
Act Nos
11/2010,
83/2012,
5/2013 and
19/2013.
LawToday:
www.
legislation.
vic.gov.au

59 Method of conducting hearings

At the foot of section 100 of the **Victorian Civil and Administrative Tribunal Act 1998** insert—

"Note

The **Open Courts Act 2013** governs suppression orders and closed tribunal orders generally in relation to the Tribunal."

60 Hearings to be public unless otherwise ordered

Section 101 of the **Victorian Civil and Administrative Tribunal Act 1998** is repealed.

61 Consequential amendments to sections 144, 145 and 146

In sections 144(5)(b), 145(2) and 146(4)(c) of the **Victorian Civil and Administrative Tribunal Act 1998**, for "section 101" substitute "Part 5 of the **Open Courts Act 2013**".

62 New section 166 inserted

After section 165 of the **Victorian Civil and Administrative Tribunal Act 1998** insert—

"166 Savings—Open Courts Act 2013

- (1) Despite the repeal of section 101 by the **Open Courts Act 2013**, section 101 (as in force immediately before its repeal) continues to apply on and after that repeal in relation to a proceeding commenced to be heard (but not determined) by the Tribunal before that repeal.
- (2) Despite the repeal of section 101 by the **Open Courts Act 2013**, an order made under section 101 (as in force immediately before its repeal) and in force at the date of that repeal continues to apply on and after that repeal."

63 Variations from Parts 3 and 4 for various proceedings

Clause 11AH of Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998** is repealed.

64 Subject matter for rules

At the end of Schedule 2 to the **Victorian Civil and Administrative Tribunal Act 1998** insert—
"Procedure under the **Open Courts Act 2013**".

Division 8—Wrongs Act 1958

65 Heading to Part I amended

In the heading to Part I of the **Wrongs Act 1958**, after "**CRIMINAL DEFAMATION**" insert "**AND THE REPORTING OF COURT PROCEEDINGS**".

See:
Act No.
6420.
Reprint No.11
as at
7 November
2012
and
amending
Act No.
20/2012.
LawToday:
www.
legislation.
vic.gov.au

66 No action maintainable against a person for faithfully reporting

At the end of section 4 of the **Wrongs Act 1958** insert—

- "(2) Subsection (1) does not limit or otherwise affect—
- (a) the operation of a provision made by or under any other Act that prohibits or restricts the publication or disclosure of information; or

-
- (b) the Supreme Court's inherent jurisdiction to restrict the publication or disclosure of information."

Division 9—Repeal of amending provisions

67 Repeal of Part 8

This Part is **repealed** on 1 December 2014.

Note

The repeal of this Part does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 27 June 2013

Legislative Council: 5 September 2013

The long title for the Bill for this Act was "A Bill for an Act to reform and consolidate provisions for and powers relating to suppression orders and closed court orders, to make consequential amendments to various Acts and for other purposes."

The **Open Courts Act 2013** was assented to on 22 October 2013 and came into operation on 1 December 2013: section 2(2).

Endnotes

2. Table of Amendments

There are no amendments made to the **Open Courts Act 2013** by Acts and subordinate instruments.

3. Explanatory Details

No entries at date of publication.