

# AUSTRALIA'S RIGHT TO KNOW

## RESTRICTIONS ON PUBLISHING INFORMATION: REVIEW OF THE EFFECT OF JUDICIAL DISCRETIONS, COURT PRACTICES AND RELEVANT STATUTORY PROVISIONS

### DRAFT TERMS OF REFERENCE

#### Background

In November 2007 the coalition of twelve media organisations comprising Australia's Right to Know published the *Report of the Independent Audit into the State of Free Speech in Australia* ("the Audit"). Commissioned by Australia's Right to Know, the report team was chaired by Irene Moss AO. The coalition has since determined a need to build on the work of the Audit through an updated review in a major area of concern: restrictions on publishing information that arise from judicial discretions, court practices and relevant statutory provisions in Australian jurisdictions.

By its nature the Audit was a fact-finding project to ascertain the current state of free speech in Australia. The report was essentially descriptive and as such, its role was not directed towards formulating recommendations. The coalition believes some key restrictions on publishing information, identified in the Audit, now warrant a review with the objective of producing practical recommendations for change and greater national consistency in the scope and operation of those restrictions. The review will focus on how courts can best formulate restrictions on publication when these are clearly necessary.

The Audit identified various Australian court practices imposing restrictions on the media's ability to report court proceedings. The review will also closely examine the wording of restriction orders to address concerns about unnecessary width of application and lack of any date of expiry or review. In doing so it will seek to identify from current sound and helpful judicial approaches, which represent 'best practice' and encourage their adoption in other equivalent Australian courts. Such approaches eliminate ambiguities and provide invaluable guidance to media reporters.

South Australia has recently introduced an amendment to its *Evidence Act* specifically covering suppression orders. The review will examine whether this novel approach offers a useful model for other Australian jurisdictions.

The review will also consider the tension between restrictions on publication and the operation of the internet.

## Terms of reference

The review will examine the issues numbered below in relation to judicial discretions, court practices and relevant statutory provisions. In doing so it should examine the variety of restrictions on publishing information that operate around Australia and identify which are currently 'best practice' and whether each such practice is of sufficient quality to recommend for adoption in other jurisdictions. Criteria for assessing quality should include:

- the public interest in reasonably maximising openness of the courts in relation both to evidence they receive and their procedures;
- the desirability of facilitating fair and accurate reporting of court proceedings as a major means of promoting public understanding of and confidence in the justice system.

## Issues

1. What constitutes reasonable grounds for placing restrictions on the publication of information associated with court proceedings?
2. Should the provision of reasons for making a suppression order and its scope and period of application be required, and if so, how? – By statute or court rule?
3. The operation of provisions relevant to suppression orders in South Australia pursuant to legislation that commenced in 2007.
4. The wording and recording of court/tribunal suppression orders, and their notification and accessibility to the media and other parties potentially affected.
5. Cross-jurisdictional problems with suppression orders made in state courts. A class of special interest comprises such orders in proceedings based on Commonwealth legislation.
6. Access to court documents such as court files, pleadings, affidavits, statutory declarations, witness statements, exhibits and transcripts.
7. Use of recording devices by media reporters during court proceedings.