

Passed by both Houses



New South Wales

# Court Information Bill 2010

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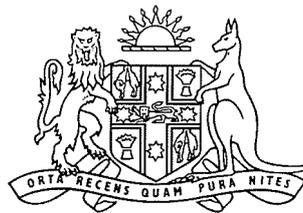
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*I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.*

*Clerk of the Legislative Assembly.  
Legislative Assembly,  
Sydney, , 2010*



New South Wales

## **Court Information Bill 2010**

Act No , 2010

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

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*I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.*

*Assistant Speaker of the Legislative Assembly.*

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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 2010*.

### **2 Commencement**

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

### **3 Objects**

The objects of this Act are as follows:

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

### **4 Definitions**

(1) In this Act:

***civil proceedings*** means any proceedings other than criminal proceedings.

***conclusion of proceedings***—see section 7.

***court*** means each of the Supreme Court, Land and Environment Court, Industrial 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

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such proceedings) or a record of or comprising written submissions made by a party to proceedings,

- (b) a record of any proceedings before the court (including a record of the dates on which proceedings are heard or to be heard and a record of the name of the judicial officer who heard or is officially listed to hear proceedings),
- (c) a record of judgment given and any directions given or orders made in proceedings before the court, including in connection with case management and listing of proceedings,
- (d) a record admitted into evidence by the court in connection with proceedings before the court.

***criminal proceedings*** means proceedings against a person for an offence (whether summary or indictable), and includes the following:

- (a) committal proceedings,
- (b) proceedings relating to bail,
- (c) proceedings relating to sentence,
- (d) proceedings on an appeal against conviction or sentence.

***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 5.

***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) passport number,
- (f) personal telephone number,
- (g) date of birth (other than year of birth),
- (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.

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

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

**restricted access information**—see section 6.

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

## 5 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 13.

### (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) written submissions made by a party to proceedings,
- (c) a police fact sheet, statement of facts or any similar document summarising the prosecution's case, but not if the proceedings have been set down for trial by jury and have not concluded,

**Note.** This information is restricted access information after proceedings have been set down for jury trial and during the trial. See section 6 (2) (d).

- (d) a transcript of proceedings in open court,
- (e) statements and affidavits admitted into evidence in proceedings, including expert reports,
- (f) a record of any judgment given and any direction given or order made in proceedings, including in connection with case management and court listing of proceedings and including a record of a conviction in criminal proceedings,
- (g) a record of the dates on which proceedings are heard or to be heard and a record of the name of the judicial officer who heard or is officially listed to hear proceedings,
- (h) 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 proceedings when the court first has an opportunity to consider any objection by the parties to the inclusion of any information in the originating process or pleadings (including in

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any cross-claim) or the proceedings have concluded, whichever happens first,

- (b) any notice filed by a party to proceedings,
- (c) written submissions made by a party to proceedings,
- (d) a transcript of proceedings in open court,
- (e) statements and affidavits admitted into evidence in proceedings, including expert reports,
- (f) a record of any judgment given and any direction given or order made in proceedings, including in connection with case management and court listing of proceedings,
- (g) a record of the dates on which proceedings are heard or to be heard and a record of the name of the judicial officer who heard or is officially listed to hear proceedings,
- (h) such other records as may be prescribed by the regulations.

#### **6 Restricted access information**

- (1) Any court information that is not open access information is restricted access information.
- (2) In addition, the following information that would otherwise be open access information is restricted access information:
  - (a) 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, and statements and affidavits admitted into evidence (including expert reports) in, proceedings on a *voire dire*,
  - (d) a police fact sheet, statement of facts or any similar document summarising the prosecution's case in proceedings set down for trial by jury, but only after the proceedings have been set down for trial by jury and until the proceedings are concluded,  
**Note.** This information is open access information before the proceedings are set down for trial by jury and after the proceedings are concluded.
  - (e) information contained in a statement that comprises a medical, psychiatric, psychological or pre-sentence report, except information contained or summarised in a judgment given or orders made in proceedings,
  - (f) information contained in a statement of a person's criminal record, except information contained or summarised in a judgment given or orders made in proceedings,

- (g) information contained in a transcript of, and statements and evidence admitted into evidence in, proceedings on an application to a court for an order to prohibit or restrict the publication or disclosure of information, but only while proceedings on the application are pending,

**Note.** If the proceedings result in the making of an order prohibiting or restricting the publication or disclosure of information, section 13 may prevent access to the information.

- (h) information contained in a victim impact statement, other than information contained in a transcript of proceedings in open court or in a record of any judgment given or order made in proceedings,
- (i) information contained in a letter of comfort provided by or on behalf of the prosecution in connection with criminal proceedings, other than information contained in a transcript of proceedings in open court or in a record of any judgment given or order made in proceedings.

## 7 Conclusion of proceedings

- (1) Civil proceedings are concluded when judgment is given or entered in the substantive proceedings or the substantive proceedings are withdrawn, dismissed or discontinued.
- (2) Criminal proceedings are concluded when the accused person is discharged or acquitted or the court makes a finding (or accepts a plea) that the accused person is guilty. If an accused person convicted of an offence is to be sentenced, the proceedings are not concluded until sentence has been imposed.
- (3) The committal of an accused person for trial or sentence at the conclusion of committal proceedings is not the conclusion of the criminal proceedings of which the committal proceedings form part.
- (4) Proceedings in respect of bail are concluded when they are finally disposed of, including by being withdrawn, dismissed or discontinued.
- (5) An appeal against a decision in proceedings does not prevent the proceedings being regarded as concluded. Proceedings on the appeal are to be regarded as separate proceedings and a pending appeal does not prevent the decision appealed against constituting the conclusion of the earlier proceedings.

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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 13.

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.

### 8 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) The court may in a particular case impose conditions on the way in which access to court information is to be provided under this section or that restrict the disclosure or use of court information to which access is provided under this section.

### 9 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 may take the following matters into account to the extent to which it considers them relevant:
  - (a) the public interest in access to the information being provided,
  - (b) the extent to which the principle of open justice will be adversely affected if access is not provided to the information,
  - (c) the extent to which an individual's privacy or safety will be compromised by providing access to the information,
  - (d) the extent to which providing access to the information will adversely affect the administration of justice,
  - (e) the extent of the person's interest or involvement in the proceedings or other matter to which the information relates,
  - (f) the reasons for which access is sought,
  - (g) such other matters as the court considers relevant in the particular circumstances of the case.
- (3) A court can impose conditions on access granted by leave of the court under this section.
- (4) The regulations can impose conditions on access conferred by the regulations under this section.

- (5) Conditions imposed under this section by the court or the regulations can only relate to the way in which access is to be provided or restrict the disclosure or use of information to which access is provided.

**10 News media access to restricted access information**

- (1) A news media organisation is entitled to access to any of the following court information that is restricted access information unless the court otherwise orders in a particular case:

- (a) information contained in a transcript of proceedings in closed court,
- (b) information contained in a transcript of, and statements and affidavits admitted into evidence in, proceedings on a *voire dire*, but only after the conclusion of the proceedings in the course of which the *voire dire* proceedings are held,
- (c) information contained in a transcript of, and statements and evidence admitted into evidence in, proceedings on an application to a court for an order to prohibit or restrict the publication or disclosure of information,

**Note.** Information in a court record referred to in paragraph (c) is restricted access information only during the proceedings. After the proceedings are concluded, the information will be open access information but entitlement to access will be subject to any order restricting or prohibiting publication or disclosure that results from the proceedings.

- (d) information contained in a court record if the only restricted access information the record contains is personal identification information,
- (e) information contained in the brief of evidence in criminal proceedings,
- (f) information contained in a record admitted into evidence that is a document in written form or that can readily be reproduced as a document in written form.

- (2) The court may in a particular case impose conditions on the way in which access to court information is to be provided under this section or that restrict the disclosure or use of court information to which access is provided under this section.

- (3) A news media organisation must not publish any personal identification information to which it obtains access under this section except with the permission of the court or of the person to whom the personal identification information relates.

Maximum penalty: 250 penalty units.

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(4) The entitlement to access under this section is in addition to the entitlement to access to open access information.

(5) In this section:

**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.

#### **11 Access to court information by party to proceedings**

(1) A party to proceedings 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 may in a particular case impose conditions on the way in which access to court information is to be provided under this section or that restrict the disclosure or use of court information to which access is provided 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 proceedings that have been concluded.

**Note.** See section 7 for the meaning of **concluded**.

#### **12 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.

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

There is no entitlement 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) any provision made by or under any other Act or law that prohibits or restricts the publication or disclosure of information.

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

### **14 Methods of providing access**

- (1) A person who is entitled under this Act to access to court information can 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 any means provided for by the rules,
  - (d) by any other means that the court considers to be appropriate in a particular case.
- (2) In deciding how access to court information is to be provided to a person, the court is to consider any preference that the person expresses as to how access is to be provided.
- (3) The court can impose reasonable conditions on the provision of access for the purpose of ensuring the safe custody and proper preservation of court records.
- (4) The court may refuse to provide access to court information in a particular case if:
  - (a) providing access would require an unreasonable diversion of the court's resources, or
  - (b) it is necessary to refuse access to ensure the safe custody and proper preservation of court records (but only if this cannot be ensured by the imposition of reasonable conditions on the provision of access).

### **15 Charging of fees for access**

- (1) A fee can be charged for providing access to court information under this Act.
- (2) Regulations under this Act or the *Civil Procedure Act 2005* may make provision for or with respect to the charging of fees for the provision of access to court information under this Act, including provision for or with respect to:
  - (a) the maximum fees that may be charged for providing access, and
  - (b) the waiver, reduction or refund of any fee payable or paid for providing access.

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## **Part 4 Privacy protection**

### **16 Application of privacy laws**

The *Privacy and Personal Information Protection Act 1998* and the *Health Records and Information Privacy Act 2002* do not apply to the providing of access to court information pursuant to an entitlement arising under this Act.

### **17 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.

### **18 Personal identification information**

- (1) For the purpose of facilitating access to court records, a court must ensure to the maximum extent reasonably practicable that court records that contain open access information do not contain personal identification information.
- (2) For that purpose, the rules may make provision for or with respect to:
  - (a) the providing of 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) the filing or tendering of court records that have had personal identification information deleted or removed from the record or contained in a separate record.

## Part 5 Protection of court information

### 19 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 court records is protected against misuse and unauthorised access, use or disclosure.

### 20 Unauthorised disclosure and use of court information

- (1) A person must not disclose or use court information obtained in the exercise of the person's functions as a court officer or in the execution or administration of 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.
- (2) A person must not induce or attempt to induce another person to disclose or use court information in contravention of subsection (1).
- (3) If a court officer discloses court information by providing access to the information and believes in good faith when providing access to the information that this Act permits or requires that access to be provided, the officer is deemed to have disclosed the information in the execution of this Act.

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

### 21 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 disclose or use the information for a purpose or in a manner that the person knows 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 disclosure or use of court information to which access is provided pursuant to an entitlement under this Act.

Maximum penalty: 100 penalty units.

## **Part 6 Miscellaneous**

### **22 Exercise of functions by court officers**

- (1) The senior judicial officer of a court may, by instrument in writing:
  - (a) direct that any function of the court under this Act may be exercised by such registrars or other officers of the court, and in such circumstances and subject to such conditions, as are specified in the instrument, and
  - (b) vary or revoke any such instrument.
- (2) Without limiting any other functions he or she may exercise, a registrar or other officer of a court may exercise any function conferred on such an officer by the rules.
- (3) This section does not limit any provision of the Act by which a court is constituted with respect to the exercise of the court's functions.

### **23 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 the information, and
  - (b) no action for defamation or breach of confidence in respect of any publication involved in, or resulting from, the disclosure of the 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.

### **24 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.

**25 Rules of court**

- (1) The Uniform Rules Committee under the *Civil Procedure Act 2005* may make rules, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed by rules or that is necessary or convenient to be prescribed by rules for carrying out or giving effect to this Act.
- (2) In particular, the rules may make provision for or with respect to the following matters:
  - (a) the practice and procedure to be followed in respect of proceedings under this Act and any matters incidental to or relating to that practice and procedure,
  - (b) the procedure for applying for access to court information under this Act,
  - (c) the means by which access can be provided to court information under this Act,
  - (d) the duties of registrars and other officers of a court in relation to or for the purpose of the operation of this Act,
  - (e) the forms to be used in connection with the operation of this Act.
- (3) Rules made by the Uniform Rules Committee for the purposes of this Act are to form part of the rules made by that Committee under the *Civil Procedure Act 2005*.

**26 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 by regulation or that is necessary or convenient to be prescribed by regulation for carrying out or giving effect to this Act.

**27 Nature of proceedings for offences**

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

**28 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.
- (2) The review is to be undertaken as soon as possible after the period of 2 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 2 years.

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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 on the NSW legislation website, 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.

### **Part 2    Provisions consequent on enactment of this Act**

#### **2    Redaction of personal identification information**

Section 18 (Personal identification information) does not apply in respect of a court record created before the commencement of that section.

## **Schedule 2 Amendments**

### **2.1 Criminal Procedure Act 1986 No 209**

#### **Section 314 Media access to court documents**

Omit the section.

### **2.2 Local Court Rules 2009**

#### **Rule 8.10 Copies of court records**

Omit the rule.

### **2.3 Uniform Civil Procedure Rules 2005**

#### **[1] Rule 36.12 Registrar to furnish copies of judgments and other documents**

Omit rule 36.12 (2).

#### **[2] Rule 36.12 (3)**

Omit “Despite subrules (1) and (2)”. Insert instead “Despite subrule (1)”.