



Suppression orders, Non-Publication Orders and Pseudonym Orders

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1. Introduction

The CDPP is committed to the principle of open justice and the public’s right to know what is happening in the criminal justice system. The reporting of cases not only promotes public confidence in the judicial system and the administration of justice, but reinforces the important role deterrence plays in sentencing criminal offenders.

The CDPP also recognises that the principle of open justice needs to be reconciled with other important considerations such as national security, ensuring a fair trial and the protection of vulnerable witnesses.

As a general proposition, suppression orders will only be warranted in very special circumstances, and should be limited in scope to only what is absolutely necessary to further the administration of justice in the particular circumstances of a case.

On the occasions that such protection is required, the CDPP may seek court orders to protect certain evidence or information, or advise another Commonwealth agency or entity of the development of a situation where they may wish to make an application to the court. Courts have a limited power at common law to make suppression orders. However, suppression orders are more commonly made pursuant to Commonwealth, State or Territory legislation.

In some jurisdictions, the terms ‘non-publication order’ or ‘pseudonym order’ are used.

Relevant terminology includes:

- Suppression order – an order made by the court to prohibit the publication or disclosure of the content of particular proceedings, evidence or information.
- ‘Interim suppression order’ – a suppression order made, in the interim, without determining the merits of the suppression order application.

- 'Pseudonym order' - an order which obscures the identity of a person in court documents and/or hearings, for example, by initialising a name in court documents or by restricting the way the person is referred to in open court.
- 'Non-publication order' – an order which serves to prohibit or restrict the publication of information (but does not otherwise prohibit or restrict the *disclosure* of information, being distinct from suppression orders, which broadly prohibit or restrict the disclosure of information, whether by publication or otherwise).
- 'Closed court' - a court proceeding where members of the public are restricted by an order of the court from access to the court room due to the nature and sensitivity of the proceedings.

For ease of reference, this document will refer to suppression orders, but the same principles apply in relation to non-publication orders and pseudonym orders.

The scope of suppression orders

Suppression orders may limit the disclosure or publication of:

- The transcript or content of particular proceedings, or reference to same;
- The names of particular parties or witnesses;
- Certain evidence;
- Details of charges or details of a defendant or accused's criminal history;
- The content of individual documents before the court such as a statement of facts or witness statements;
- The fact that the suppression order itself has been made; and/or
- Any other information originating from or relevant to proceedings.

2. The power to make a Suppression Order

There are three sources of powers available to a court in making a suppression order:

- Statutory power (available in all jurisdictions and at all court levels);
- The court's implied power¹ (Magistrates Court/Local Court, and District Court, only); or
- The court's inherent power² (Supreme Court only).

Suppression orders are most commonly made pursuant to legislation (see section 3 below).

However, in rare cases, the court may use its implied or inherent power to make a suppression order. This is the case even in jurisdictions which have suppression order legislation. This will usually only occur in matters where there is no legislation providing for a suppression order in the particular circumstances.³

Caution should be exercised in making submissions that the court should exercise this power, because there are strict limits to the breadth of implied and inherent powers with regard to suppression orders (*John Fairfax Publications Pty Ltd and Another v District Court of New South Wales and Others* [2004]⁴). In any matter where the defence or a third party seek a suppression order pursuant to the courts implied or inherent power, or where the CDPP is considering seeking such an order, prosecutors should consult with their PTL or Branch Head, for referral to the Practice Group Leader who is the decision maker. Consideration should be given to the source and limits of the implied or inherent power.

¹ Certain powers can be implied from the statutory conferral of a criminal jurisdiction on such a court: *John Fairfax Publications Pty Ltd and Another v District Court of New South Wales and Others* [2004] NSWCA 324.

² Inherent jurisdiction is historically conferred on the Supreme Court and the continued existence of the Court is provided for by modern legislation. The Supreme Court therefore has an inherent power to regulate its own proceedings for the purpose of administering justice: *John Fairfax v Police Tribunal, in Ex parte Queensland Law Society* [1984] 1 Qd R 166 at 170.

³ For example, in Queensland, Western Australia, Tasmania, the A.C.T, the N.T, and South Australia, where the person to be subject to the proposed order is not a victim of a sexual offence, child, Police informant or operative, person covered by national security/defence legislation, or other category of persons referenced in legislation.

⁴ *John Fairfax Publications Pty Ltd and Another v District Court of New South Wales and Others* [2004] NSWCA 324.

3. Relevant legislation

State and Territory

All States and Territories have legislation governing the use of suppression orders.⁵ Annexure E of the Victims of Crime Manual has a list of the relevant legislation in each State and Territory containing key provisions that you are likely to encounter. These statutory powers are included in a range of different types of legislation, including State or Territory *Evidence Acts*, *Bail Acts*, or in legislation covering general criminal procedure, sexual offences, witness protection, youth justice, or vulnerable witnesses.⁶ Suppression orders in Commonwealth matters will usually be made under such State or Territory legislation, as Commonwealth legislation dealing with suppression orders is limited in application to certain types of matters.

Relevant court Practice Directions in each State or Territory may also deal with the procedure for seeking suppression orders.

Suppression orders made under State or Territory legislation will not usually have automatic effect in other jurisdictions, even where the State or Territory court is exercising federal jurisdiction.⁷ For this reason, prosecutors should consult the relevant State or Territory legislation to ascertain whether it provides for extra-territorial application.⁸ In cases where State or Territory legislation does not provide for extra-territoriality and where there is a risk of information being disseminated by the media in other jurisdictions (for example, a prosecution likely to attract national media interest), prosecutors should consider whether a suppression order can be made under Commonwealth legislation.

Commonwealth

Commonwealth provisions providing for suppression orders include the following:

- *Crimes Act 1914* (Cth) s15MM(8) – applies to proceedings involving witnesses who are police operatives and who are protected under a witness identity protection certificate.
- *Criminal Code* (Cth) s93.2 – applies to proceedings where suppression is in the interests of Australia's national security.⁹
- *Federal Court Act 1976* (Cth) Part VAA “Suppression and non-publication orders” – applies in Federal Court proceedings. See also *Federal Circuit Court of Australia Act 1999* (Cth) – Part 6A - applies in Federal Circuit Court of Australia proceedings.
- *Judiciary Act 1903* (Cth) – Part XAA “Suppression and Non-Publication Orders” – applies in High Court proceedings.
- *Director of Public Prosecutions Act 1983* (Cth) – s16A “Prohibition of publication of evidence etc. in certain proceedings” – applies in certain proceedings for civil remedies, recovery of pecuniary penalties, and proceeds of crime.
- *Service and Execution of Process Act 1992* (Cth) – Part 5, Division 3 (“Suppression orders”) – applies where certain persons are apprehended on a warrant and brought before the Court (interstate extradition matters).

⁵ For example, the *Court Suppression and Non-Publication Orders Act 2010* (NSW), and the *Open Courts Act 2013* (Vic).

⁶ For example, in the Australian Capital Territory, Northern Territory, South Australia, Tasmania, and Western Australia, the respective *Evidence Acts* include provisions for suppression orders.

⁷ *R v Nationwide News Pty Ltd* [2008] VSC 526 (222 FLR 295). The court held that Magistrates Court of Victoria in a federal prosecution was not empowered under Victorian legislation to make a non-publication order in respect of conduct outside of Victoria. Note that Victoria has since enacted new suppression order legislation allowing for extra-territoriality.

⁸ Victorian and New South Wales legislation explicitly provide for extra-territoriality.

⁹ Section 93.2 *Criminal Code* (Cth) enables orders closing the court, orders limiting reports of proceedings, and/or orders limiting access to evidence.

- *National Security Information (Criminal and Civil Proceedings) Act 2004* (Cth) – regulates disclosure of information in federal criminal proceedings (and civil proceedings) where the disclosure is likely to prejudice national security, e.g certain counter-terrorism prosecutions.

Automatic statutory protections

Certain statutory provisions automatically prevent the publication of information in particular circumstances, without the need for an application for a suppression order. For example, child witnesses, child complainants, and vulnerable adult complainants are protected under section 15YR of the *Crimes Act* (Cth), which prohibits publication of their identity in prosecutions for certain offences including but not limited to slavery, trafficking, and child sex offences, unless leave of the court is granted.¹⁰

Before applying for a suppression order, prosecutors should consider the scope of any existing automatic statutory protections, as an application for an order may be unnecessary.

Suppression orders in different courts

Fresh suppression orders may be required at different stages as the matter proceeds between courts, including upon a party filing an application for special leave to appeal to the High Court.¹¹ It should not be assumed that a suppression order made in a lower court will continue to automatically apply in a higher court, so consideration should be given to this issue at the committal, trial, sentence and appellate phases of a matter.¹²

Exceptions to suppression orders for public officials

Suppression orders made under State and Territory legislation are directed towards preventing publication or disclosure of the names of parties, victims of crime or proceedings to the public. A lack of definition on what is meant by ‘publication’ or ‘disclosure’ in jurisdictional legislation, as well as a lack of case law examining the breadth of those specific pieces of legislation, has led to some confusion and differing views about whether prosecutors will breach suppression orders by providing material to Government authorities and agencies, where such disclosures are necessary in order to enable the performance of their functions in relation to the administration of a sentence.¹³

By way of example, where an offender is sentenced to a federal parole order, the CDPP provides (discloses) sentence details (including transcripts of sentencing proceedings) to the Attorney-General’s Department in order for the Department to administer federal parole orders, and the Department in turn is usually required to provide those details to State or Territory Parole Boards. Similar issues arise for the handling of sentence information by State or Territory Correctional Services, State or Territory Parole Boards, the Department of Home Affairs (who may need to organise the deportation of an offender after their release from custody), or a range of other persons performing Government functions in their official capacity.

Some jurisdictions have enacted amendments to their legislation to provide clarity on this issue, but in most local legislation this is not the case. Annexure A to this NLD sets out the current CDPP position for each jurisdiction, based on a combination of CDPP, State/Territory prosecution agency and court practice in each jurisdiction. Similar issues can also arise where suppression orders are made pursuant to federal legislation and the inherent/implied powers of the court.

¹⁰ See s15Y *Crimes Act* (Cth) for a list of offence proceedings to which the automatic protections apply.

¹¹ High Court of Australia Practice Direction No 2 of 2010 allows for the use of pseudonyms when a party makes its special leave application. Refer also to High Court of Australia Practice Direction No 1 of 2016 (‘Applications for a suppression order or non-publication order’).

¹² Refer *IMM v The Queen* [2016] HCA 14 and *Phillips v R* [2006] HCA 4; (2006) at para 81, for discussion of this issue.

¹³ Whilst there is some case law that provides that the private sharing of court-related information between individuals is not publication, those cases concern particular legislation. In *Roget v Flavel* (1987) 47 SASR 402 the court observed that ‘publication’ was not a word of fixed meaning, and its precise meaning must depend on the context it is used, the mischief the legislation is designed to overcome and the need to construe the overall scheme created in a way that makes it workable. On that basis, some caution is required in relying upon these authorities to construe the term ‘publication’ in other legislation.

4. Prosecution Application for a Suppression Order

From time to time, the CDPP may, on its own initiative, decide to apply for a suppression order. Alternatively, the CDPP may receive a request to make an application for a suppression order from a third party, such as a referring agency, a victim or another entity. Where such a request is received, the CDPP will need to carefully consider whether the third party is the most appropriate agency to make the application, rather than the CDPP.

When determining whether to make an application for a suppression order, the CDPP will closely consider the particular circumstances of the case, the applicable legislation and the possible grounds for making an application.

Such circumstances include where the publication of evidence or information may:

- Endanger the national or international security of Australia;
- Prejudice the administration of justice;
- Endanger the physical safety of any person;
- Cause undue hardship, distress or embarrassment to an alleged victim of crime or to a child witness;
- Offend public decency or morality.

Preventing the endangerment of national or international security includes, but is not limited to:

- Preventing the release of information which could jeopardise ongoing investigations;
- Preventing the release of information that might reveal operational methods and capabilities; or
- Protecting information provided by foreign governments and agencies.

Preventing prejudice to the administration of justice includes but is not limited to:

- Ensuring a fair trial by protecting juries from prejudicial pre-trial publicity (including suppression of prejudicial facts as well as information from related proceedings);
- Securing the evidence of a witness;
- Protecting parties, witnesses or informants from physical danger;
- Preventing particular continuing police investigations from being impeded (including suppression of the identity of undercover operatives); or
- Protecting victims where the purpose of the proceedings would be undermined if certain information was made public.

Notice of Application

Regard should also be had to any statutory requirements relating to giving notice to the defence, and third parties (such as the media), of an application for a suppression order.

Approval required

The relevant Practice Group Leader (PGL) must approve a prosecutor making an application for a suppression order (see Decision Making Matrix) ahead of the application being made. Prosecutors should create a decision task in CaseHQ reflecting those discussions and the relevant decision.

If an application needs to be made in court urgently, prosecutors should seek a brief adjournment and contact the relevant PGL by phone for verbal approval.

Duration of an order

Suppression orders should ordinarily contain an expiry date, otherwise they may continue long after the need for the order has lapsed, noting that the need for orders suppressing reporting of proceedings, or an aspect of proceedings, in perpetuity will be rare. In most matters, the purpose and effect of a suppression order is to postpone publication until the moment has passed when the publication would pose a serious risk to the proper administration of justice.¹⁴ The expiry date of every suppression order should be clear upon viewing the written order itself.¹⁵

¹⁴ *Dupas v Channel Seven Melbourne Pty Ltd* [2012] VSC 486; 226 A Crim R 53 at [57].

¹⁵ The reasoning for this is that media and publishers must be able to see the expiry date on the face of the order, see *Queensland Newspapers Pty Ltd v Stjernqvist* [2006] QSC 200; [2007] 1 Qd R 171 at [25].

Prosecutors should, therefore, request the court to specify an end date, or ensure the order is otherwise self-executing. Example wording might be, *“This order is to remain in force until further order of this Court, or such other time as the charges are withdrawn or determined according to law”*.

As an exception to the above, there are certain matters involving sexual offence victims, child victims/witnesses, and national security issues, and other specialised circumstances, where legislation may have the effect that protections extend past the conclusion of the proceedings.

5. Defence Application for a Suppression Order

Where the defence make application for a suppression order, the prosecutor’s role is to assist the court and to carefully consider whether:

- there is a proper basis for an order applying the criteria relevant to making an application for a suppression order outlined above; and
- to ensure the court has not been misled about a matter of fact or law.

Prosecutors should guard against any tendency for orders to be made without a proper basis or as a matter of course in particular types of matters, for example child exploitation matters. Prosecutors should discuss these issues with their Branch Head and PGL in order to determine the appropriate approach to take. Where one or both of the issues outlined above is present, intervention by the prosecutor will be appropriate in order to assist the court, as a merely neutral stance may be misinterpreted by the court as acquiescence to the defence application.

Grounds which are insufficient to justify the making of a suppression order

Personal embarrassment or damage to the reputation of the accused, their family, or defence witnesses (subject to some exceptions for certain classes of victims of crime)¹⁶ is not a proper basis for a suppression order.¹⁷

Approval of approach to be taken on a defence application

The relevant PGL must approve the approach to be taken, whether that be opposing, supporting or taking a neutral stance to the defence application for a suppression order (see Decision Making Matrix). If the prosecution has not been forewarned that an application will be made it may be necessary for the prosecutor to seek a short adjournment to allow him or her to discuss the matter with the PGL. Prosecutors should create a decision task in CaseHQ reflecting those discussions and the decision.

In considering the prosecution’s stance on a defence application for a suppression order, the PGL should have regard to the factors and principles outlined in Parts 1 and 3 that pertain to making an application for a suppression order.

Duration of an order

As discussed in Part 3, prosecutors should submit to the court that the suppression order should have an end date, or otherwise be self-executing, (subject to the statutory exceptions noted above).

6. Applications made by other Commonwealth entities

There will be instances in CDDP prosecutions where other Commonwealth entities are best placed and have sufficient standing in a matter to seek a suppression order themselves or to be heard during a suppression order application. An example is where the Australian Government Solicitor, on behalf of the Attorney-

¹⁶ For example, victims of sexual offences are protected by suppression orders under the *Federal Court of Australia Act 1976* (Cth) - s37AG(1)(d) “(where) the order is necessary to avoid causing undue distress or embarrassment to a party to or witness in a criminal proceeding involving an offence of a sexual nature (including an act of indecency)”. State and Territory legislation contain similar provisions.

¹⁷ The same applies to non-victim prosecution witnesses. See *John Fairfax Group Pty Ltd v Local Court of New South Wales* (1991) NSWLR 131 at [142] for a discussion of the balance between embarrassment and the principle of open justice.

General, seeks a suppression order where it is required in the interests of national security.¹⁸ Another example is where the Australian Government Solicitor, on behalf of the Australian Federal Police, may seek a suppression order relating to confidential police investigative methodologies or to protect the existence or identity of a police informer.

The CDPP will need to form a view as to its position, which may be to support, oppose or take a neutral stance¹⁹ on the application. The observations made above regarding approvals and the relevant factors to consider are equally apposite.

7. Templates

Prosecutors should have regard to any relevant statutory form of order, or notice provisions contained within State and Territory legislation. Refer also to the CDPP e-library which contains examples of suppression orders in various jurisdictions.

8. Media Interest

Prosecutors should be cognisant that media organisations may seek to oppose the making of suppression orders.

9. Recording Suppression Orders in CaseHQ and other required procedures

Suppression orders must be recorded in CaseHQ.²⁰ Prosecutors must also advise library staff of any suppression orders (or the lifting of those orders), noting that in e-library, any sentences and judgments where a suppression order exists must be marked with red warning text. Where material is to be published on the CDPP's website or annual report, or otherwise, prosecutors must ensure the Communications and Media team are aware of any limitations arising from suppression orders to ensure breaches do not occur.

10. Breach of Suppression Orders

Breach of a statutory order is enforceable by means of a prosecution, whereas breach of an order based on the court's inherent or implied power is punishable as a contempt of court and proceedings are launched by the court itself. State and Territory legislation commonly includes specific offences, penalties and procedures for breach of a statutory suppression order, and prosecutors should have regard to legislation in their jurisdiction.

Prosecutors should consult their Branch Head in any matter where it appears that there has been a breach of a suppression order.

11. Related Resources

Other resources include:

- [Victims of Crime Manual](#) – Paragraph 14 'Suppression or non publication orders' and Annexure E (List of relevant State and Territory suppression order legislation);
- [National Legal Direction 'Media'](#);
- Guidelines and Directions Manual Chapter on '*Witness issues*' – Paragraph 2 ('National Witness Protection Program') and paragraph 4 ('Disclosure of a witness' name'); and
- [Witness Protection Act 1994 \(Cth\)](#).

¹⁸ See section 20A of the *National Security Information (Criminal and Civil Proceedings) Act 2004* (Cth) – "Attorney-General etc. may attend and be heard at federal criminal proceedings".

¹⁹ Where confidential affidavits have been filed to which the CDPP is not privy, it is likely that a neutral stance will be appropriate.

²⁰ Prosecutors can enter suppression orders under the option 'Add file action'.

12. Annexure A – Exceptions to suppression orders for public officials

In NSW, for suppression orders made on or after 1 July 2011, there is an explicit statutory exception for the work of public officials.

In Victoria, for suppression orders made on or after 1 December 2013, there is an explicit statutory exception for the work of public officials.

State or Territory legislation in the Australian Capital Territory, Northern Territory, Queensland, South Australia, Tasmania and Western Australia is silent on the issue of whether or not suppression orders extend to the necessary actions of public officials in dealing with sentencing information in the performance of their functions. Similarly, Commonwealth legislation provides for the making of suppression orders but some Commonwealth statutes fail to provide an explicit exception for public officials.

The CDPP position per jurisdiction, for suppression orders made under State/Territory legislation, is set out below:

Jurisdiction	Approach to issue of suppression orders made under State/Territory legislation, and the work of 'public officials'
New South Wales	Exception wording is <u>not</u> required in the order. ²¹
Victoria	Exception wording is <u>not</u> required in the order. ²²
Queensland	Exception wording is <u>not</u> required in the order. ²³
Australian Capital Territory	Exception wording is <u>not</u> required in the order. ²⁴
Northern Territory	Exception wording is <u>not</u> required in the order. ²⁵
South Australia	Exception wording is <u>not usually</u> required in the order. ²⁶
Tasmania	Exception wording <u>is</u> required in the order. ²⁷
Western Australia	Exception wording <u>is</u> required in the order. ²⁸

²¹ Section 15 of the *Court Suppression and Non-Publication Orders Act 2010* (NSW).

²² Section 22 of the *Open Courts Act 2013* (Vic).

²³ Section 8(c), (d) and (e) *Criminal Law (Sexual Offences) Act 1978* (Qld) excludes from the operation of (automatic) suppression orders, reports made to or on behalf of various government agencies, which arguably includes the CDPP and CPO. Other Qld suppression order legislation is silent on the issue, however refer to the section below, 'Guidance for Queensland'.

²⁴ Consistent with the approach taken by the A.C.T DPP.

²⁵ Consistent with the approach taken by the NT DPP.

²⁶ Note that suppression orders are rare in South Australian CDPP matters, and sealing of sentencing remarks is more common, with sealing being an inherent/implied power of the court. The Adelaide office practice is that the CDPP will only provide the CPO with unsealed (publicly-available) sentencing remarks. If sealed remarks are required by the CPO, the CDPP will seek the permission of the court before providing sealed remarks.

²⁷ Consistent with the approach taken by the Tasmanian DPP.

²⁸ The issue should be specifically raised by the Crown and an exception made as part of the order. This is Perth office practice, so as to avoid any doubt that publication to government agencies is permitted.

Guidance for Queensland, the Australian Capital Territory, and the Northern Territory (where the order is made pursuant to State/Territory legislation):

The CDPP position in these jurisdictions is that provision of the relevant information to public officials is not covered by, nor a breach of, the suppression order, as it is not a publication to the media or to the public but is instead provided for the administration of the sentence. There is no requirement to make submissions on this topic unless the issue is raised by the court.

Where the court is of the view that disclosure to public officials is prevented by the suppression order:

If the above issue is raised by the court, the Crown should have regard to whether the relevant legislation prevents ‘disclosure’, ‘publication’, or both.

In circumstances where the legislation provides that a suppression order only prevents “publication”:

In circumstances where the legislation provides that a suppression order only prevents “publication” (and not disclosure), then before a proposed suppression order is made, the Crown should draw the court’s attention to available case law examining the meaning of the word ‘publication’ and any relevant extrinsic material. The CDPP’s position is that private disclosure by one public official to another for the purposes of performance of the latter’s functions does not constitute “publication” as envisaged by the legislation²⁹ and therefore is not covered by the proposed suppression order.

In circumstances where the legislation provides that a suppression order prevents “disclosure”:

In circumstances where the court has concerns that the communication of information by one public official to another for the purposes of performance of the latter’s functions would infringe a proposed suppression order because the legislation prevents the ‘disclosure’ of information, then prosecutors should make appropriate submissions as to why the private disclosure between government agencies for the performance of their functions is not caught by the legislation. Prosecutors should support their arguments using any relevant case law and /or extrinsic material that helps elucidate the legislative intent of the provisions.

Where the court does not accept the Crown’s submission – suggested ‘carve out’ wording:

In rare cases where, after submissions have been made, the court remains of the view that disclosure to public officials is prevented by the suppression order, the prosecution should ask that the court to include an express exception in the suppression order. For example, the following wording can be used:

*“this suppression order does not prevent the disclosure of information where this done in the course of performing functions or duties, or exercising powers, in a public official capacity in connection with the conduct of proceedings or the recovery or enforcement of any penalty imposed in proceedings”.*³⁰

²⁹ Note that many of the State and Territory Acts providing for suppression orders do not define the terms ‘publish’ or ‘publication’. Therefore, the common dictionary definition of ‘publish’ can be utilised pursuant to the rules of statutory interpretation. Refer also to *KF v Parramatta Children’s Court & 3 Ors* [2008] NSWSC 1131, where the NSW Supreme Court held that the private communication of information between a party to the proceedings and a non-party to proceedings, for legitimate purposes that were related to the proceedings, did not breach a Children’s Court suppression order, and was not ‘publication’ as envisaged by the NSW suppression order legislation. See also *Roget v Flavel* (1987) 47 SASR 402 at [406]– publication ‘does not refer to a substantially private communication, from one person to another, whether by way of preparation for an impending trial, or as information to someone with an obvious commercial or personal or other interest in the matter’.

³⁰ Note that this wording is modified from the exceptions for public officials in section 15 of the *Court Suppression and Non-Publication Orders Act 2010* (NSW) and section 22 of the *Open Courts Act 2013* (Vic).

Guidance for all jurisdictions where the order is made pursuant to Commonwealth legislation

For suppression orders made under Commonwealth legislation, prosecutors should have regard to the relevant Commonwealth statute in order to ascertain whether suppression orders contain an explicit exception for certain public officials.³¹ If the legislation does not provide an exception, the wording of the particular statute should be considered, together with any relevant case law and extrinsic material. If there is any real doubt about whether the work of public officials is an exception to the ambit of the suppression order, the proper course is to raise the issue with the court to seek clarification of whether exception wording is required in the order.

Guidance for all jurisdictions where the order is made pursuant to inherent/implied power

These are very rare and there is limited judicial consideration. For suppression orders made pursuant to the court's inherent/implied power, the proper course is to raise the issue with the court to seek clarification of whether exception wording is required in the order.

³¹ For example, s37AK of the *Federal Court Act 1976* (Cth) provides "Exception for court officials". Section 77RJ of the *Judiciary Act 1903* (Cth) applies to High Court proceedings and also provides "Exception for court officials".