



Practice Note No 4 of 2013

Notifications under the Open Courts Act 2013

- 1 The Open Courts Act 2013 (“the Act”) will come into operation on 1 December 2013.
- 2 Under s 10 of the Act, an applicant for a suppression order is required, generally, to give three business days’ notice of the making of the application to the court or tribunal in which the application is to be made.
- 3 Subsection 10(2) of the Act provides that such a notice must be in accordance with rules of court (if any) applying in the court or tribunal in which the application is made.
- 4 The Judges of this Court have recently made Rules of Court (Order 82) to provide that, in a civil proceeding, a notice under section 10 of the Act must be generally in accordance with a prescribed form (Form 82A) and that, in a criminal proceeding, such a notice must be generally in accordance with a similar prescribed form (Form 6-16A). Under the new rules, the Form 82A notice or the Form 6-16A notice (as the case may be) is required to be emailed to the court at suppression_notice@supremecourt.vic.gov.au. The form should be sent as an attachment to an email with the subject “Application for suppression order under Open Courts Act”. The contents of the attachment should be copied and pasted into the body of the email. The new rules also require that a copy of the notice be filed by the applicant as soon as practicable after the notice has been emailed to the court.
- 5 By virtue of subsection 11(1) of the Act, the Court is required, on receiving a notice under section 10, to take reasonable steps to ensure that “any relevant news media organisation” is notified of the application for a suppression order. The expression

“relevant news media organisation” is defined by subsection 11(3) to mean:

“A news media organisation which the court or tribunal would ordinarily ensure was sent notice of the making of a suppression order.”

6 Under subsection 11(2) of the Act, the notification may be by electronic communication or any other means that the Court considers appropriate. The Court proposes to utilise electronic communication exclusively in this regard, with a view to minimising inconvenience and delay. That is why the new rules require that the notice under section 10 be emailed to the abovementioned email address. Notices sent to that address will be received by the Strategic Communications Manager of the Court. Ordinarily, the Strategic Communications Manager will then simply forward the email and the attached Form 82A notice or Form 6-16A notice to each relevant news media organisation. It is considered that this will fulfil the Court’s obligations under s 11 of the Act.

7 Having regard to the proposal to simply forward notices to the relevant news media organisations and to the fact that copies of notices are required to be filed in the proceeding (and will therefore be accessible to anyone searching the file), applicants for suppression orders should understand that, under the proposed procedures, the notices themselves will ordinarily be treated by the Court as open, non-confidential documents. Accordingly, if the identity of an applicant or any other aspect of an application is sought to be kept confidential, the applicant will need to take such steps to that end as the applicant may be advised. It may be noted that, under the new Rules, as indicated above, the notice need only be “generally in accordance with” the prescribed form.

8 In order to facilitate and streamline this process, the following procedures are to be adopted:

- (a) Any news media organisation wishing to be notified under section 11 of the Act of applications for suppression orders under section 10 of the Act or of the making of a suppression order must nominate a single email address for

receipt of notifications.

- (b) A news media organisation wishing to nominate an email address for receipt of notifications must send a blank email from the nominated email address to suppression_notice@supremecourt.vic.gov.au using the subject heading "OCA media nomination";
- (c) Any notifications by the Court under section 11 of the Act will ordinarily be given only to email addresses nominated pursuant to paragraph (b) above;
- (d) Any news media organisation that has previously nominated an email address pursuant to this Practice Note and later wishes to be removed from the notification list must send a blank email from their nominated address to suppression_notice@supremecourt.vic.gov.au using the subject heading "OCA media nomination – remove from list";
- (e) Any news media organisation seeking further details regarding notices given under section 10 of the Act should direct their inquiries not to the Court but to the applicant or the applicant's legal representatives, in accordance with the details provided in the notice.

9 The new Rules and this Practice Note proceed on the basis that the Act adds to, but does not displace or make redundant, any of the existing Rules or requirements of the Court as to the manner in which applications (especially interlocutory applications) may be made, or must be made, to the Court. Thus, in relation to civil proceedings, Rule 46.02(1) of Chapter I of the Rules requires that an interlocutory or other application made on notice to any person shall be by summons, unless the Court otherwise orders. See also Rule 4.02. In relation to criminal proceedings, Rule 1.18 of Chapter VI provides that if a party intends to make an application and there is no prescribed form, a general application in Form 6-1C may be used with such modification as is necessary.

10 It follows that, unless the Court otherwise orders, an application for a suppression

order which is to be made on notice to any person should, in a civil proceeding, be made the subject of *both* a summons and a notice under section 10 of the Act and should, in a criminal proceeding, be made the subject of *both* a (written) application and a notice under section 10 of the Act. The new Rules are drawn on that basis.

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