



New South Wales

Court Suppression and Non-publication Orders Bill 2010

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.

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.

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.



New South Wales

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Contents

	Page
Part 1	Preliminary
1	Name of Act 2
2	Commencement 2
3	Definitions 2
4	Inherent jurisdiction and powers of courts not affected 3
5	Other laws not affected 3
Part 2	Suppression and non-publication orders
6	Safeguarding public interest in open justice 4
7	Power to make orders 4
8	Grounds for making an order 4
9	Procedure for making an order 5
10	Interim orders 5
11	Where an order applies 5
12	Duration of orders 6

Court Suppression and Non-publication Orders Bill 2010

Contents

	Page
13 Review of orders	6
14 Appeals	7
15 Exception for court officials	7
16 Contravention of order	8
Part 3 General	
17 Proceedings for offences	9
18 Regulations	9
Schedule 1 Savings, transitional and other provisions	10
Schedule 2 Amendment of Acts	11



New South Wales

Court Suppression and Non-publication Orders Bill 2010

No. , 2010

A Bill for

An Act to provide for the making of suppression and non-publication orders by courts.

The Legislature of New South Wales enacts: 1

Part 1 Preliminary 2

1 Name of Act 3

This Act is the *Court Suppression and Non-publication Orders Act 2010*. 4
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2 Commencement 6

This Act commences on a day or days to be appointed by proclamation. 7

3 Definitions 8

In this Act: 9

court means: 10

(a) the Supreme Court, Land and Environment Court, Industrial Court, District Court, Local Court or Children's Court, or 11
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(b) any other court or tribunal, or a person or body having power to act judicially, prescribed by the regulations as a court for the purposes of this Act. 13
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information includes any document. 16

news media organisation means 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. 17
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non-publication order means an order that prohibits or restricts the publication of information (but that does not otherwise prohibit or restrict the disclosure of information). 21
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party to proceedings includes the complainant or victim (or alleged victim) in criminal proceedings and any person named in evidence given in proceedings and, in relation to proceedings that have concluded, means a person who was a party to the proceedings before the proceedings concluded. 24
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proceedings means civil or criminal proceedings. 29

publish means disseminate or provide access to the public or a section of the public by any means, including by: 30
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(a) publication in a book, newspaper, magazine or other written publication, or 32
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(b) broadcast by radio or television, or 34

(c) public exhibition, or 35

(d) broadcast or publication by means of the Internet. 36

suppression order means an order that prohibits or restricts the disclosure of information (by publication or otherwise).

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4 Inherent jurisdiction and powers of courts not affected

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This Act does not limit or otherwise affect any inherent jurisdiction or any powers that a court has apart from this Act to regulate its proceedings or to deal with a contempt of the court.

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5 Other laws not affected

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This Act does not limit or otherwise affect the operation of a provision made by or under any other Act that prohibits or restricts, or authorises a court to prohibit or restrict, the publication or other disclosure of information in connection with proceedings.

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Part 2	Suppression and non-publication orders	1
6	Safeguarding public interest in open justice	2
	In deciding whether to make a suppression order 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.	3 4 5 6
7	Power to make orders	7
	A court may, by making a suppression order or non-publication order on grounds permitted by this Act, prohibit or restrict the publication or other disclosure of:	8 9 10
	(a) information tending to reveal the identity of or otherwise concerning any party to or witness in proceedings before the court or any person who is related to or otherwise associated with any party to or witness in proceedings before the court, or	11 12 13 14
	(b) information that comprises evidence, or information about evidence, given in proceedings before the court.	15 16
8	Grounds for making an order	17
(1)	A court may make a suppression order or non-publication order on one or more of the following grounds:	18 19
	(a) the order is necessary to prevent prejudice to the proper administration of justice,	20 21
	(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,	22 23 24
	(c) the order is necessary to protect the safety of any person,	25
	(d) the order is necessary to avoid causing undue distress or embarrassment to a party to or witness in criminal proceedings involving an offence of a sexual nature (including an act of indecency),	26 27 28 29
	(e) it is otherwise necessary in the public interest for the order to be made and that public interest significantly outweighs the public interest in open justice.	30 31 32
(2)	A suppression order or non-publication order must specify the ground or grounds on which the order is made.	33 34

9	Procedure for making an order	1
(1)	A court may make a suppression order or non-publication order on its own initiative or on the application of:	2
		3
(a)	a party to the proceedings concerned, or	4
(b)	any other person considered by the court to have a sufficient interest in the making of the order.	5
		6
(2)	Each of the following persons is entitled to appear and be heard by the court on an application for a suppression order or non-publication order:	7
		8
(a)	the applicant for the order,	9
(b)	a party to the proceedings concerned,	10
(c)	the Government (or an agency of the Government) of the Commonwealth or of a State or Territory,	11
		12
(d)	a news media organisation,	13
(e)	any other person who, in the court's opinion, has a sufficient interest in the question of whether a suppression order or non-publication order should be made.	14
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(3)	A suppression order or non-publication order may be made at any time during proceedings or after proceedings have concluded.	17
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(4)	A suppression order or non-publication order may be made subject to such exceptions and conditions as the court thinks fit and specifies in the order.	19
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(5)	A suppression order or non-publication order must specify the information to which the order applies with sufficient particularity to ensure that the order is limited to achieving the purpose for which the order is made.	22
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		25
10	Interim orders	26
(1)	If an application is made to a court for a suppression order or non-publication order, the court may, without determining the merits of the application, make the order as an interim order to have effect, subject to revocation by the court, until the application is determined.	27
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(2)	If an order is made as an interim order, the court must determine the application as a matter of urgency.	31
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11	Where an order applies	33
(1)	A suppression order or non-publication order applies only to the disclosure or publication of information in a place where the order applies, as specified in the order.	34
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(2)	A suppression order or non-publication order is not limited to applying in New South Wales and can be made to apply anywhere in the Commonwealth.	1 2 3
(3)	However, an order is not to be made to apply outside New South Wales unless the court is satisfied that having the order apply outside New South Wales is necessary for achieving the purpose for which the order is made.	4 5 6 7
12	Duration of orders	8
(1)	A suppression order or non-publication order operates for the period decided by the court and specified in the order.	9 10
(2)	In deciding the period for which an order is to operate, the court is to ensure that the order operates for no longer than is reasonably necessary to achieve the purpose for which it is made.	11 12 13
(3)	The period for which an order operates may be specified by reference to a fixed or ascertainable period or by reference to the occurrence of a specified future event.	14 15 16
13	Review of orders	17
(1)	The court that made a suppression order or non-publication order may review the order on the court's own initiative or on the application of a person who is entitled to apply for the review.	18 19 20
(2)	Each of the following persons is entitled to apply for and to appear and be heard by the court on the review of an order under this section:	21 22
(a)	the applicant for the order,	23
(b)	a party to the proceedings in connection with which the order was made,	24 25
(c)	the Government (or an agency of the Government) of the Commonwealth or of a State or Territory,	26 27
(d)	a news media organisation,	28
(e)	any other person who, in the court's opinion, has a sufficient interest in the question of whether a suppression order or non-publication order should have been made or should continue to operate.	29 30 31 32
(3)	On a review, the court may confirm, vary or revoke the order and may in addition make any other order that the court may make under this Act.	33 34

14 Appeals	1
(1) With leave of the appellate court, an appeal lies against:	2
(a) a decision of a court (the <i>original court</i>) to make or not to make a suppression order or non-publication order, or	3 4
(b) a decision by the original court on the review of, or a decision by the original court not to review, a suppression order or non-publication order made by the court.	5 6 7
(2) The <i>appellate court</i> for an appeal under this section is the court to which appeals lie against final judgments or orders of the original court or, if there is no such court, the Supreme Court.	8 9 10
(3) Each of the following persons is entitled to appear and be heard on an appeal under this section:	11 12
(a) the applicant for the suppression order or non-publication order,	13
(b) a party to the proceedings in which the order or decision subject to appeal was made,	14 15
(c) the Government (or an agency of the Government) of the Commonwealth or of a State or Territory,	16 17
(d) a news media organisation,	18
(e) any other person who, in the appellate court's opinion, has a sufficient interest in the decision that is the subject of appeal.	19 20
(4) On an appeal under this section, the appellate court may confirm, vary or revoke the order or decision subject to the appeal and may make any order or decision under this Act that could have been made in the first instance.	21 22 23 24
(5) An appeal under this section is to be by way of rehearing, and fresh evidence or evidence in addition to, or in substitution for, the evidence given on the making of the decision may be given on the appeal.	25 26 27
(6) If judgments or orders of the original court are subject to review by another court (rather than appeal to another court), this section provides for a review of the original court's decisions instead of an appeal and in such a case references in this section to an appeal are to be read as references to a review.	28 29 30 31 32
15 Exception for court officials	33
A suppression order does not prevent a person from disclosing information if the disclosure is not by publication and is in the course of	34 35

performing functions or duties or exercising powers in a public official capacity:	1
	2
(a) in connection with the conduct of proceedings or the recovery or enforcement of any penalty imposed in proceedings, or	3
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(b) in compliance with any procedure adopted by a court for informing a news media organisation of the existence and content of a suppression order or non-publication order made by the court.	5
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16 Contravention of order 9

(1) A person commits an offence if the person engages in conduct that constitutes a contravention of a suppression order or non-publication order and is reckless as to whether the conduct constitutes a contravention of a suppression order or non-publication order.	10
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Maximum penalty: 1,000 penalty units or imprisonment for 12 months, or both, for an individual or 5,000 penalty units for a body corporate.	14
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(2) Conduct that constitutes an offence under this section may be punished as a contempt of court even though it could be punished as an offence.	16
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(3) Conduct that constitutes an offence under this section may be punished as an offence even though it could be punished as a contempt of court.	18
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(4) If conduct constitutes both an offence under this section and a contempt of court, the offender is not liable to be punished twice.	20
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Part 3 General

17 Proceedings for offences

- (1) Proceedings for an offence under this Act are to be dealt with:
 - (a) summarily before the Local Court, or
 - (b) summarily before the Supreme Court in its summary jurisdiction.
- (2) If proceedings are brought in the Local Court, the maximum monetary penalty that the Local Court may impose for the offence, despite any higher maximum monetary penalty provided by this Act in respect of the offence, is:
 - (a) for an individual, 100 penalty units, or
 - (b) for a body corporate, 500 penalty units.

18 Regulations

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Schedule 1	Savings, transitional and other provisions	1
		2
Part 1	Preliminary	3
1	Regulations	4
(1)	The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts: this Act	5 6 7
(2)	Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.	8 9
(3)	To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:	10 11 12
(a)	to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or	13 14 15
(b)	to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.	16 17 18
Part 2	Provision consequent on enactment of this Act	19
2	Savings for repeals	20
	A provision of an Act repealed by Schedule 2 continues to apply (as if it had not been repealed) to and in respect of an order, prohibition or direction in force under the provision immediately before its repeal.	21 22 23

Schedule 2	Amendment of Acts	1
2.1	Civil Procedure Act 2005 No 28	2
	Section 72 Court may prohibit disclosure of information	3
	Omit the section.	4
2.2	Criminal Assets Recovery Act 1990 No 23	5
	Section 62 Publication of proceedings	6
	Omit the section.	7
2.3	Criminal Procedure Act 1986 No 209	8
[1]	Section 292 Publication of evidence may be forbidden in certain cases	9
	Omit the section.	10
[2]	Section 302 Ancillary orders	11
	Omit “, and” from section 302 (1) (b).	12
[3]	Section 302 (1) (c) and (d) and (3)	13
	Omit the paragraphs and subsection.	14