



19 February 2010

C62, 69.4  
RM;rp

Mr Jerome Maguire  
Chief Executive Officer  
Attorney-General's Department and  
Department of Justice  
DX 336  
ADELAIDE SA

Dear Jerome

***Suppression and Non-publication Orders Bill***

I refer to a letter of 10 December 2009 in which you invited comments on the above Bill, which seeks to harmonise areas of suppression orders legislation which is being considered by the National Justice Chief Executive Officers Group and which has been released for consultation.

The Bill was referred to the Society's Criminal Law Committee. The extension of the concept of suppression to non-disclosure places a very high, often unattainable, onus on those possessing the information. In the abstract it might appear to be a sound concept, but providing a power to a Court to order confidentiality in apparently non-exceptional situations creates a great risk that the orders will have unintended consequences – to the detriment of the possessor of information.

The following comments are provided Comments on individual clauses follow:

- cl 5(a): *"proper administration of justice"* should be defined;
- cl 5(b): the concept of *"the defence, security of law enforcement interests....or the international relations interests of the Commonwealth"* is too wide and remote. The concept should be defined to provide clarity. In this regard see also cl 6(3)(c), 11(3)(c) and 12(3)(c);
- cl 5(c): delete *"significantly"*. It creates uncertainty and is unnecessary;
- cl 6(2)(b): the term *"sufficient interest"* is too vague and uncertain. It should be defined, and narrowed. In this regard see also cl 6(3)(e), 11(3)(e) and 12(3)(e);
- cl 6(3)(d): *"news publisher"* should be defined (and wherever else the term appears);

- cl 7(2): it's effectively meaningless to mention "72 hours" without it being a limit. The use of the term "wherever practicable" takes away from the 72 hour supposed limit. It is better to impose a limit (in hours) but with the ability to extend the operation of the interim order by application to the Court made before the expressed limit expires;
- cl 8(2): it is not clear how the order can extend to "any other specified Australian jurisdiction or throughout Australia";
- cl 9 & 10: the relationship between these clauses is confusing. Clause 10(3) should be expressed to be subject to cl 9;
- cl 11(2): "all rights of appeal as of right" may need defining or rewording - possibly via the deletion of "as of right";
- cl 12(1)(b): a decision not to review should not be the subject of an appeal. Granting rights of appeal to such decisions can be complicated. Such a decision should be left to judicial review;
- cl 13: "public official functions" should be defined;
- cl 14(1): this is an indictable offence. It currently reads as an absolute/strict liability offence. Given the high maximum penalty, it shouldn't be. The consequences are too harsh. A mental element (knowledge, deliberate, reckless etc) should be inserted;
- cl 14 (2)-(4): this clause is confusing. It appears to allow a person to be prosecuted for an offence and a contempt provided they are not "punished" twice. Query what "punished" means. Query also whether a person can be convicted of the offence AND found to be in contempt. This should be clarified because it raises *autrefois convict* issues even though cl 14(4) is expressed in contrary terms.

I trust this response is of assistance to you.

Yours sincerely



Richard Mellows  
**PRESIDENT**

cc Ms J Selth