Executive summary

1 This report is about three related areas of law:

- the law of contempt of court
- the *Judicial Proceedings Reports Act 1958* (Vic)
- the law about what people are allowed to publish about court proceedings, and what is restricted.

Contempt of court

What is contempt of court?

2 The role of the courts is to administer justice—fairly, efficiently and with authority. Contempt of court is any conduct that interferes with the ability of the courts to perform their role. This can include conduct inside a courtroom, such as a witness refusing to answer questions, or conduct outside a courtroom, such as publishing information about an accused person that has not been heard in court.

3 The law of contempt of court is not based on Acts of Parliament. It is based on a long-standing power of the Supreme Court to protect the work of the courts from interference. It has developed over centuries through decisions made by courts.

Need for reform

4 It is rare for people to be charged with contempt of court. However, the law of contempt of court is critical. It protects public confidence in the courts and is essential to the rule of law. But it needs reform.

5 The law should be fairer, clearer, and more certain. A person should be able to know in advance what behaviour can be punished as a contempt of court. They should know what needs to be proved, who will judge them, what the process will be, and what punishment they could receive. A person should be able to understand the language of the law of contempt of court. This is not the case today.

6 The scope of contempt of court is also too broad. People have a right to freedom of expression and courts should be open. People who publish information about court proceedings should not be punished for contempt of court if they have taken reasonable care to do the right thing. It should only be a contempt of court in limited circumstances to make statements that undermine public confidence in judges and the courts.

7 The procedure for contempt of court is a confusing mix of civil law and criminal law. The procedure can be unfair. When a contempt of court happens in court during a trial, the same person – a judge or magistrate – can act as a witness, prosecutor and judge. When a person disobeys a court order, and is charged with contempt of court, it is not clear whether this is a criminal matter or not.

8 There are many new challenges. Online publishing and social media have changed the way people access and share information. The law of contempt of court has not kept up and needs to change.

How to reform the law

9 There should be a Contempt of Court Act that states clearly what the law is. This would make the law fairer, more certain and accessible for everyone.

10 The proposed Act should not simply convert the law of contempt into a series of criminal offences. The new Act should reflect that the courts' contempt powers come from its inherent power to protect the administration of justice. However, the new Act should better define exactly when and how the courts can use that power.

11 The new Act should define the scope of the contempt powers of the Supreme Court. Lower courts (the County Court, Magistrates' Court and Children's Court) should have more limited contempt powers than the Supreme Court. They should be able to refer contempt matters to the Supreme Court.

12 The new Act should define the conduct that fits within the following common categories of contempt of court. Those categories should be renamed:

- *contempt by conduct that interferes with a court proceeding*—this includes disruptive and abusive behaviour in court, and witnesses refusing to answer questions. (Now known as contempt in the face of the court.)
- *contempt by non-compliance with a court order or undertaking*—this involves disobeying orders made by a court or undertakings given to a court. (Now known as disobedience contempt.)
- *contempt by publishing material prejudicial to legal proceedings*— this includes publishing material that could make a trial unfair, for example by publishing information not before the court that may influence a juror to believe the accused was guilty. (Now known as sub judice contempt.)
- *contempt by publishing material undermining public confidence in the judiciary or courts*—this includes publishing material that makes false claims about the integrity of a judge or magistrate. (Now known as scandalising contempt.)
- *interferences with and reprisals against those involved with a court proceeding*—this includes threatening or harassing people involved in court proceedings to influence the proceedings, or punishing them for what they do or say in court.

13 The new Act should also include a general category of contempt that includes any other conduct that interferes with, or has a substantial risk of interfering with, the proper administration of justice. This would give courts power to deal with unusual forms of contempt.

14 The new Act should set out how a contempt of court should be dealt with, including who can start the process, and which general laws should apply. To ensure a fair trial, the procedure should be consistent with the Charter of Human Rights and Responsibilities. This will mean ending the special procedure for 'contempt in the face of the court' that currently allows a judge or magistrate to act as the witness, prosecutor and judge in a contempt case.

15 The proposed Act should set out maximum penalties for each of the categories of contempt. The maximum prison terms (with equivalent fines) should be:

- six months to 12 months for contempt by conduct that interferes with a court proceeding (depending on the court)
- two years for contempt by publishing material that prejudices a legal proceeding or undermines public confidence in the judiciary or courts

- five years for non-compliance with a court order or undertaking
- ten years for other conduct amounting to contempt.

The Judicial Proceedings Reports Act

16 The *Judicial Proceedings Reports Act 1958* (Vic) should be modernised. It includes two restrictions on publishing information that are out of date and should be repealed. These are:

a. publishing material about indecent matters

b. publishing material about divorce and related proceedings.

17 The restriction on reporting directions hearings and sentence indications should be retained, because it protects a person's right to a fair trial.

18 The law should continue to restrict the publication of material that identifies victims of sexual offences, and increase the maximum penalty for this offence to six months imprisonment. This should not, however, automatically apply to victims who have died, although family members should be able to request that a victim's identity continue to be suppressed.

19 Although the identification of victims in sexual offence cases is restricted, victims who wish to tell their story should be able to do so. The law should be amended to make it clear that an adult victim can agree to be identified at any time, including prior to charge, post-charge and/or at trial, without requiring the court's permission.

20 There should not be any further temporary restriction on reporting on the sensitive details of family violence and sexual offence cases. Instead, victims should be given advice and support to apply for suppression orders and judicial officers should be required to ask whether a suppression order is needed in these cases.

Enforcing restrictions on publication

21 It is difficult to enforce restrictions on publication today, because information can be published and shared on the internet instantly. The law needs to adapt to online publishing.

22 In general, publishers should not be punished for hosting or facilitating content written by other people, such as comments on a web page. However, the Open Courts Act should be amended to enable the courts to order publications be taken down, and to specify the procedure for take-down orders, including in urgent cases.

23 The law should also apply to material published overseas or interstate if there is a sufficient link to Victoria, although national cooperation and reforms are needed to make this effective.

24 The maximum penalty for breaching most restrictions on publications, including suppression orders, should be two years imprisonment. This would mean reducing the current penalty for breaching a suppression order, to be more consistent with similar offences elsewhere in Australia.

25 The courts should improve access to suppression orders so that people are aware of them. There should be more community education about why publications are sometimes restricted. Victim survivors should be supported to report breaches of the law.

26 There should be an audit of suppression orders that do not contain an end date. If a suppression order is no longer needed, there should be an application process to have it cancelled.