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19 July 2019

Dear Mr Gardner,

### **Victorian Law Reform Commission Reference on Contempt**

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Thank you for the opportunity to provide comments on the Victorian Law Reform Commission's (VLRC) Consultation Paper on Contempt.

I have set out my comments below in two parts:

- Part A – General comments; and
- Part B – Comments in response to specific questions in the VLRC Report

#### **Part A: General Comments**

1. As the Director of Public Prosecutions for Victoria, I have two primary areas of focus within the context of the VLRC's Reference on Contempt, and my comments reflect these areas of focus:
  - a. *Sub judice* contempt and ensuring the integrity of criminal trials. I note the functions of the Director set out in section 22(1)(ba)(iii) of the *Public Prosecutions Act 1994* (the PPA 1994) with respect to contempt relating to criminal proceedings; and
  - b. The publication of material which causes distress to victims. I note the functions of the Director set out in section 24(c) of the PPA 1994, with respect to having regard to the need to ensure that the prosecutorial system gives appropriate consideration to the concerns of victims of crime.

### *Sub judice contempt remains relevant*

2. I consider that 'preventative' approaches including the law of *sub judice* contempt remain relevant and important to protect the integrity of criminal trials. Although social media and the availability of online material present new challenges in terms of the way that information is shared, I am firmly of the view that there is still work to be done by the law of *sub judice* contempt. Comments on social media will not necessarily reach the same audience or have the same longevity as the mainstream press. The weight that the public attach to comments on social media, as opposed to reporting by a recognised news outlet, is also different.
3. I am also of the view that there should not be a move towards introducing fault elements for *sub judice* contempt (or other kinds of contempt). In many cases, it would be impossible to prove contempt if a fault element were introduced, and this would substantially weaken the capacity of the law of *sub judice* contempt to ensure the integrity of criminal trials. Media organisations have a responsibility to put systems into place to avoid *sub judice* contempt occurring. This includes training and supervision where appropriate. Factors relevant to fault and intention should remain the domain of penalty.
4. Finally, I note that any restrictions on open justice must be limited to what is necessary. With respect to the law of *sub judice* contempt, I note that in almost every case, the media are permitted to report on a criminal case at some point in time. There remains open justice, it is just that the reporting is delayed. In most cases, that delay is a matter of days or weeks. In some instances, where multiple trials are listed, it might be a matter of months.

### *Compliance with the law of sub judice contempt*

5. I am of the view that it is not currently difficult to comply with the laws of *sub judice* contempt when reporting on a jury trial. During a trial, the media may report on matters before the jury. Difficulties arise where the media introduce commentary about a case while it is before a jury, or where the media publish evidence or other matters not before the jury. With the decline of dedicated court reporters, and the increase in syndicated news, there is a greater need for media organisations to ensure that their staff receive appropriate training so that they are aware of and comply with their obligations.
6. I consider that the main issue with the law of *sub judice* contempt is that there is uncertainty around what might constitute prejudice, because of factors such as the time to trial, the length of time that a publication remains available, and the size of the audience. This uncertainty, combined with the significant costs liability in contempt proceedings, means that determining whether there is a reasonable prospect of conviction, and whether a contempt proceeding is in the public interest is often a difficult task. As I have noted below, I would welcome reforms which remove liability for indemnity costs in contempt proceedings and reflect the current approach to costs in criminal matters (for example, where there has been a failure to disclose).
7. I am also of the view that uncertainty around what constitutes 'fair comment' and a 'fair and accurate report of proceedings' is potentially problematic. That kind of uncertainty, and any changes which reduce the effectiveness of the law of *sub judice* contempt may mean that it becomes necessary in the future to seek to rely on suppression orders to avoid a real and substantial risk of prejudice to the proper administration of justice.

### *Remedial measures*

8. I consider that a move towards greater reliance on 'remedial' measures, at the expense of 'preventative' measures, such as *sub judice* contempt, is not desirable. The fact that there might be other mechanisms which might assist to ensure a fair trial, such as jury directions, adjourning the commencement of a trial for the publicity to die down, or possibly having a judge alone trial, ought not justify a lesser reliance on appropriate 'preventative measures' such as *sub judice* contempt. Confidence in the corporate integrity of the jury and the jury's adherence to directions does not mean that other means of promoting a fair trial ought not be employed. Each of the different methods in combination promotes a fair trial. Further, I consider that it is preferable to make the task of the jury as straightforward as possible. Exposing the jury to prejudicial material and then attempting to 'cure' the prejudice with directions makes the task of the jury much more complicated than it needs to be.
9. I am also of the view that arguments around judge alone trials should not have any bearing on how the law of *sub judice* contempt might be reformed. The reality from other jurisdictions is that the accused person will almost always seek a jury trial, and therefore the media will need to be careful about what they report in the event that a trial does proceed as a jury trial.

### *Codifying the law of contempt*

10. I consider that it is not currently difficult to comply with the law of *sub judice* contempt. In the event that the VLRC determine that this area of law should be codified, I make the following observations:
  - a. The areas of the law which can easily be codified are the areas which tend not to be problematic at present;
  - b. Prejudice will always be context specific and it may be difficult to define. At present, I consider that there is uncertainty around what will amount to prejudice, given factors such as the time to trial, the length of time that a publication remained available and the size of the audience;
  - c. There is also uncertainty around 'fair comment'. I am also aware of a line of argument which suggests that a fair and accurate report of proceedings amounts to a defence to *sub judice* contempt;
  - d. Lists of factors (for example, the kinds of information which may not be published) are problematic. Whether or not the publication of a particular kind of information has a real and definite tendency to prejudice the administration of justice is dependent on the context. This may lead people to avoid publishing certain kinds of information, simply because it is referred to in a non-exhaustive of factors, when in fact, in particular contexts there may be no difficulty with the publication of that information; and
  - e. Maintaining a common law approach might enable this area of law to develop more consistently across the various Australian jurisdictions.

*Publication of material which causes distress to victims and giving appropriate consideration to the concerns of victims*

11. In a number of recent cases, online and print articles have been published containing particulars likely to lead to the identification of victims of sexual offences. In some cases, victims or parents of child victims have contacted the Office of Public Prosecutions expressing concern and distress that they have been or will be identified as a result of those publications. In at least one of those cases, the publications contained an unnecessary level of detail about the nature of sexual offending against child victims. I note also that in some smaller communities and regional areas, where the victim is sometimes already known to the community, the publication of an unnecessary level of detail about sexual offending (even where the victim is not identified in the publication) can cause undue distress to victims. In family violence matters, the publication of certain information at an early stage in a proceeding, prior to appropriate orders being made, has the potential to impact on the wellbeing and safety of a victim.
12. Online publications have the potential to remain available forever. I am firmly of the view that victims should not be further distressed, embarrassed or traumatised by media reporting about criminal matters. In most cases, by exercising appropriate care, it is possible to report on a criminal proceeding in a way that is fair and accurate, and which provides the community with a good understanding of the proceeding, without publishing material that is likely to lead to the identification of a victim of sexual offending, and without publishing material which is likely to cause undue distress, embarrassment and trauma to a victim. Again, the media have an obligation to ensure that their staff are properly trained and aware of their obligations in relation to reporting on criminal matters.
13. Finally, I note also that some victims of sexual offending do wish to be able to share their stories and to speak about what has happened to them. I am of the view that the law should strike an appropriate balance between protecting victims, where appropriate, and enabling victims to speak about their experience if they wish to do so.

**Part B: Comments in response to questions in the VLRC Consultation Paper**

**Chapter Three: General Issues with the Law of Contempt**

14. In relation to **question two** please refer to my opening comments.
15. In relation to **question four**, I consider it appropriate that judicial officers retain the discretion to determine whether to deal with conduct by way of contempt.
16. In relation to **question five**, I am open to considering a statutory maximum penalty for contempt of court.
17. In relation to **question six**, I note that apologies are presently relevant to determining whether and what penalty is imposed for contempt of court, and I consider that this should remain the case.

18. In relation to **question seven**, I am open to considering whether the *Sentencing Act 1991* (Vic) should apply to contempt proceedings.
19. In relation to **questions nine, ten and eleven**, I consider that it is appropriate for judicial officers to issue warnings where they consider it appropriate to control the proceedings. I am of the view that whether or not a court chooses to do so should not impact upon the prosecutorial discretion.

#### **Chapter Four: Contempt in the Face of the Court**

20. In relation to **question twelve**, I consider that there is a need to retain the law of contempt in the face of the court.
21. In response to **question thirteen**, please refer to my earlier comments in Part A regarding codification and the merits of introducing fault elements for *sub judice* contempt. I echo those concerns in so far as they relate to contempt in the face of the court.
22. In relation to **question sixteen**, I consider that conduct covered by other criminal offences should not be excluded from any offence of contempt in the face of the court.
23. In relation to **question seventeen**, I make the following observations. In some cases where a Magistrate or Judge declines to deal with contempt in the face of the court by way of the special summary procedure, the matter is referred to me to consider whether to institute contempt proceedings in the Supreme Court. Having regard to the nature of the conduct, these matters are often not suitable for Supreme Court litigation. I would therefore support any reform that makes the procedure for dealing with contempt in the face of the court clearer so that, in appropriate cases, the special summary procedure is utilised.

#### **Chapter Five: Juror Contempt**

24. In response to **questions twenty-one and twenty-two**, I am of the view that all juror-specific offences should be contained in the one place, namely the *Juries Act 2000*. This makes jurors' obligations clearer and assists them in confidently carrying out their functions. I anticipate that these statutory provisions would be adequate to respond to the vast majority of situations. However, I consider that courts should retain the power to deal with juror conduct as contempt in the face of the court; the existence of juror-specific offences should not preclude the court from dealing with conduct as contempt in the face of the court if that is appropriate in the circumstances.
25. In response to questions **twenty-three and twenty-four**, I am open to considering options whereby jurors are informed about the kinds of conduct that would constitute an offence. I consider that the content and structures of jury directions are matters for the court.

#### **Chapter Six: Disobedience Contempt**

26. As disobedience contempt is primarily concerned with civil proceedings, I do not have any comments on the questions presented in this chapter.

## Chapter Seven: Contempt by Publication (*Sub Judice* Contempt)

27. In response to **questions twenty-seven and twenty-eight**, please refer to my opening comments. I note that I am open to considering upper limits for fines and imprisonment.
28. In response to **question twenty-nine**, please refer to my opening comments.
29. In relation to question **thirty**, I support measures that raise awareness, both within the criminal justice system and in the community more broadly, about the impact of social media on the administration of justice and *sub judice* contempt.
30. In relation to **question thirty-one**, please refer to my opening comments. I also make the following comments in relation to the current procedure for *sub judice* contempt. I am of the view that the current procedure is workable and ensures a relatively quick response by the Director to problematic publications. I consider that it is important that the Director retains the power to institute *sub judice* contempt proceedings, given that the Director is often responsible for approaching the media to request that prejudicial material or material in breach of a suppression order be removed from publication. In the event of non-compliance with such a request, a power to institute contempt proceedings remains important.
31. However, I am open to considering reforms to the current procedure for *sub judice* contempt. If there are to be any changes to that procedure, I make the following comments.
32. I consider that it is important that the Director retains the power to institute contempt proceedings. This enables the Director to respond to instances of contempt quickly (in contrast to the length of time that a referral to police, a police investigation, a committal and criminal trial might take) and to deal appropriately with cases that often involve a level of complexity. I am of the view that there are already significant safeguards within the process, for example, the requirement to prove contempt beyond reasonable doubt, particularising the case, and disclosure obligations. As I've noted above, I am open to considering a statutory maximum penalty for contempt.
33. I also suggest two areas for further consideration:
  - a. Costs: As mentioned above in the opening comments, I consider that the approach to costs in contempt proceedings should reflect the current approach to costs in criminal matters (for example, where there has been a failure to disclose) and liability for indemnity costs should be removed; and
  - b. Formalising requirements prior to instituting proceedings: I am open to considering a requirement to send a letter prior to instituting a proceeding, providing the recipient with an opportunity to provide material, if they wish to do so, which may impact upon either the assessment of whether there are reasonable prospects of conviction and/or the prosecutorial discretion. This has been my practice in recent cases. An apology will not always 'purge' a contempt, but I consider it appropriate to provide this opportunity as it may impact on the prosecutorial discretion.

## **Chapter Eight: Contempt by Publication (Scandalising the Court)**

34. As contempt by scandalising the court is primarily the domain of the Attorney-General, rather than the DPP, I do not have any comments on the questions presented in this chapter.

## **Chapter Nine: Prohibitions on Publications under the Judicial Proceedings Reports Act**

35. In relation to **question thirty-six**, I recommend that s3(1)(a) be repealed. I do not consider that there is public interest in retaining the provision

36. In relation to **question thirty-eight**, I recommend that the prohibitions contained in s3(1)(c) be retained but moved to the *Open Courts Act 2013*. I further recommend that the VLRC consider recommending that the scope of the provision be expanded to include prohibitions on publication of certain information about voir dire hearings, submissions and rulings on evidence, or any other information that would not be put before a jury, and that occurs close to trial.

37. In relation to **question thirty-nine**, I recommend that the existing statutory prohibition in section 4(1A) should be retained, however it should be moved to the *Open Courts Act 2013*. I recommend that the provision should also make clear:

- a. Whether or not it applies to victims who are deceased. I take the view that currently it does. However, there are examples of high-profile cases where an accused person is charged with murder and rape (or other sexual offending) and the media identify the victim as the victim of both murder and the sexual offence. There is a balance that must be struck in this area between the public interest in reporting such matters and the distress to family members of a deceased who has been subject to rape or other sexual offending at the time of or leading up to a murder; and
- b. When a proceeding is 'pending'. I suggest that for certainty, this should be defined in the legislation.

38. I refer also to my comments below in response to **questions forty and forty-one**.

39. Further, I note that I do not consider that a non-exhaustive list of potentially identifying particulars should be added; these matters are inherently context-dependent.

40. In relation to **questions forty and forty-one**, and further to my comment about **question thirty-nine** above, I consider that the law needs to strike an appropriate balance between:

- a. allowing victims autonomy and control over their story, and enabling victims to talk about what has happened to them if they wish to do so; and
- b. providing appropriate protections to victims of sexual offending, so that victims are not subjected to undue distress or invasion of privacy as a result of the criminal justice process, and so that victims are not deterred from making a complaint because they are concerned that they will be identified as the victim of sexual offending.

41. One way to strike this balance is to enable a victim to consent to the publication of identifying material. Some of the key considerations include:
- a. It is important that victims are properly informed about the potential consequences if they do consent to publication of identifying material. Given that material published on the internet can remain available indefinitely and given that information can be re-published via social media, once a victim consents to the publication of identifying material, if they change their mind at a later stage, it may be impossible (practically) to remove identifying material which has already been published;
  - b. It is not appropriate for the Office of Public Prosecutions (OPP) to provide advice to victims, or to act on behalf of victims. In some instances, the role and interests of the Director will differ from the interests and views of an individual victim. There is a need for victims in criminal matters to have easy access to advice, and to be able to discuss and weigh up their options frankly;
  - c. In cases involving multiple victims, the identification of one victim may lead to the identification of other victims; and
  - d. Special consideration should be given to cases involving child victims and cognitively impaired victims.
42. I consider that victims should be able to consent to publication of identifying material in appropriate cases. Although it imposes a practical burden, I am of the view that where a proceeding is pending or after a proceeding has concluded, it is appropriate for an application to be made to the court, for a number of reasons:
- a. To ensure that a victim has received appropriate advice and understands what publication of identifying material will mean for them;
  - b. So that the court can determine the appropriate course in cases involving multiple victims, or in cases where the views of the victim and the views of the prosecution or defence differ (for example, where the Crown or defence seek non-publication of identifying information for other reasons);
  - c. To provide appropriate oversight in cases involving vulnerable victims (for example children and cognitively impaired victims); and
  - d. To record the outcome of the application by way of a court order. This would enable a person who wished to publish identifying information in a sexual offence matter to approach the court to confirm whether an order has been made which permits publication of identifying material.
43. I also note a possible inconsistency between the defences in section 4 of the *Judicial Proceedings Reports Act 1958*, once the *Open Courts and Other Acts Amendment Act 2018* (Vic) comes into force. Where a proceeding is not pending, it appears that both adult victims and child victims (in certain circumstances as set out in *Hinch v DPP* (Vic));



*Television and Telecaster (Melbourne) Pty Ltd v DPP* [1996] 1 VR 683) may consent to publication of identifying material – section 4 (1B). Where a proceeding for a sexual offence has concluded and the accused has been convicted of the sexual offence, only adult victims may consent – new section 4(1CA). However, once a proceeding for a sexual offence has concluded and the accused has been convicted of the sexual offence, then presumably at that time (or sometime after that) a proceeding is no longer pending. If that is the case, then it appears that section 4(1B) would also apply and so both adult and child victims (in certain circumstances) may consent to publication of identifying material.

44. I suggest that the consideration be given to ensuring that the legislation:
  - a. defines when a proceeding is 'pending' and what is meant by a proceeding has 'concluded'; and
  - b. makes clear whether it is intended that children may consent under section 4(1B); and if so set out the circumstances in which a child may consent.
45. If it is intended that child victims may, in appropriate circumstances, consent to publication under section 4(1B), then I recommend that consideration be given to amending section 4(1CA) so that it is not limited to adult victims. It might also be appropriate to set out in legislation the circumstances in which a child may consent.
46. In relation to **question forty-two**, I make the following observations.
47. In recent matters, online and print publications have been referred to the OPP by victims, parents of child victims, and by solicitors because they include excessive detail about sexual offending and sufficient detail about the circumstances of the case that family, friends or community members have identified the victim. This can be particularly problematic in smaller communities, where the community already know who the victim is (even if they are not named or identified in reporting about the case). This is also problematic in cases where a victim decides not to tell a family member about the fact of, or the details of the offending, but they lose control of their story once it is reported on in the media. In family violence cases, there may be legitimate risks to the safety of a person, for example if information is published which reveals the location of the complainant or their family.
48. I am open to considering a statutory prohibition which limits the information that may be published about sexual offence or family violence criminal matters for a specified period of time.
49. To reduce the risk of a large number of potential breaches, any such provision should be clear and unambiguous. I recommend that the provision should specify the matters that may be published and include a discretion for the court to order that specified other information may also be reported. I consider that it would be appropriate for the court to retain a discretion to order that the temporary prohibition does not apply.
50. It will be incumbent upon journalists and media organisations to make enquiries with the court to confirm whether additional information may be published, and to confirm whether the court has ordered that the prohibition does not apply. Consideration could be given to

a requirement that the judicial officer announce in open court and/or record by way of order at each hearing that this is a case to which the statutory prohibition applies.

51. However, I am firmly of the view that a period of five days would not be sufficient time for the prosecution to seek the views of a victim, to properly consider whether a further order should be sought, to provide notice of any application for a suppression order, and to list the application. I would like to consider further what an appropriate specified time period might be. In regional matters, filing hearings and early stage bail applications are prosecuted by police prosecutors. In Melbourne matters, filing hearings and early stage bail applications are prosecuted by advocates (often as part of a list). At that stage, the file has not been allocated to an instructing solicitor and the OPP has no pre-existing relationship with a victim. The victim may not be at court, and even if the victim is at court, the prosecutor is unlikely to have sufficient time to explain the options to a victim, to seek their informed views, and to properly consider whether any further order is necessary.
52. I consider that it is also important that appropriate structures are put in place to properly support victims in the criminal justice process, so that victims have access to information and advice, and can understand what options are available to them, the potential implications of exercising those options, and how to go about exercising those options. The OPP can provide some limited information to victims. However, it is not appropriate for the OPP to provide advice to victims. In some cases, the views of victims and the views of the Director will be different. In some cases, discussing potential options with victims may lead a victim to disclose information to the OPP which the prosecution might then be obliged to disclose as part of the criminal proceeding.

## **Chapter Ten: Enforcing Laws that Restrict Publication**

53. In response to **questions forty-three and forty-four**, I consider that the terms 'publish' and 'publication' should be defined consistently across relevant legislation. For clarity, the definition should specify what is meant by 'disseminate or provide access to the public or a section of the public'.
54. I recommend that any statutory definition should make clear whether, for online publications, publication occurs at the time that the material is uploaded to the internet, or whether publication is a continuing act, for so long as the material remains accessible online. My view is that publication is a continuing act, for so long as the material remains accessible online.
55. In relation to **question forty-six**, I consider that the real difficulty here lies with enforcement: identifying and locating the appropriate entity, and the costs liability in Supreme Court contempt proceedings. I would support measures that address these practical difficulties in enforcement.
56. In relation to **question forty-seven**, I consider that the real issue here lies with enforcement (international extradition and costs). I would support measures which address those issues.
57. In relation to **question forty-eight**, I echo my opening comments and also make the following observations.

58. I consider that the suppression order mailing list currently remains the best way of notifying media organisations of the existence of suppression orders, and the best way of proving that notification has taken place. However, it would be of assistance if each court maintained records which clearly show the individual, or media organisation, or corporate entity that corresponds with each email address on the suppression order distribution list. When it comes to proving knowledge of an order by an individual or corporate entity, it can sometimes be difficult to determine whether a particular email address on the suppression order mailing list corresponds to a particular individual, media organisation, or corporate entity. I note that in many cases it also remains difficult to establish knowledge or recklessness, for the purposes of proving an offence under sections 23 and 27 of the *Open Courts Act 2013*, where an individual or media organisation is not part of the email distribution list.
59. It remains a difficult task to notify the wider community of the existence of suppression orders, and statutory restrictions on publication. I am of the view that a publicly available register has the potential to create more issues than it addresses. At this stage, large media outlets, as opposed to individual members of the public remain the greatest concern in terms of publishing material in breach of prohibitions and restrictions on publication.
60. I note also that with the decline of dedicated court reporters, and the rise of syndicated news, there appears to be a lack of awareness among some journalists and news publishers about basic standards of court reporting in criminal cases. It may be that there are steps that can be taken by news media organisations to better educate staff about reporting on criminal matters – in particular, existing statutory prohibitions, the law of *sub judice* contempt, and the importance of checking for and complying with any suppression orders.
61. In relation to **question forty-nine**, I do not consider that there should be a system for monitoring compliance. If such a system is being considered, the DPP should not hold responsibility for this function, as the OPP does not have the resources or capacity to carry out this function.
62. At present, I deal with alleged breaches of suppression orders and other alleged breaches of prohibitions on publication as and when they are referred to me. The OPP does not proactively monitor the media or social media, as it does not have the resources to do so and monitoring and investigation are not core functions. I am of the view that the current system is appropriate – publications which are potentially problematic are brought to my attention. The OPP does not have capacity beyond this.
63. In relation to **questions fifty and fifty-one**, I recommend that the 'DPP consent' requirements under s 4 of the *Judicial Proceedings Reports Act 1958* be retained. I further recommend that consideration be given to a 'DPP consent' requirement in the *Open Courts Act 2013* for breach offences and any similar provisions.
64. With respect to comments in the VLRC Consultation Paper about a perceived 'prosecutorial gap', I note the comments set out above (in response to **question forty-nine**) in relation to the OPP's approach to monitoring compliance with prohibitions and restrictions on publication.

65. I note also that in some cases where an alleged breach of suppression order is referred to the Director for consideration, there is no reasonable prospect of conviction for a breach offence on the basis that:
- a. the order has not been validly made (for example, the order has not been made on one of the grounds set out in the legislation);
  - b. the order has been drafted in such a way that it is not clear whether the order applies to the material that has been published; or
  - c. it is not possible to establish knowledge of the order (or recklessness).
66. In some cases where an alleged contempt is referred for consideration, it is not in the public interest to institute common law contempt proceedings in the Supreme Court. This is particularly so with less serious examples of contempt where the conduct could have been dealt with by a Magistrate or Judge as contempt in the face of court, and/or could also be adequately dealt with by way of a substantive criminal offence.
67. In relation to **question fifty-two**, I am content that the current approaches in s 4 of the *Judicial Proceedings Reports Act 1958* and the *Open Courts Act 2013* are appropriate.
68. In relation to **question fifty-four**, my view is that the current approach is adequate.
69. In relation to **question fifty-six**, I am open to considering this approach.
70. In relation to question **fifty-seven**, I consider that courts should have the power to order that internet materials be taken down, and that for clarity and certainty, this process and the relevant considerations (which currently appear in case law) should be set out in legislation. I consider that the overarching consideration should be necessity.
71. In relation to who should be responsible for monitoring the internet and social media for potential 'take-down' material, I refer to my comments above in relation to question forty-nine. I consider that it would be extremely difficult to nominate an individual or agency as responsible for monitoring the internet and social media for potential 'take-down' material (and further to actually carry out that function). Rather, it is preferable that applications are made as and when concerning material is brought to the attention of the parties to a proceeding.
72. I consider that standing to apply to a court for a take-down order, and standing to appear and be heard, should mirror the existing provisions in the *Open Courts Act 2013*. I am also of the view that take-down applications should be conducted on an adversarial basis, given that the court is being asked to make a determination about public access to information.

73. In relation to **question fifty-nine**, I am open to considering this proposal.

Thank you again for the opportunity to provide comments on the VLRC Consultation Paper. I look forward to further discussions in August 2019.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'Kerri Judd'.

Kerri Judd QC

**Director of Public Prosecutions**