



County Court of Victoria

Access to Court Records

Discussion Paper

This discussion paper has been prepared to inform litigants, the profession, and interested parties that information about them and / or their case may be available to others and to seek feedback or suggestions about this document from interested parties.

Please forward any comments or feedback to feedback@countycourt.vic.gov.au

Please include in the email subject line the following statement: *feedback – access to court records*

November 2005

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INTRODUCTION.

- 1 A Working Party was established in November 2003 under the sponsorship of the Executive Committee of the Council of Judges to develop protocols for access to information on the Court Record for the County Court Victoria. The Working Party has consisted of Judge Wodak, Principal Registrar Ann Matheson and previously Fin McRae, Civil Listings Manager Kate Spillane, Client Services Manager Damian James, Criminal Listings Managers Ian McPhee and currently Anthony Gwynne, Librarian Ian Edwards, Court IT Group Manager Hans Wolf, Senior Deputy Registrar Terry Kearney and Executive Associate, Marilyn Heard. This Working Party made the following recommendations to the Executive Committee, which agreed to forward the matter to the Council of Judges for consideration. The Council of Judges in November 2005 endorsed the release of the paper for discussion.

RECOMMENDATIONS.

- The court develop a Discussion Paper, including reference to the relevant law, on access to records and privacy considerations and publish this so that litigants and all court users are aware that information concerning their case may be available to others.
- Once a Discussion Paper is agreed upon the court will consult with court users, through the; County Court Litigation Lawyers Committee, Criminal Users Group, Law Institute of Victoria, Bar Council, Victoria Legal Aid, Privacy Commissioner and others. Consideration should also be given to publishing the Discussion Paper on the court's website for public comment.
- Once a policy statement is agreed upon the Court consider reviewing and adding to the County Court Rules or requesting amendments to the County Court Act to give effect to the policy.

PREAMBLE TO ACCESS TO COURT RECORDS POLICY

- 2 In the past, the demand for access to information held by Courts was limited by “practical obscurity”. The necessity of attending at a courthouse to obtain information resulted in limited demand for public access to information. More recently, on-line electronic access has enabled those who have no direct interest in a case, such as casual browsers, to obtain access to huge volumes of data. Ease of access makes data more attractive to information service brokers and marketers. As a result, courts need to recognise the impact of the pace of technological change with respect to access and adapt their procedures accordingly.
- 3 Courts world-wide are facing the need to address the issue of balancing the concept of access to information against competing privacy concerns. It is desirable that the County Court establish an access to court records policy which recognises the relationship between the promotion of open justice and an individual’s right to privacy.
- 4 In satisfying its responsibilities to the community the County Court needs to advise parties and court users that information about their case may be more widely available today than in the past. Parties and their legal representatives should also be aware of the right to make application to the court to limit access to information. Such policies can be made available through practice notes and the Court website.
- 5 It is appropriate that the County Court determine what information is to be accessible and maintain such information within its records.

DEFINITIONS.

- 6 Court record – is used to include pleadings, orders, affidavits, transcript, judgments etc, that is to say, documents created by the parties, their counsel, or a judicial official or his/her designate. Correspondence to and from the court and the parties and reports requested by judicial officers will also be

considered part of the court record.

- 7 Docket Information – is used to include documents prepared manually by court staff or automatically by data entered into a computer such as a listing of court records in a court file.
- 8 Court file – includes both of the above bearing in mind that some docket information will not be physically in the court file but resides in ledgers or databases¹.
- 9 “Parties” includes a self represented litigant, the solicitor on the record, partner or employee solicitor on the records, barrister instructed by the solicitor on the record or an agent authorised in writing.

GENERAL.

- 10 It is recommended that the Daily Lists containing information about the names of cases continue to be published in the Age newspaper, the court’s website, and internally within the County Court and the Department of Justice.
- 11 The Court’s Information Officer should continue to be the first point of contact for any media enquiries.
- 12 Any applications by the media for the release of information from court proceedings such as photographs etc. be made to the trial judge, before or during the trial. (After the trial is concluded, there needs to be a process designed, as the trial judge is functus officio, and in any event may be unavailable).
- 13 This policy is to be read in conjunction with the Judicial Proceedings Reports Act 1958. See Appendix A.

¹ Adapted from a paper by Anne Wallace, Australian Institute of Judicial Administration. “*Overview of Public Access and Privacy Issues*” Presented at “Courts for the 21st Century: Public Access, Privacy and Security” Conference at Queensland University of Technology School of Law and the Supreme Court of Queensland. November 6 2003.

CIVIL.

- 14 The current position with regard to searching of civil files should continue. That is; generally and upon payment of the prescribed fee, non parties can search a civil file. For a full statement of the relevant County Court Rules of Procedure in Civil Proceedings 1999 please refer to Appendix B.
- 15 Access to civil files electronically should continue under the present arrangements. That is all court users, parties and non parties, continue to access Court Connect to view case listing information, some orders and types of documents filed, but not the contents of the documents.
- 16 Upon application the court may, in certain circumstances, restrict access to court files.

ADOPTIONS.

- 17 The current position in relation to adoptions should continue, that is there be no access to adoption files, either electronically or by any other means, except as exists under the Adoption Act (1984).

CRIMINAL.

- 18 That there be limited access to parties to criminal or appeal files, before and after the trial, at the discretion of the Registrar on a case by case basis. The purpose for which a party seeks access to a file and it's intended use will be considered in the exercise of this discretion.
- 19 During the trial any requests by parties for access is to be referred to the trial judge.
- 20 That there be no access to criminal or appeal files by non parties without an order of the court. Where possible these applications should be made to the trial judge before or during the trial.(After the trial is concluded, there needs to be a process designed, as the trial judge is functus officio, and in any event may be unavailable).

- 21 That there be no access electronically via Court Connect to criminal or appeal files apart from the current arrangements regarding future listings. Only the cases listed before the “6 cylinder” judges are available on the website. This indicates case number, name of accused, solicitor for accused, and type of hearing, eg trial or plea, date listed and time listed. This current limited criminal listing information should remain accessible via the internet.
- 22 Certified Extracts of verdicts and sentences and Appeal cases be made available upon reasonable written request to the Registry. In assessing what is “reasonable” the stated purpose and intended use of the information will be taken into account.
- 23 If there is a suppression order in existence no certified extract will be provided, without the leave of the judge who made the suppression order.
- 24 Discharged jurors presently obtain information regarding the results of County Court cases from the general enquiry line in criminal registry. Recommend that discharged jurors continue to be supplied with sentencing information by this method.
- 25 Copies of sentences are currently available from the County Court Library. This will need to be reconsidered when the sub –committee of the Executive Committee report back on the question of publication of sentences on the website.

CHILDREN’S COURT APPEALS.

- 26 Appeals from the Children’s Court continue to be described by an acronym in the Daily List.
- 27 The present prohibitions under the Children & Young Persons Act (1989) apply to those cases appealed to the County Court. See Appendix C.

REQUESTS TO CONDUCT RESEARCH OR OBTAIN STATISTICAL DATA

Academic or Commercial Research.

28 It is proposed that the following process be followed for approval of academic or commercial research;

1. Any application to conduct research utilising the Court Records should be made in writing to the Chief Judge at the earliest possible stage prior to research commencing.
2. Applications are to include the following:
 - a. Scope, summary / précis, hypothesis, etc.
 - b. Confirmation of authorisation or commission of research paper from the relevant Academic Institution or Company.
 - c. Any questionnaires, plain language statements and/or participant information sheets, informed consent forms, promotional materials for recruitment and any other documentation relevant to the research.
 - d. Any information from the relevant institutions' ethics committee if applicable or a statement of any ethical issues involved in the proposed research to enable the County Court to determine whether the research gives adequate consideration to participants' welfare, rights, privacy, beliefs, perceptions, customs and cultural heritage, at both the individual and collective levels.
 - e. Clear identification of all researchers, supervisors, participating agencies, sponsors or funding bodies identified, including full disclosure of all relationships which exist between these parties and participants which could lead to a conflict of interest.

- f. The amount and sources or intended sources of funding for the research and any affiliation or financial interest.
 - g. Where proposal for research is sponsored by commercial entities which themselves employ consultants in relation to the research, the name of the consultant and the specific role of that person with respect to the research is fully detailed.
 - h. If a financial contribution or reimbursement is being offered to participants, the specific amount is made clear in the application and in the plain language statement for participants, and is not an inducement for obtaining informed consent.
 - i. An undertaking that no personal information obtained by the researcher be published in line with the requirements of the Judicial Proceedings Reports Act 1958 by researcher/s signed and attached.
3. The Chief Judge may refer a research proposal to a judge or committee for consideration and recommendation.
 4. The Chief Judge may refer an application for approval of research to the Department of Justice Research Ethics Committee for consideration and recommendation.
 5. Once approved by the Court a letter of approval will be prepared and forwarded to the researcher.
 6. The Librarian will keep a record of all applications for research projects.

Data Requests.

- 29 The court will consider requests for data and statistics on a case by case basis and take the following into account;

1. The purpose for which the information is required and how it is to be used.
 2. The Court will take into account if this is information that is generally available to the public.
- 30 If time consuming to compile, charge a published standard scale of fees for cost of retrieval from CLMS and compilation of required data.

FUTURE CONSIDERATIONS.

Civil

- a. Civil orders be accessible on the internet via Court Connect.
- b. A statement should be drafted to make it clear that the court does not consent to the indexing of any databases via the internet and indicate what measures are in place to prevent that from occurring.
- c. The court continue to develop the use of medium neutral citation with a view to publication of all civil judgments as soon as possible.

Criminal

- a. The court should discuss with VGRS regarding the current arrangements regarding access to transcripts.
- b. The court publish criminal sentences.
- c. Future Monthly Criminal Trial Lists be published on the County Court website.

Amending Sentences and Judgments for Publication²

- a. Judges consider whether a person's full date of birth is necessary in a judgment or sentence. The month or year may be sufficient.
- b. Judges consider the extent to which personal information about a witness or party is essential to the reasons for decision.
- c. Victim's or witness's names not be disclosed in full or at all.
- d. Residential addresses not be disclosed unless essential.
- e. Family relationships not be disclosed unless essential.

² Adapted from a paper. "*Judicial Writing in an Electronic Age*" by Justice Debra Mullins Supreme Court of Queensland. 21 December 2004.

Appendix A

Judicial Proceedings Reports Act (1958).

http://www.dms.dpc.vic.gov.au/Domino/Web_Notes/LDMS/PubLawToday.nsf/a12f6f60fd56800ca256de500201e54/986ea36f3bc85e07ca256ede007dedb1!OpenDocument

3. Restriction on publication of reports of judicial proceedings
- (1) It shall not be lawful to print or publish or cause or procure to be printed or published—
- (a) in relation to any judicial proceedings any indecent matter or indecent medical surgical or physiological details being matter or details the publication of which would be calculated to injure public morals; or
 - (b) in relation to any judicial proceedings for dissolution of marriage, for nullity of marriage, for judicial separation, or for restitution of conjugal rights, any particulars other than the following, that is to say—
 - (i) the names addresses and occupations of the parties and witnesses;
 - (ii) a concise statement of the charges defences and counter-charges in support of which evidence has been given;
 - (iii) submissions on any point of law arising in the course of the proceedings and the decision of the court or judge thereon;
 - (iv) the summing-up of the judge and the finding of the jury (if any) and the judgment of the court and observations made by the judge in giving judgment:

Provided that nothing in paragraph (b) of this sub-section shall be held to permit the publication of anything contrary to the provisions of paragraph (a) of this sub-section; or
 - (c) except as provided in this section in relation to a hearing under section 5 of the **Crimes (Criminal Trials) Act 1993**, any matters other than—
 - (i) the identity of the court and name of the judge constituting it;
 - (ii) the names, ages, home addresses and occupations of the accused and witnesses;
 - (iii) any relevant business information;

- (iv) the offence or offences, or a summary of it or them;
 - (v) the names of legal practitioners engaged in the proceeding;
 - (vi) if the proceeding is adjourned, the date and place to which it is adjourned and bail arrangements on the adjournment.
- (1A) The following is relevant business information for the purposes of sub-section (1)(c)(iii)—
- (a) any address used by the accused for carrying on a business on the accused's own account;
 - (b) the name of any business which the accused was carrying on, on the accused's own account, at the time when events giving rise to the charge or charges occurred;
 - (c) the name and address of any firm in which the accused was a partner at that time or by which at that time the accused was engaged under a contract of service or a contract for services;
 - (d) the name and address of the registered or principal office of any company of which the accused was a director at that time or by which at that time the accused was engaged under a contract of service or a contract for services;
 - (e) any working address of the accused in his or her capacity as a person engaged by a company referred to in paragraph (d).
- (1B) At a hearing under section 5 of the **Crimes (Criminal Trials) Act 1993**, the court may, on the application of the accused or, if there are more than one, any one of the accused, order that sub-section (1)(c) shall not apply to reports of that hearing.
- (1C) If an accused is not represented by a legal practitioner at a hearing referred to in sub-section (1B), the court must explain to the accused the restrictions imposed by sub-section (1)(c) and inform the accused about the court's power under sub-section (1B).
- (1D) If a hearing at which an order has been made under sub-section (1B) is adjourned, the court must, on resuming the hearing, announce that the order has been made.
- (1E) It is not unlawful under this section to print or publish or cause or procure to be printed or published any matter relating to a hearing referred to in sub-section (1)(c) after the conclusion of the trial of the person charged or of the last of the persons charged to be tried.
- (2) It shall not be lawful to sell distribute or give away or cause or procure to be sold distributed or given away or to have in possession for sale distribution or giving away any newspaper or document (whether printed or published in Victoria or elsewhere) containing or purporting to contain any matter or details or particulars the printing or publication of which would if the newspaper or document were printed or published in Victoria be a contravention of the provisions of this section. For the purposes of this sub-section "**newspaper**"

and "**document**" have respectively the like meanings as in section 1.3 of the **Gambling Regulation Act 2003**.

- (3) If any person acts in contravention of the provisions of sub-section (1) or of sub-section (2) of this section such person shall in respect of each offence be liable if a corporation to a penalty of not more than 50 penalty units and if any other person to a penalty of not more than 20 penalty units or to imprisonment for a term of not more than four months or to both such penalty and imprisonment:

Provided that no person other than a proprietor, editor, master printer or publisher shall be liable to be convicted under sub-section (1) of this section:

Provided further that where a person who is guilty of any offence under this section is a corporation, any person being a member of the governing body, director, manager, or secretary of such corporation shall be deemed to have committed the like offence and be liable to the pecuniary penalty or imprisonment or both provided by this Act in the case of such an offence by a person other than a corporation accordingly, unless he proves that the act or omission constituting the offence took place without his knowledge or consent.

- (4) No prosecution for an offence under this section shall be commenced by any person without the sanction of the Director of Public Prosecutions.
- (5) Nothing in this section shall apply to the printing selling distributing giving away or having in possession of any pleading, transcript of evidence or other document for use in connexion with any judicial proceedings or the communication thereof to persons concerned in the proceedings, or to the printing or publishing of any notice or report in pursuance of the directions of the adjudicating magistrate or judge or court; or to the printing publishing selling distributing giving away or having in possession of any matter in any separate volume or part of any bona fide series of law reports which does not form part of any other publication and consists solely of reports of proceedings in courts of law, or in any publication of a technical character bona fide intended for circulation among members of the legal or medical professions.
- (6) In this Act "**judicial proceedings**" means judicial proceedings whether in Victoria or elsewhere.
- (7) This section shall be read and construed as in aid and not in derogation of the provisions of section 66 of the **Maintenance Act 1965**.

4. Prohibition of reporting of names

- (1) In this section—

"publish" means—

- (a) insert in a newspaper or other periodical publication; or
- (b) disseminate by broadcast, telecast or cinematograph; or
- (c) disclose by any means to any other person—

other than for a purpose connected with a judicial proceeding;

"sexual offence" means an offence under subdivision (8A), (8B), (8C), (8D) or (8E) of Division 1 of Part I of the **Crimes Act 1958** or under any corresponding previous enactment or an attempt to commit any such offence or an assault with intent to commit any such offence.

- (1A) A person who publishes or causes to be published any matter that contains any particulars likely to lead to the identification of a person against whom a sexual offence, or an offence where the conduct constituting it consists wholly or partly of taking part, or attempting to take part, in an act of sexual penetration as defined in section 35 of the **Crimes Act 1958**,ⁱ is alleged to have been committed is guilty of an offence, whether or not a proceeding in respect of the alleged offence is pending in a court.
- (1B) If a proceeding in respect of the alleged offence is not pending in a court at the relevant time, it is a defence to a charge under sub-section (1A) for the accused to prove—
- (a) that no complaint about the alleged offence had been made to a member of the police force before that time; or
 - (b) that the matter was published or caused to be published in accordance with the permission of—
 - (i) the Supreme Court, the County Court or the Magistrates' Court granted on an application by a person; or
 - (ii) the person against whom the offence is alleged to have been committed.
- (1C) If a proceeding in respect of the alleged offence is pending in a court at the relevant time, it is a defence to a charge under sub-section (1A) for the accused to prove that the matter was published or caused to be published in accordance with the permission of that court granted on an application by a person.
- (2) Any person who is guilty of an offence under sub-section (1A) is liable, if a corporation, to a penalty of not more than 50 penalty units and, if a person other than a corporation, to a penalty of not more than 20 penalty units or to imprisonment for a term of not more than four months or to both such penalty and imprisonment.
- (3) Where a corporation is guilty of an offence against this section any person being a member of the governing body or being a director manager or secretary of the corporation shall severally be deemed to have committed the offence and shall be liable to the aforesaid penalty or imprisonment or both unless he proves that the offence by the corporation took place without his knowledge or consent.
- (4) No prosecution for an offence under this section shall be commenced by any person without the sanction of the Director of Public Prosecutions.”

Appendix B

County Court Miscellaneous Rules (1999)

Chapter 2 County Court Miscellaneous Rules 1999 - Order 5

5.02 Registrar to permit searches in most cases

- (1) The Registrar shall when requested in writing containing sufficient particulars and on payment of any prescribed fee, cause a search to be made in the books and registers in the Registrar's custody.
- (2) Unless the Court otherwise orders, the Registrar shall on payment of any prescribed fee permit any person to search any documents filed in any proceeding.
- (3) This Rule does not apply to any register or to any documents relating to any proceeding under the Adoption Act 1984 (or any corresponding previous or subsequent enactment).
- (4) If at any time the Registrar requires directions as to whether any search shall be made, the Registrar shall apply to a Judge and until the Judge so directs, no such search shall be made.

INSPECTION OF DOCUMENTS – ORDER 28.05

28.05 (1) When the office of the Court is open, any person may, on payment of the proper fee, inspect and obtain a copy of any document filed in a proceeding.

(2) Notwithstanding paragraph (1)—

- (a) no person may inspect or obtain a copy of a document which the Court has ordered remain confidential;
- (b) a person not a party may not without leave of the Court inspect or obtain a copy of a document which in the opinion of the Prothonotary [Registrar] ought to remain confidential to the parties.

[I 28.05.0] Confidential documents.

For a comparison of r 28.05 with the former O 61 r 17, see *Re a Former Officer of the Australian Security Intelligence Organisation* [1987] VR 875 at 878.

Rule 28.05 supports the view that most documents filed in the court are available for public inspection, although it does not follow that for the purpose of the law of defamation that the contents of the documents may be freely published or attract qualified privilege. See *Little v State of Victoria (No 3)* [1990] VR 257 at 288; *Smith v Harris* [1996] 2 VR 335 at 349–350.

PRODUCTION OF COURT DOCUMENT – ORDER 28.06

28.06 Production to the Court of a document in a proceeding shall be obtained by filing a notice to produce the document in the office of the Registrar or, where the document is in an office of the Court outside Melbourne, in that office.

SUBPOENAED FILES (To Produce Documents) O. 42

[I 42.06] Production before date for attendance

- 42.06 (1) A subpoena for production requiring production before the Court or an officer of the Court shall, unless the Court otherwise orders, permit the person named, instead of producing the document or thing before the Court or officer of the Court, to produce it to the Prothonotary [Registrar] by hand or by post, in either case so that the Prothonotary [Registrar] receives it not later than two days before the first day on which production is required by the subpoena to be made.
- (2) Where a document or thing is produced to the Prothonotary [Registrar] under paragraph (1), the Prothonotary [Registrar] shall—
- (a) if requested to do so, give a receipt to the person producing the document or thing; and
 - (b) produce the document or thing as the nature of the case requires or the Court directs.
- (3) This Rule does not apply to so much of a subpoena as requires a person to attend for the purpose of giving evidence.

ADOPTIONS.

by Ch.2, Rule 5.02(3)

- (3) This Rule does not apply to any register or to any documents relating to any proceeding under the Adoption Act 1984 (or any corresponding previous or subsequent enactment).

Appendix C.

Children & Young Person Act (1989).

http://www.dms.dpc.vic.gov.au/Domino/Web_Notes/LDMS/PubLawToday.nsf/a12f6f60fbd56800ca256de500201e54/f2738b76519e92b9ca2570c00015cda2!OpenDocument

Division 5—Restriction on Publication of Proceedings

26. Restriction on publication of proceedings

- (1) A person must not publish or cause to be published—
- (a) except with the permission of the President, a report of a proceeding in the Court or of a proceeding in any other court arising out of a proceeding in the Court that contains any particulars likely to lead to the identification of—
 - (i) the particular venue of the Children's Court, other than the Koori Court (Criminal Division), in which the proceeding was heard; or
 - (ii) a child or other party to the proceeding; or
 - (iii) a witness in the proceeding; or

- (b) except with the permission of the President, a picture as being or including a picture of a child or other party to, or a witness in, a proceeding referred to in paragraph (a); or
- (c) except with the permission of the Secretary granted in special circumstances in relation to a child who is the subject of a custody to Secretary order or a guardianship to Secretary order, any matter that contains any particulars likely to lead to the identification of a child as being the subject of an order made by the Court.

Penalty:

- (a) In the case of a body corporate—500 penalty units;
 - (b) In any other case—100 penalty units or imprisonment for 2 years.
- (2) The Court in making an order may direct the Secretary not to grant permission under sub-section (1)(c) with respect to the order.
- (3) Without limiting the generality of sub-section (1), the following particulars are deemed to be particulars likely to lead to the identification of a person—
- (a) the name, title, pseudonym or alias of the person;
 - (b) the address of any premises at which the person resides or works, or the locality in which those premises are situated;
 - (c) the address of a school attended by the person or the locality in which the school is situated;
 - (d) the physical description or the style of dress of the person;
 - (e) any employment or occupation engaged in, profession practised or calling pursued, by the person or any official or honorary position held by the person;
 - (f) the relationship of the person to identified relatives of the person or the association of the person with identified friends or identified business, official or professional acquaintances of the person;
 - (g) the recreational interests or the political, philosophical or religious beliefs or interests of the person;
 - (h) any real or personal property in which the person has an interest or with which the person is otherwise associated.