

Responses from Jason Bosland

Can you explain to our audience the issues, as you see them, with the current use of that s 18(1)(a) and s 18(1)(c)?

These grounds are being relied upon by accused to obtain suppression orders to prevent their identification on the basis that publicity would cause them mental health consequences. Under s 18(1)(c), the safety ground, the argument is that the suppression order is necessary to protect the accused's psychological safety. Under s 18(1), the administration of justice ground, the argument is that publicity would cause the accused such a level of mental distress that they would not be able to effectively engage in the proceeding - for example, that they would not be able to follow or participate in the trial, instruct legal counsel or give evidence.

Can you please reflect on observations by commentators (including yourself) who have made the argument that a two tier system of concealing one's identity is emerging in Victoria - can you please explain how that works and why it conflicts with the spirit of the law and principles of open justice?

It is based on the fact that in order to obtain a suppression order on mental health grounds, an accused must have the financial means to pay lawyers and psychiatrists for expert reports. This creates the perception that some accused receive special treatment in our courts. That perception corrodes the public's confidence in the administration of justice.

What is the solution to this problem?

It can be achieved through legislative change. I would prefer not to provide details at this stage; these will be the subject of the discussion on Monday.

What does it mean for transparency of the justice system?

It means that the open justice principle is not given full effect. The purpose of the principle is to enhance and protect the administration of justice in our courts. Public scrutiny ensures that judicial proceedings are conducted fairly, impartially and according to law. This ensure public confidence in the justice system and is central to the operation of the rule of law. Open justice also ensures that witnesses tell the truth and encourages other witnesses and/or victims to come forward.

What does it mean for the public's faith in the proper administration of justice?

I think any form of secrecy in our courts is inimical to the public's faith in the justice system. This doesn't mean that suppression orders can never be made. Sometimes they are justified in order

to ensure that justice can be done or to protect other vulnerable participants in proceedings. But, given the perception that suppression orders create, they should be used sparingly and only where strictly necessary.