

This is why open justice is broken

MARQUE

Suppression orders are infringing too far on open justice. New research from Victoria highlights some pretty scary trends^[1]. Suppression orders are often too broad, lack appropriate end points, are unclear in their terms, beyond the scope of the court's powers, and made without sufficient explanation of their necessity.

Here's an example. A few weeks ago a Victorian court reportedly prohibited the publication of "any detail or particular" of an alleged offence other than the time and place it occurred. Noble purpose; protecting the victim. But still a fail by the court. The orders were made when the charges were being dropped. The names of the accused, the offence with which they were charged and the age of the victim had already been widely published.

Given the absurdly wide-reaching order after the event, most of the media seemed to decide that precise details of the how the offence occurred were suppressed, but not the offence itself, the names of the accused or the age of the victim. The confusion has to be a result of the breadth of the order and the history of publication.

Suppression is supposed to be a last resort. We start with open justice. Open doors to our court rooms and open access to information about proceedings. The idea is that what happens in a courtroom must be subject to public scrutiny. This prevents abuses of the court system and maintains public confidence in the judiciary. Open justice should only be compromised in the most extreme cases.

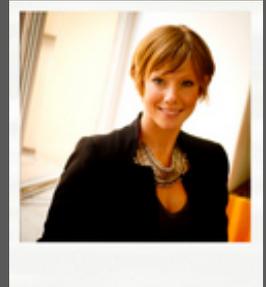
Here's what we think needs to happen.

First, there should be an open justice advocate. A lot of applications for suppression orders are unopposed. News media organisations have standing to oppose them, which is fair. But it shouldn't be left to private entities with their own commercial concerns to look after all of us. Judges should be assisted by an advocate contradicting any proposed order.

Next, the courts making these orders need to be more accountable. They should publish reasons for making every suppression order. If information is withheld from the public, contrary to open justice, then we should at least know it's happening and why it's necessary.

These aren't novel ideas. We're not the first ones to say these things. But the government's not listening. These subtle erosions of accountability and free speech are sinister and deserve a voice.

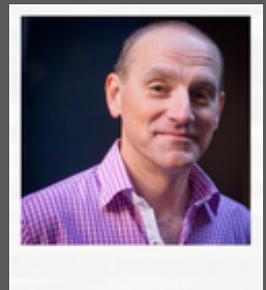
Questions? Give us a call.



Hannah Marshall
Senior Associate

+612 8216 3088

[Email Hannah](#)



Michael Bradley
Managing Partner

+612 8216 3006

[Email Michael](#)

Marque Lawyers Pty Ltd
Level 4, 343 George St
Sydney NSW 2000

Ph: +61 2 8216 3000

Fax: +61 2 8216 3001

[Visit Website](#)



^[1] Jason Bosland, "Two Years of Suppression Under the Open Courts Act 2013 (Vic)" (2017) 39 *Syd LR* 25.