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consultation draft

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New South Wales

## Court Information Bill 2009

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Court Information Bill 2009

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New South Wales

## **Court Information Bill 2009**

No. , 2009

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**A Bill for**

An Act to make provision for access to information held by courts.

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Clause 1 Court Information Bill 2009

Part 1 Preliminary

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**The Legislature of New South Wales enacts:**

## **Part 1 Preliminary**

### **1 Name of Act**

This Act is the *Court Information Act 2009*.

### **2 Commencement**

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

### **3 Definitions**

(1) In this Act:

***court*** means each of the Supreme Court, Land and Environment Court, District Court, Local Court and Children's Court.

***court information*** means information contained in a court record.

***court officer*** includes any person employed in the Government service to exercise functions in a court registry or other court office.

***court record*** means any of the following records that a court has in its possession or custody (or that a court has in the possession or custody of some other person) in connection with the court's judicial functions:

- (a) a record filed or tendered in the court by a party to proceedings before the court (including originating process to commence any such proceedings),
- (b) a record of any proceedings before the court,
- (c) a record created for or in connection with court listing or case management in connection with proceedings before the court,
- (d) a record admitted into evidence by the court.

***criminal record*** of a person means a record of the offences for which the person has been convicted or of the offences in respect of which:

- (a) the person has paid a penalty notice, or
- (b) an order has been made against the person under section 10 (Dismissal of charges and conditional discharge of offender) of the *Crimes (Sentencing Procedure) Act 1999*.

***open access information***—see section \*4.

***proceedings*** means civil or criminal proceedings.

***record*** means any document or other source of information compiled, recorded or stored in written form or on film, or by electronic process, or in any other manner or by any other means.

***restricted access information*** means any court information that is not open access information.

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Court Information Bill 2009

Clause 4

Preliminary

Part 1

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(2) Notes included in this Act do not form part of this Act.

#### **4 Open access information**

**Note.** An entitlement to access to open access information under this Act is subject to other laws or court orders that prohibit or restrict the publication or disclosure of court information. See section \*10.

##### **(1) Criminal proceedings**

Information contained in the following court records relating to criminal proceedings is *open access information*:

- (a) an indictment, court attendance notice or other document commencing proceedings,
- (b) a document tendered in proceedings as the prosecution's case summary or case narrative, but only (in the case of proceedings to be tried by jury) before the proceedings have been set down for trial,
- (c) a transcript of evidence received in proceedings in open court,
- (d) statements and affidavits admitted into evidence in proceedings,
- (e) a record of a conviction or order made in proceedings,
- (f) a record created for or in connection with court listing or case management in connection with proceedings,
- (g) such other records as may be prescribed by the regulations.

##### **(2) Civil proceedings**

Information contained in the following court records relating to civil proceedings is *open access information*:

- (a) originating process and pleadings in proceedings, but only after the stage in the proceedings when the court first has an opportunity to consider any objection by the parties to the inclusion of any information in originating process or pleadings, or the proceedings are concluded (whichever happens first),
- (b) a transcript of evidence received in proceedings in open court,
- (c) statements and affidavits admitted into evidence in proceedings,
- (d) a record of judgment given and any order made in the proceedings,
- (e) a record created for or in connection with court listing or case management in connection with the proceedings,
- (f) such other records as may be prescribed by the regulations.

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Clause 4            Court Information Bill 2009

Part 1              Preliminary

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(3) **Exceptions (restricted access information)**

The following information (that would otherwise be open access information) is not open access information and is restricted access information:

- (a) information that is personal identification information under section \*16 (Protection of personal identification information),
- (b) information contained in an affidavit, pleading or statement that has been rejected, struck out or otherwise not admitted,
- (c) information contained in a transcript of evidence received, and statements and affidavits admitted into evidence, in proceedings on a *voire dire*,
- (d) information contained in a statement that comprises a medical, psychiatric, psychological or pre-sentence report,
- (e) information contained in a statement of a person's criminal record,
- (f) a transcript of evidence received, and statements and affidavits admitted into evidence, in proceedings on an application to a court for an order to prohibit or restrict the publication or disclosure of information,
- (g) information relating to criminal proceedings involving an offence of a sexual nature (including an act of indecency),
- (h) information relating to proceedings under the *Crimes (Domestic and Personal Violence) Act 2007*,
- (i) information relating to proceedings under the *Adoption Act 2000*,
- (j) information relating to proceedings before the Children's Court,
- (k) information contained in a victim impact statement,
- (l) information contained in a letter of comfort provided by or on behalf of the prosecution in connection with criminal proceedings.
- (m) such other information as may be prescribed by the regulations as restricted access information.

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Court Information Bill 2009

Clause 5

Entitlement to access to court information

Part 2

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## Part 2 Entitlement to access to court information

**Note.** An entitlement to access to court information under this Act is subject to other laws or court orders that prohibit or restrict the publication or disclosure of court information. See section \*10.

This Act applies only to the providing of access to court information by courts. It does not prevent prosecuting authorities or a party to proceedings from giving access to documentary or physical exhibits returned at the conclusion of proceedings.

### 5 Access to open access information

- (1) Any person is entitled to access to court information that is open access information unless the court otherwise orders in a particular case.
- (2) A court can impose conditions on an entitlement to access under this section in a particular case.

**Note.** Section \*4 lists the information that is *open access information*. All other court information is *restricted access information*.

### 6 Access to restricted access information

- (1) A person is entitled to access to court information that is restricted access information if access is permitted:
  - (a) by leave of the court, or
  - (b) by the regulations.
- (2) In deciding whether to grant leave for access to information under this section, a court must take the following matters into account:
  - (a) the extent to which the principle of open justice will be affected if access is not provided to the information,
  - (b) whether an individual's privacy or safety will be compromised by providing access to the information,
  - (c) whether providing access to the information will adversely affect the administration of justice,
  - (d) the extent to which the person seeking access may be affected by any proceedings to which the information relates,
  - (e) the reasons for which access is required,
  - (f) whether access to the information can reasonably be provided.
- (3) A court can impose conditions on an entitlement to access granted by leave of the court under this section.
- (4) The regulations can impose conditions on an entitlement to access conferred by the regulations under this section.

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Clause 7 Court Information Bill 2009

Part 2 Entitlement to access to court information

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## 7 News media access to restricted access information

- (1) A person acting on behalf of a news media organisation is entitled to access to restricted access information contained in any of the following court records unless the court otherwise orders in a particular case:
  - (a) a transcript of evidence received in proceedings held in closed court,
  - (b) a record admitted into evidence that is not a document in written form but that can readily be reproduced as a document in written form.
- (2) In this section:

*news media organisation* means a commercial enterprise engaged in the business of broadcasting or publishing news by any of the following means:

  - (a) a newspaper, magazine, journal or other periodical,
  - (b) a radio or television broadcasting service,
  - (c) an electronic service (including a service provided by the internet) that is similar to a newspaper, magazine, journal or other periodical or a radio or television broadcast.
- (3) A court can impose conditions on an entitlement to access under this section.
- (4) The entitlement to access under this section is in addition to the entitlement to access to open access information.

## 8 Access to court information by party to proceedings

- (1) A party to proceedings in a court and the party's legal representative are entitled to access to any court information that relates to the proceedings unless the court otherwise orders in a particular case.
- (2) The court can impose conditions on an entitlement to access under this section.
- (3) The entitlement to access under this section is in addition to the entitlement to access to open access information.
- (4) This section extends to:
  - (a) current proceedings, and
  - (b) proceedings that have been finalised, and
  - (c) proceedings that have been discontinued.

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Court Information Bill 2009

Clause 9

Entitlement to access to court information

Part 2

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### **9 Access under other laws**

This 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.

### **10 Restrictions on access—court orders and other laws**

A person is not entitled to access to court information under this Act if providing that access would contravene:

- (a) any order of a court that prohibits or restricts the publication or disclosure of information, or
- (b) provision made by or under any other Act or law that prohibits or restricts the publication or disclosure of information.

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Clause 11 Court Information Bill 2009

Part 3 How access to court information is provided

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## **Part 3 How access to court information is provided**

### **11 Methods of providing access**

- (1) A person who is entitled under this Act to access to court information is entitled to be provided with that access in any of the following ways:
  - (a) by being given a reasonable opportunity to inspect a court record (or a copy of a court record) that contains the information,
  - (b) by being provided with a copy of a court record that contains the information,
  - (c) by being provided with access to a court record (or copy of a court record) that contains the information together with such facilities as may be necessary to enable the information that the record contains to be read, viewed or listened to (as appropriate to the kind of record concerned),
  - (d) in the case of information contained in a court record that is in the form of a sound recording or in the form of a record in shorthand or other encoded material, by being provided with a written transcript of the words recorded.
- (2) A person is entitled to choose the way in which the person is to be provided with access but access can be provided in some other way if access in the way chosen by the person:
  - (a) would require the use of equipment that it is not reasonably practicable to access, or
  - (b) would not be appropriate, having regard to the physical nature of the record, or
  - (c) would involve an infringement of copyright, other than copyright owned by the State, the Commonwealth, another State or a Territory.
- (3) Access can be provided subject to reasonable conditions imposed for the purpose of ensuring the safe custody and proper preservation of court records.

### **12 Charging of fee for access**

- (1) A fee can be charged for providing access to court information under this Act.
- (2) The regulations may make provision for or with respect to the charging of fees for the providing of access to court information under this Act (including by prescribing the maximum fees that may be charged for providing access).

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Court Information Bill 2009

Clause 13

How access to court information is provided

Part 3

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### **13 Applications for access to court records**

The regulations may make provision for or with respect to the making and determination of applications for access to court information pursuant to an entitlement to access conferred by this Act.

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Clause 14 Court Information Bill 2009

Part 4 Privacy protection

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## Part 4 Privacy protection

### 14 Application of privacy laws

The *Privacy and Personal Information Protection Act 1998* does not apply to the providing of access to court information pursuant to an entitlement arising under this Act.

### 15 Courts to publicise privacy protection measures

Each court is 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 pursuant to an entitlement under this Act and the court's practices and procedures for preventing or limiting access to personal information.

### 16 Protection of person identification information

- (1) A court must establish practices and procedures for ensuring to the maximum extent reasonably practicable that the providing of access to open access information under this Act does not facilitate access to personal identification information.
- (2) For that purpose, a court may:
  - (a) provide access to open access information contained in a court record by providing access to a copy of the record from which personal identification information has been deleted or removed, and
  - (b) require or permit a court record filed or tendered by a party to proceedings to have personal identification information deleted or removed from the record or contained in a separate record.
- (3) A court is entitled to refuse to provide access to a court record that contains personal identification information (despite any entitlement to access to open access information that the record contains).
- (4) In this section, *personal identification information* means any of the following information concerning a person:
  - (a) tax file number,
  - (b) social security number,
  - (c) medicare number,
  - (d) financial account numbers,
  - (e) information in a passport,
  - (f) personal telephone number,
  - (g) date of birth (other than year of birth),

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Court Information Bill 2009

Clause 16

Privacy protection

Part 4

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- (h) home address (other than suburb, city and State or Territory),
- (i) other information that can be used to establish a person's identity and that is prescribed by the regulations as personal identification information for the purposes of this Act.

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Clause 17 Court Information Bill 2009

Part 5 Protection of court information

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## Part 5 Protection of court information

### 17 Security of court information

A court must take such security safeguards as are reasonable in the circumstances to ensure that the court information contained in the court records that the court holds is protected against misuse and unauthorised access, use or disclosure.

### 18 Unauthorised disclosure of court information

A person must not disclose court information obtained in the exercise of the person's functions as a court officer or in the execution or administration of this Act except:

- (a) with the consent of the person from whom the information was obtained, or
- (b) in the exercise of those functions or in the execution or administration of this Act, or
- (c) as authorised by the regulations, or
- (d) as otherwise authorised or required by law.

Maximum penalty: 50 penalty units.

### 19 Conditions of access to court information

- (1) A person who is provided with access to court information pursuant to an entitlement under this Act must not use the information for a purpose or in a manner that is contrary to any condition of access.
- (2) A *condition of access* is a condition imposed by the court or by the regulations that restricts the use of court information to which access is provided pursuant to an entitlement under this Act.

Maximum penalty: 100 penalty units.

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Court Information Bill 2009

Clause 20

Miscellaneous

Part 6

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## **Part 6 Miscellaneous**

### **20 Protection in respect of disclosure of court information**

- (1) If court information is disclosed pursuant to an entitlement under this Act:
  - (a) no action for defamation or breach of confidence lies against the Crown, a court or a court officer by reason of the disclosure of information, and
  - (b) no action for defamation or breach of confidence in respect of any publication involved in, or resulting from, the disclosure of information lies against the author of a record containing the information or any other person by reason of the author or other person having supplied the record to a court, and
  - (c) neither the person by whom the disclosure is made nor any other person concerned in disclosing the information is guilty of an offence merely because of the disclosing of the information.
- (2) The giving of access to court information pursuant to an entitlement under this Act does not constitute, for the purposes of the law relating to defamation or breach of confidence, an authorisation or approval of the publication of a record containing the information or its contents by the person to whom access to the information is given.

### **21 Personal liability**

No matter or thing done by a court officer, or by any person acting under the direction of a court officer, if the matter or thing was done in good faith for the purposes of executing this Act, subjects the court officer or person so acting, personally to any action, liability, claim or demand.

### **22 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.

### **23 Nature of proceedings for offences**

Proceedings for an offence under this Act or the regulations may be dealt with summarily before the Local Court.

### **24 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

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Clause 24      Court Information Bill 2009

Part 6          Miscellaneous

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- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

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Court Information Bill 2009

Savings, transitional and other provisions

Schedule 1

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

### **Part 1    General**

#### **1    Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:  
this Act
- (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.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (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
  - (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.