

A critical analysis of the erosion of the presumption of innocence through media reporting of criminal trials: are current contempt laws adequate to withstand the threat?

Associate Professor Dr Gaye Lansdell
Law Faculty, Monash University
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SUMMARY REPORT

Table of Contents

PART 1: INTRODUCTION	3
PART 2: AIMS OF THE RESEARCH	4
PART 3: METHODOLOGY	4
PART 4: REVIEW OF RELEVANT LITERATURE	5
The Presumption of Innocence	5
The right to a Fair Trial/Procedural Justice	6
Open Justice	6
Power of the Media	7
Contempt of Court vs Suppression Orders	9
PART 5: RESULTS AND DISCUSSION	11
Themes	12
Summary of Results	16
PART 6: RECOMMENDATIONS	18
PART 7: CONCLUSIONS	19
Limitations and further research	20
PART 8: REFERENCES	21

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PART 1: INTRODUCTION

The presumption of innocence and the right to a fair trial are fundamental foundational legal tenets of the criminal justice system in the common law adversarial processes that shape the legal system in Australia.¹ Correspondingly, the principle of open justice aimed to guarantee transparency in the system and which pertains to both public attendance at and media reporting of criminal trials, is also legislatively mandated across Australian legal systems including Victoria, the jurisdiction chosen as the focus for this pilot project.² However, the competing pressure between these principles which combine to shape our system of justice may, in circumstances of overzealous media reporting, mean that the presumption of innocence is undermined by processes outside the ambit of the profession and for which the legal profession and the machinery of justice has limited control. In this way, the media is in a powerful position to mould and sway public opinion and shape societal attitudes on a range of issues including pre-trial and trial practice.³ Given the influence of the media and latterly social media⁴ on the jury, one can query if the time has come for the jury to be replaced by judge alone trials.⁵

The law as to contempt of court is also well-documented and has been refined since its inception as a doctrine in the 1700s, though regarded as ‘complex and confusing’,⁶ with the media being held to

¹ For the purposes of Victoria and this project, both are reflected in the *Charter of Human Rights and Responsibilities* 2006 (Vic) (‘Charter’) ss 25(1) and 24 respectively.

² In Victoria, through the *Open Courts Act* (2013). However, the Charter does set out that the media may be excluded from proceedings (s.24(2)).

³ Yvonne Jewkes, *Media and Crime* (Sage, 3rd ed 2015); Bernadette J. Saunders, Gaye Lansdell, Anna Eriksson & Rebecca Bunn (2018) ‘Friend or foe: the media’s power to inform and shape societal attitudes towards people with acquired brain injury’ (2018) 33(6) *Disability & Society*, 932-953. Reporting practices have led, for example, to retrials: most notably in 2017 in Victoria in *DPP v Johnson and Yahoo7* (No2) [2017] VSC 45 (where a reporter: Johnson’s, statements during an ongoing trial were regarded as capable of having a ‘real and definite tendency to prejudice the accused’s trial’ (per Dixon J), as they were published during the currency of a murder trial, that led to the trial being aborted, a re-trial being required and a new jury empanelled. Both Johnson and Yahoo7 were convicted of contempt of court and the latter defendant fined significantly. Jurors have also been discharged, generally in relation to social media usage during a trial: Tasmanian Law Reform Institute, *Jurors, Social Media and the Right of an Accused to a Fair Trial* (Report, January 2020) 2-3; Lorana Bartels, ‘The Jurors and Social Media, is there a Solution’ *The Conversation*, 31 July 2013. In Victoria, juror discharge occurred in the case of *Benbrika v The Queen* [2010] VSCA 281 [214]. Reporting practices by the media can have lasting impacts on complainants, which was at the forefront of the decision to discontinue the rape trial against Bruce Lehrmann in relation to Brittany Higgins in December 2022. Rachael Burgin, ‘Lehrmann Trial Discontinued: when prosecution isn’t in the public interest’ *The Conversation*, 22 December 2022. The media’s excessive coverage of the trial including its pre-trial period and post-trial aftermath was regarded by the then DPP, as harmful at an individual level particularly for Higgins leading to life-altering circumstances (Niki Burnside and Elizabeth Byrne, ‘Rape charge dropped against Bruce Lehrmann, who was accused of sexually assaulting Brittany Higgins’ *ABC News*, 2 December 2022. <https://www.abc.net.au/news/2022-12-02/bruce-lehrmann-rape-charge-to-be-dropped-brittany-higgins/101725242>

⁴ Kristen Braun, ‘Yesterday is History, Tomorrow is a Mystery – The fate of the Australian jury system in the age of social media dependency’ 2017 40(4) *University of New South Wales Law Review* 1634.

⁵ Tom Percy and Greg Barns, ‘Trial by Judge Alone’ (2020) 161 *Precedent* 18.

⁶ David Rolph, *Contempt* (Federation Press, 2023). See also Jacqueline Horan, *The Jury in the 21st Century* (Federation Press, 2012) pp, 153-155.

account for breaching *sub judice* rules with impunity on many occasions in Victoria alone.⁷ Media sensationalisation around leading criminal trials is not new⁸, but the increased public consumption and interest in leading criminal trial cases fuelled by a steady stream of commercial movies, television series, podcasts and the like together with the associated depth of coverage of specific events, have the potential far reaching consequences that threaten the right to a fair trial for any defendant but also the right to be tried by an impartial jury.

These events could fundamentally undermine the rule of law and the administration of justice and as such fall within the concerns of the Australian Academy of Law, specifically as to its mandate to uphold the 'highest standards... of the administration of justice' and to 'continuously improve the law and the operation of the legal system'.⁹ It was in the spirit of these constitutional aims of the Academy that the project sought to examine the current topic.

PART 2: AIMS OF THE RESEARCH

The project examined the newspaper coverage of four seminal leading trials in Victoria to determine, if possible, the extent to which practices of the media might undermine the presumption of innocence and rights to a fair trial, the potential impact on jurors and to determine whether the law of contempt, as currently drafted, could control any threats to the sound administration of justice. The analysis focused on pre-trial media commentary as well as commentary occurring during the currency of a trial and post-trial where relevant to explore how the media portray and actively shape public perceptions of the trial process.

PART 3: METHODOLOGY

The project used qualitative content analysis to explore the language and commentary used by the relevant Victorian media outlets reporting of four selected cases with extensive media coverage. The context was print newspapers (even if digitised) rather than social media posts, blogs or other audio/visual outputs with four publications chosen for their high readership and broad demographic media coverage (including diverse political persuasions) in Victoria: *The Age*, *The Herald Sun*, *ABC News* and *The Guardian*.

Qualitative content analysis is the examination of written text, which seeks to uncover both the apparently intended messages communicated through the text as well as any underlying messages communicated through the choice and arrangement of words. In communication theory the media

⁷ Appendix, Victorian Law Reform Commission, *Contempt of Court*, Victorian Government Printer, Melbourne, 2020, http://www.lawreform.vic.gov.au/wp-content/uploads/2021/07/VLRC_Contempt_of_Court_report_forWeb.pdf

⁸ Note the frenzy over OJ Simpson (The trial of Orenthal James Simpson (known as OJ Simpson) in 1995 in relation to the deaths of his wife Nicole Brown and Ronald Goldberg in 1994, became a theatrical show event even before it started (with a televised road chase which 95 million Americans tuned in to see but resulted in an acquittal due to successful defence relating to potential police fabrication of evidence at the crime scene (reported in Sadakat Kadri, *The Trial: A History from Socrates to OJ Simpson* (Harper Perennial, 2005, 355) and between 2018-2020 regarding George Pell in Victoria in 2018 (see under 'Open Justice' in this Report). More recently the 2023 Bruce Lehrmann and Brittany Higgins trial, although not in Victoria, generated thousands of news articles during the currency of the trial and after (Paul Dawson, *Brittany Higgins' story or the Brittany Higgins story? Journalism, politics and the narrative rhetoric* *Media International Australia*, Feb 25, 2025.

⁹ Australian Academy of Law, AAL Constitution, <https://academyoflaw.org.au/about/#about>

messages become frames by which members of the public come to understand the information that is being communicated with frames being either thematic or episodic, emotional or merely factual.

The analysis involved a systematic media search using Factiva for text-based media with search criteria using the names of the chosen defendants (or suspects as relevant). Newspapers were the preferred focus because they can be easily searched through the Factiva database and because they are available in both print and online formats, their circulation still reaches a high number of the population.¹⁰ The time-frame covered for the search was 1 July 2020 – 6 March 2026. A database framework was designed and systematically applied when reviewing newspaper articles and later further developed during a coding process as themes were identified. All articles were coded according to the headline, year published, topic area and overall article tone, the social or political context and key or frequent ‘voices’ within the articles. The impression or meaning generated by the content was also coded and analysed with an inductive coding methodology being used, where themes are derived from interpreting the raw data.¹¹

PART 4: REVIEW OF RELEVANT LITERATURE

The project was set against the backdrop of some basic legal tenets including the presumption of innocence, the right to a fair trial and the principle of open justice. The power of the media and the associated need for contempt of court and suppression orders to maintain the sound administration of justice were also a cornerstone of the project. It is useful to briefly canvass these principles.

The Presumption of Innocence

The Presumption of Innocence, like so many other foundational legal tenets, is of remarkably ancient origin,¹² though the ‘classical formulation’ of the presumption of innocence, has ‘no bearing outside the criminal process’.¹³ Whilst, as was asserted in the 1935 House of Lords *Woolmington v DPP* decision, ‘no attempt to whittle ... down [the principle] can be entertained’,¹⁴ the ability for ancient machinery to meet such a demand within a diversifying and commonly emotionally¹⁵ charged contemporary context is dubious. Even the best attempts at guarding the presumption of innocence fall victim to a seemingly perpetual ‘legal lag’. In this respect, in Victoria the question of addressing press publication could be argued to have been a very early and continuing consideration, given the

¹⁰ It was estimated that print media still reached about 75% of the population in 2019 (Roy Morgan. ‘Over 15.7 Million Australians Read Newspapers in Print or Online’. Media Release Feb 7th, 2019. Melbourne: Roy Morgan. <http://www.roymorgan.com/findings/7878-australian-newspaper-print-readership-and-cross-platform-audiences-december-2018-201902070454>), notwithstanding that some papers require a fee to access articles. Recent statistics are not available.

¹¹ David R Thomas, ‘A general inclusive approach for analysing qualitative evaluation data’ (2006) 27(2) *The American Journal of Evaluation*, 237-246. See also Jerry Wellington & Martin Szczerbinski, *Research Methods for the Social Sciences* (Continuum Publishing Group, 2007).

¹² Perhaps even Babylonian according to Francois Quintard-Morenas, 2010, ‘The Presumption of Innocence in the French and Anglo-American Legal Traditions’ (2010) 58(1) *The American Journal of Comparative Law*, 107–149, 110.

¹³ Robin Antony Duff, ‘Presuming Innocence’, in Lucien Zedner and Julian Roberts (eds), *Principles and Values in Criminal Law and Criminal Justice: Essays in Honour of Andrew Ashworth* (Oxford University Press, 2012), 52.

¹⁴ *Woolmington v DPP* [1935] AC 462, 482 per Viscount Sankey LJ.

¹⁵ this in reference to the increasing incidence of what is described as the ‘citizen reporter’, and the unofficial channels of ‘news’ distribution which characterise this modern context (i.e. blog, twitter, Facebook posts...)

commitment shown to the Benthamian promise of ‘open justice’, achieved by the presence of ‘publicity’ as it were in the physically open or public courtroom.¹⁶

The right to a Fair Trial/Procedural Justice

The right to a fair trial is ingrained in the Australian justice system and there are many indicators from both domestic law and international legal covenants that confirm this.¹⁷ Indeed, the preservation of a fair trial in the face of a legislative challenge is underpinned by the inherent jurisdiction of the court by invoking contempt of court penalties or imposing a stay of proceedings, for example, where fair trial would be under threat.¹⁸

The concept of procedural justice is an important corollary in this respect as it refers to people’s perceptions of the degree to which ‘procedures and the enactment of procedures by authorities when making decisions are fair.’¹⁹ To that end, procedurally fair decision-making must be unbiased and consistent,²⁰ ‘people must be afforded a hearing that is fair and without bias before decisions which affect them are made’.²¹ Procedural justice has been stated to be ‘deep rooted’ in our justice system,²² and clearly any attempts by the media to frustrate this would strike at the heart of the system.

Open Justice

There is a potential conflict between the right to a fair trial as expressed in Article 14 of the *International Covenant on Civil and Political Rights* (‘ICCPR’) and the rights of the media under the right to freedom of expression in Article 19 of the ICCPR, but it is basic common law right that an accused should be judged as to their guilt or innocence by a jury from the material presented in court only.²³ However, the principle of open justice supported in Victoria through the *Open Courts Act* (2013), is not merely a procedural rule but it represents a fundamental common law principle,²⁴ though not constitutionally guaranteed. As the oft-cited expression from Jeremy Bentham attests

¹⁶ Marilyn Warren, ‘Open justice in the technological age’ (2014) 40(1) *Monash University Law Review*, 45–58.

¹⁷ These include, for example, Article 14 of the *International Covenant on Civil and Political Rights* (‘ICCPR’), Chapter III of the Australian *Constitution* and s24 of the Victorian *Charter of Human Rights and Responsibilities* (2006). This is in addition to relevant case law at the High Court level in *Dietrich v The Queen* [1992] HCA 57 and as early as 1934 in *Attorney-General v Tonks* [1934] NZLR 141 ‘A person accused of a crime is entitled to have the charge against him heard and adjudicated upon by a jury of his fellows, and he is entitled also to have his case presented to such a jury with their minds open and unprejudiced and untrammelled by anything which any newspaper ...’ (149).

¹⁸ Rebecca Ananian-Walsh, ‘The inherent jurisdiction of courts and the fair trial’ (2019) 41(4) *Sydney Law Review* 423.

¹⁹ Peter Verboon and Marius Van Dijke ‘When do severe sanctions enhance compliance? The role of procedural fairness’ (2011) 32 *Journal of Economic Psychology* 120-130, 121.

²⁰ Tom Tyler *Why People Obey the Law* (Yale University Press, 1990), 175.

²¹ Mark Aronson, Matthew Groves and Greg Weeks, *Judicial Review of Administrative Action and Government Liability* (Lawbook, 6th ed, 2017), 397.

²² Chief Justice Robert French, ‘Procedural Fairness — Indispensable to Justice?’ (Speech, Sir Anthony Mason Lecture, University of Melbourne, 7 October 2010), 1.

²³ *Murphy v The Queen* (1989) 167 CLR 94, 98-99 (Mason CJ and Toohey J). A position maintained by the *Juries Act* (2000)(Vic) s.42, sch 3.

²⁴ Warren, (n16), 58. See also *Scott v Scott* (1913) AC 417 for a clear common law judicial pronouncement. The history of its origins is set out succinctly by Keiran Pender in his article: ‘Open Justice, Closed Courts and the Constitution: Australian and Comparative Perspectives’ (2023) 42(2) *University of Queensland Law Journal*, 155-190.

‘where there is no publicity, there is no justice’.²⁵ Arguably, its importance has only increased in the current era where public accountability surrounding the court system is high. The stated benefits of open justice are said to include the instilling of public confidence;²⁶ ensuring that any inappropriate behaviour on behalf of the court including bias and incompetence is precluded by legal participants, experts and witnesses giving evidence²⁷; and, protecting the preservation of the freedom of the press, though the media must accurately report the proceedings.²⁸

It should be noted, as the *Open Courts Act* specifies in section 4, while there is a presumption in favour of open courts, the presumption is not absolute. As stated in *Hogan v Hinch* (2011) open justice ‘is a means to an end, not an end in itself’.²⁹ And so if the interests of justice so require it, the principle of open justice should be relaxed.³⁰ However, any person seeking to challenge the principle must displace it. Section 18(a) of the Victorian *Open Courts Act*, sets out that the party seeking a suppression order (the remedy required to avoid publication) must show that it is ‘necessary to prevent a real and substantial risk of prejudice to the proper administration of justice that cannot be prevented by other reasonably available means’. Section 18(b) specifies, however, that the need to protect the personal safety of any person (which could include the applicant) will be sufficient, provided the applicant can provide credible evidence or information of the circumstances that are relied on (s.14(1)).

Power of the Media

The media’s power to ‘shap[e] public knowledge and facilitate public scrutiny of the justice system’³¹ underlies the importance of the manner in which it presents information. Mediatisation³² as a concept, describes the influence of the media on society and its participants encouraging a form of ‘mediated reality’.³³ Taking Victoria as the focal jurisdiction, the George Pell trial and appeal epitomised the use of antagonistic media frames, arguably heading in only one of two undesirable directions, towards an unfair trial or a witch-hunt before the media were reigned in with suppression orders.³⁴ There is a perilous relationship between villainising media coverage and the erosion of the presumption of innocence. For many people, the media is the either the only or the

²⁵ As cited in *Scott v Scott* (1913) AC 417, 477 per Lord Shaw and followed in Australia in *Dickason v Dickason* (1913) 17 CLR 50, 51.

²⁶ *Scott v Scott* per LJ Atkinson at 463. See also Lisa Waller and Katrina Clifford, ‘Courts in the Media’ in Camilleri M and Harkness A (eds) *Australian Courts: Controversies, Challenges and Change* (Palgrave Macmillan, 2023), 73-89 that the ‘media are uniquely and inseparably linked to open and accountable government’, 73.

²⁷ *Herald and Weekly Times Pty Ltd v DPP* 2007 VSC 71, per Kaye J.

²⁸ Australian Press Council, Statements of General Principles, <https://presscouncil.org.au/standards/statement-of-principles>, Principle 1.

²⁹ *Hogan v Hinch* (2011) 243 CLR 506, [20] (French CJ).

³⁰ Pender, (n24).

³¹ Leslie J Moran, ‘Mass-mediated ‘open justice’: Court and judicial reports in the press in England and Wales’ (2014) 34(1) *Legal Studies*, 143–166, 143.

³² Mark Deuze, *Media Life*. (Cambridge, 2014)

³³ Camilla Nelson, (2023). The ‘most maligned’ witness in the Christopher Dawson case: Gender, power, media and legal culture in the digitally distributed live-streamed court’ (2023) 20(1) *Crime, Media, Culture: An International Journal*, 83-106.

³⁴ Andrew Bolt, ‘ABC denies its Pell witch-hunt, then proves it’, *Herald Sun*, 11 April 2020. Chris Merrit, ‘Louise Milligan ignores key facts on George Pell’ Rule of Law Institute of Australia, 19 January 2023. Louise Milligan’s 2018 book *The Cardinal: The Rise and Fall of George Pell*, (Melbourne University Publishing), has been feted as an impetus for the Pell prosecutions.

main source of information for the progression and ultimate results of a criminal trial. Their interest may begin long before the culprit has been identified and following that identification only intensified as the stages of the criminal process unfold. There is a vested interest by the media in providing as much detail to capture the reader's longevity in the matter and increasing readership of the relevant outputs. Rather than just reflecting or reinforcing the status quo, the media are in a powerful position to mould or to sway public knowledge and opinion.³⁵ Ericson, Baranek and Chan, for example, have argued that the media play an active role in determining how crime and deviance are understood, 'a kind of deviance defining elite',³⁶ who may, in effect, act as agents of social control. This becomes more concerning as news organisations are progressively controlled by just a few.

The form of justice materialising before the legal system can even set a court date is, what is referred to as 'trial by media'.³⁷ As Greer and McLaughlin state trial by media has come to be known 'as a market-driven form of multi-dimensional, interactive, populist justice in which individuals are exposed, tried, judged and sentenced in the 'court of public opinion'.³⁸ The Chris Dawson trial in New South Wales in 2023 was awash with examples of excessive media intrusion prior to the commencement of the trial³⁹ and which necessitated a temporary stay of proceedings.⁴⁰ In the Pell case, Justice Kidd was criticised for ordering a suppression order⁴¹ on a verdict where a second trial with the same defendant was following closely off the back of a first trial. Of critical significance for the Judge in deciding whether or not to grant the suppression order was the lack of confidence in the ability of jurors in the upcoming second trial to disregard comments that might be published by the media (in one of the most highly publicised cases in Victorian trial history) in relation to the first trial; a decision that has been critically reviewed by many but considered overall, by learned scholars, to be a reasonable response to the circumstances as presented at the time.⁴²

It is inconceivable that the media does not have an impact on the jury. Burd and Horan have queried whether one will ever be sure that the jury has decided their verdict based on what has been stated in the courtroom or what has been provided by the media.⁴³ However, given that jury

³⁵ Paul Grabosky and Paul Wilson. *Journalism and Justice: How Crime is Reported* (Pluto Press, 1989) Jewkes, (n3); Gayle McPherson, et al. 'Elite Athletes or Superstars? Media Representation of Para-Athletes at the Glasgow 2014 Commonwealth Games' (2016) 31(5) *Disability and Society*, 659–675.

³⁶ Richard V Ericson, Patricia M Baranek, Janet BL Chan, *Visualizing deviance: a study of news organisations*, (Open University Press, 1987), 3.

³⁷ Helena Machado and Susanna Santos (2009) 'The disappearance of Madeleine McCann: Public drama and trial by media in the Portuguese press' (2009) 5(2) *Crime, Media, Culture*, 146-167.

³⁸ Chris Greer and Eugene McLaughlin, 'Media Justice: Madeleine McCann, Intermediatization and 'Trial by Media' in the British Press' (2012) 16(4) *Theoretical Criminology* 395-416, 397.

³⁹ Nelson, (n33).

⁴⁰ In allowing the temporary ban but refusing a permanent stay of proceedings, Justice Fullerton stated that the Teacher's Pet podcast at the heart of the issue was 'the most egregious example of media interference with a criminal trial process that this court has had to consider ...' *R v Dawson* [2020] NSWSC 1221, [443]. In addition, the Judge indicated that had the podcast been aired after Dawson had been charged with murder, the publishers and individuals would have been charged and convicted with contempt.

⁴¹ *DPP v Pell (Suppression Order)* [2018] VCC 905 (Kidd J).

⁴² Jason Bosland, "Open Justice, ""Back-to-Back"" Trials and Juror Prejudice: Examining the Suppression Order in the Trial of George Pell" (2022) 45(2) *Melbourne University Law Review* 462-510, 509 where he refers to Moses, the President of the Law Council of Australia being the main critic of Justice Kidd's decision.

⁴³ Roxanne Burd and Jacqueline Horan, 'Protecting the Right to a Fair Trial in the Twenty-First Century – Has Trial by Jury Been Caught in the World Wide Web?' (2012) 36 *Criminal Law Journal* 103-122.

deliberations are to be secret there are few published empirical studies on the views of jurors.⁴⁴ Goodman-Delahunty and Tait review a number of recent studies that confirm that there is an unconscious impact on both jurors and judges alike with respect to negative pre-trial publicity and that in addition and concerning, studies have shown that directions to jurors to disregard publicity that may impact the case are not effective – ‘put simply, undoing the harm of exposure to prejudicial information is unlikely’.⁴⁵

Contempt of Court vs Suppression Orders

Contempt of Court

There are various forms of contempt of court,⁴⁶ but this report is concerned only with the category that falls under the heading *sub judice* (‘under judgement’) (to prevent media organisations from impacting the fair trial of an accused person while the trial is ongoing and prior to a decision having been made).⁴⁷ The penalty for contempt is based on the impact on the administration of justice and the right of an accused to receive a fair trial.⁴⁸

Contempt, has been recently tested *en masse* in Victoria, in terms of the numbers of organisations prosecuted in the aftermath of the George Pell case as to historical child sexual assault offences in Melbourne that progressed to the High Court resulting in a unanimous decision of an acquittal on all charges.⁴⁹ At the hearing of the contempt charges in 2021, Justice Dixon of the Supreme Court of Victoria chastised the news organisations (including *The Age* and *Herald Sun*⁵⁰) for their ‘blatant and wilful defiance of the court’s authority’ in publishing Cardinal Pell’s convictions before a planned second trial, in breach of the clear suppression in order in place at the time.⁵¹

After the Pell case concluded (in the High Court) and prior to the sentencing of these news organisations for contempt, the Victorian Law Reform Commission (VLRC) released its 2020 report

⁴⁴ Jimin Pyo, ‘The impact of jury experience on perception of the criminal prosecution system’ (2018) 52 *International Journal of Law, Crime and Justice*, 176-184, 176.

⁴⁵ Jane Goodman-Delahunty and David Tait, ‘Juries in the Digital Age: Managing Juror Online and Social Media Use During Trial, in Camilleri and Harkness (eds), *Australian Courts: Controversies, Challenges and Change*, (Palgrave Macmillan, 2023), 45-64, 53. See also: Tarika Daftary-Kapur, Steven Penrod, Maureen O’Connor and Brian Wallace, ‘Examining pretrial publicity in a shadow jury paradigm: Issues of slant, quantity, persistence and generalizability’ (2014) 38(5) *Law & Human Behavior*, 462–477, where the authors suggest the media will release information to the public that would be inadmissible at trial.

⁴⁶ See as enumerated in the VLRC Report, (n7), xiii.

⁴⁷ As set out in *Covering the Courts: a Q and A guide for Journalists*, County Court of Victoria <https://www.countycourt.vic.gov.au/files/documents/2018-09/covering-courts.pdf>, 3.

⁴⁸ *R v Derryn Hinch* [2013] VSC 554, [12]. The matter of the amount of the penalty remains one of discretion for the individual Judge given there is no specific penalty prescribed either at common law or under the Victorian *Supreme Court (General Civil Procedure) Rules 2015*, r.75.11(1), except at the Magistrate’s Court level in Victoria and in the Coroners Court (where specific penalties are stated): VLRC Report, (n7), 309

⁴⁹ *Pell v The Queen* (2020) 376 ALR 478. See the article by Bosland, (n42) for the history of the relevant proceedings which commenced in 2018 and concluded in 2020.

⁵⁰ *The Queen v Herald and Weekly Times Pty Ltd* [2021] VSC 253, [496]. Rick Sarre, ‘Why have media outlets been fined more than \$1 million for their Pell Reporting’, *The Conversation*, June 4, 2021.

⁵¹ George Pell Media Contempt Proceeding Judgement, Justice Dixon, Supreme Court of Victoria, 4 June 2021 <https://www.supremecourt.vic.gov.au/news/live-stream-of-george-pell-media-contempt-proceeding-trial> ; New South Wales Reform Commission, *Open Justice: Court and tribunal information: access, disclosure and publication* (Consultation Paper 22, December 2020), 274-278 <https://lawreform.nsw.gov.au/documents/Publications/Consultation-Papers/CP22.pdf>

*Contempt of Court*⁵² which queried whether contempt had any useful purpose anymore in controlling the media.⁵³ The VLRC decided in the affirmative⁵⁴ but recommended a specific contempt offence be developed clarifying the test to be applied and that penalties be reviewed,⁵⁵ and that the ‘pending’ period for which contempt applies, end at the point of verdict and restart at the point when a retrial is issued.⁵⁶

Suppression Orders

By contrast, to prevent publication of prejudicial material in upcoming proceedings, for which contempt is not effective,⁵⁷ the only method is by way of a suppression order. As stated in 1986 by the New South Wales Law Reform Commission, ‘it may be that publicity which is adverse to the accused person is so prolonged and widespread that it is clearly impossible to eliminate its impact upon potential jurors’.⁵⁸ And, if that is not possible, then both the presumption of innocence and a fair trial are imperilled. During the Pell trial, it was stated that the expansive nature of digital media reporting meant that there was no point trying to suppress the reporting of the trial by way of court order, the ‘futility’ argument.⁵⁹ It is arguable that as the media interest progressed and intensified as predicted, that Pell should have had a judge alone trial, particularly after the first hung jury that then required a second trial. When easy access to social media is added to this equation, it is easy to see why judge alone trials would be a preferred option in sensationalised cases.

However, the interrelationship between open justice, courts and the granting of suppression orders has become a hotly contested topic in Victoria, with assertions that suppression orders are being given out ‘like lollies to children’⁶⁰ and the open justice legislation being undermined as a result.⁶¹ A 2017 review had determined that the number of orders granted was in proportion to the caseload of the tribunals concerned,⁶² but media commentators⁶³ have suggested that despite the 2017 review

⁵² VLRC, (n7).

⁵³ Ibid, (n7), [10.18]

⁵⁴ Ibid, (n7), [10.24]

⁵⁵ Ibid, (n7), Recommendations 76, 77 and regarding penalties, [10.156] and Chapter 15 generally.

⁵⁶ Ibid [10.104].

⁵⁷ Matthew Lippman and Thomas Weber, ‘The Law of Constructive Contempt: A Comparative Perspective’ (1979) 8(3) *Anglo-American law review*, 210–239, p.211

⁵⁸ NSW Law Reform Commission, New South Wales Law Reform Commission, *Criminal Procedure: The Jury in a Criminal Trial* (Report No 48, 1986) 103,

<https://lawreform.nsw.gov.au/documents/Publications/Reports/Report-48.pdf>

⁵⁹ Bosland 2022, (n42). Justice Kidd in *DPP v Pell (Suppression Order)* (2018), VCC 905 expressed his scepticism that the breach of the suppression order had occurred for the sole reason of persuading him to ‘vary or revoke’ the order on the grounds of futility. A recent statement as to futility of suppression orders in the face of social media has been made by Beach JA in *R v Lynn Take Down Application* [2026] VSC 148, [48].

⁶⁰ Richard Ackland, ‘You Wouldn’t Read About It: Not That You Can’, *Sydney Morning Herald* (online, 27 January 2006) <https://www.smh.com.au/national/you-wouldnt-read-about-it-not-thatyou-can-20060127-gdmusc.html>

⁶¹ Johan Lidberg and Alicia McMillan, ‘Open Justice no more: how Victoria’s courts are stopping journalists from doing their jobs’ *The Conversation*, 3 March 2026.

⁶² Victorian Government, Open Courts Act Review, Table of Recommendations (March 2018), 4.

<https://files.justice.vic.gov.au/2021-11/Open%20Courts%20Act%20Review%20-%20March%202018.pdf>

⁶³ As set out in Alicia McMillan and Johan Lidberg, ‘The State of Play: Limitations to Public Interest Journalism in Victoria in 2025’, Report n102, <https://www.melbournepressclub.com/uploads/News/News-2026/McMillan%20and%20Lidberg%20State%20of%20play%2025.pdf>

and the fact that the test of necessity is set at a high bar,⁶⁴ there have been few changes to the rate at which suppression orders are granted. Bosland, while suggesting that Victoria is not the suppression capital of Australia,⁶⁵ states that the Victorian government's reluctance to issue contempt proceedings against the media in circumstances where that should have occurred may have led to an over-reliance on suppression orders, as a form of pre-emptive strike.⁶⁶ The matter has acutely resurfaced in early 2026⁶⁷ prompted, in part, by the lengthy suppression orders in *DPP v Silvagni*.⁶⁸

PART 5: RESULTS AND DISCUSSION

Four cases were considered in the project: Greg Lynn ('GL'),⁶⁹ Erin Patterson ('EP'),⁷⁰ Tom Silvagni ('TS')⁷¹ and William Swale ('WS'),⁷² all chosen for the extensive media interest in Victoria over the relevant time period. The first three cases proceeded to trial and in all three, where findings of guilt were returned, appeals against conviction have been instituted, with one successful (GL), at the time

⁶⁴ *John Fairfax & Sons Ltd v Police Tribunal of NSW (1986) 5 NSWLR 465; Police Member No. 1 (a pseudonym) & Anor v Mokbel & Anor [2025] VSCA 34, 15 [65]*. And recently confirmed in *DPP v Silvagni [2025] VCC 538*.

⁶⁵ The orders have been maligned for some time in Victoria: See history of this in: Jason Bosland, 'Restraining "Extraneous" Prejudicial Publicity: Victoria and New South Wales Compared' (2018) 41(4) *UNSW Law Journal* 1263-1296 and later article by Jason Bosland, 'Debunking the Myth: Why Victoria is not the suppression capital of Australia' (2020) 24 *Media and Arts Law Review* 11-23.

⁶⁶ *Ibid.*

⁶⁷ Lidberg and McMillan, (n61). This article is based on their other Report: 'The State of Play' (n63). (The release of their report prompted a statement from Chief Justice Richard Niall of the Supreme Court of Victoria, as the Chair of Courts Council on 2 March 2026: <https://www.supremecourt.vic.gov.au/news/statement-from-the-chief-justice> . His Honour stated that the Report, which alleges that public interest journalism in Victoria is at a crisis in Victoria due, in part, to an overuse of suppression orders, 'contains a number of misleading claims, selective citations and suppression order data which has been debunked as incomplete and misleading'. His statements have been supported and affirmed by Liberty Victoria, *Media Release on Suppression Orders* <https://libertyvictoria.org.au/liberty-victoria-media-release-on-suppression-orders/> n.d.

⁶⁸ [2025] VCC 538. To be discussed in Part 5 of this Report.

⁶⁹ Greg Lynn: in relation to the deaths of two campers, convicted of the murder of one (Clay) but acquitted of the murder of the other camper (Hill). Lynn had claimed that he acted in self-defence when Hill charged at him and in the process of wrestling with this a gun went off killing Clay (by a shot to the head) and Hill then presented a knife to Lynn but then Hill subsequently fell onto the knife killing himself. Lynn was sentenced to 32 years imprisonment with a non-parole period of 24 years. Appealed to Court of Appeal, retrial granted. Awaiting date. *R v Lynn (Sentence) [2024] VSC 635; Lynn v The King [2025] VSCA 315 (Appeal); R v Lynn Take Down Application [2026] VSC 148; Re Lynn Bail [2026] VSC 86*.

⁷⁰ Erin Patterson: convicted of murdering 3 people and attempted murder of a 4th by poisoning with death cap mushrooms served in beef wellington prepared by Patterson. Sentenced to life imprisonment with a non-parole period of 33 years. Patterson's claim: this was accidental, not intended. *DPP v Erin Patterson [2025] VSCA 82* (court of Appeal re pre-trial rulings); *R v Patterson (Sentence) [2025] VSC 557*. Has appealed, awaiting date.

⁷¹ Tom Silvagni: convicted of 2 counts of rape. Sentence to 6 years and 2 months with a non-parole period of 3 years and 3 months. *DPP v Silvagni [2025] VCC 538; Silvagni v County Court of Victoria [2025] VSC 492* (Suppression order reinstated); *DPP v Silvagni Review of Suppression Order [2025] VCC 1838* (suppression order lifted post-verdict); *DPP v Silvagni [2025] VCC 1891* (sentence). Has appealed, awaiting date.

⁷² William Swale: a diabetic involved in the deaths of 5 people (including 2 children), through the impact of his car driving into them while they were sitting in outdoor area of hotel. The incident occurred on 5 November 2023, Swale was charged with 14 offences including 5 counts of culpable driving, 2 counts negligently causing serious injury and 7 counts of reckless conduct endangering life. 1 September 2024 Magistrate strikes out all charges: Tyron Dalton, 'Charges dropped against Daylesford pub crash driver, diabetic William Swale', *ABC News*, 19 September 2024.

of writing, with a retrial set in the future. The final case (WS), did not proceed to trial after a Magistrate ruled that all charges should be struck out.⁷³

A nuanced examination of the sample cases reveals how messages about different subjects were portrayed within relevant newspapers articles. The relevant headlines were extracted and the underlying content of the associated article examined as to whether their form of language (both tone and voice) undermined the suspect or defendant or portrayed them in a negative light; whether private and irrelevant information was published which was unnecessary for the investigation or trial; and, whether sensationalised and prejudiced headlines and content implied guilt or would be perceived to imply it.⁷⁴

Themes

Negative representations

From the outset the cases of GL and EP gripped the attention of the Victorian public, (a pilot allegedly killing 2 older campers at a public camping area and disposing of their remains and a mother of two poisoning her children's grandparents and two of their friends with a beef wellington laced with death cap mushrooms). EP's trial in particular was said to have the largest media interest in the recent history of Supreme Court trials⁷⁵ but the period between verdict and sentence in GL's trial also saw an increase in media traffic forming the subject for an application for a take down order pending retrial.⁷⁶

Before charges were even laid EP was portrayed in a negative light; a random video interview⁷⁷ conducted outside her house was the impetus for her being depicted as secretive, uncaring and feigning tears prompting Duff in 2024 to publicly state that ability of EP to receive a fair trial and find an impartial jury was questionable.⁷⁸ The words 'killer' and 'murderer' were being bandied around in newspaper headlines during trial (and before the accused had been found guilty) which conveyed a negative, value-laden tone ('deadpan defendant denies mushroom witnesses accounts'⁷⁹ and 'Shame, embarrassment, self-loathing. The picture of an accused mushroom killer').⁸⁰ Even EP was moved to suggest that the media had portrayed her as an 'evil witch'.⁸¹ Media articles also appeared from their tone and voice to demonise GL, both during the trial ('Greg Lynn's reality surpasses the Truman Show, as he testifies in his own murder trial);⁸² and 'He was selfish...'.⁸³ This negativity was

⁷³ Dalton, Ibid.

⁷⁴ Maria Stoyanova, 'The Impact of Media Publicity on the Presumption of Innocence' in Lieve Gies, (ed) *Trial by Media*, (Palgrave Studies in Crime, Media and Culture, 2025) 269-293.

⁷⁵ Amanda Meade, 'Erin Paterson trial was Victoria Supreme Court's largest media matter in recent history, court data reveals' *The Guardian*, 9 July 2025.

⁷⁶ R v Lynn Take Down Application [2026] VSC 148.

⁷⁷ <https://www.heraldsun.com.au/news/victoria/erin-patterson-talks-to-the-media-outside-her-leongatha-home/video/5bc7c2c32b21c108c642e32c1d8b55a4> 7 August 2023 (Current Affair). This was the only video interview Patterson ever gave.

⁷⁸ Duff referred to in Alice Coster, 'Lawyer's fears for accused mushroom killer' *Herald Sun*, 15 March 2024.

⁷⁹ Tony Wright, *The Age* 10 June 2025

⁸⁰ Erin Pearson and Marta Pascual Juanola, *The Age*, 4 June 2025. Also Erin Pearson, 'Lies, Damned Lies: The admissions and denials of an accused killer cook' *The Age*, 7 June 2025.

⁸¹ Cait Kelly, 'Erin Patterson says media have portrayed her as an "evil witch"' *The Guardian*, 16 August 2023.

⁸² Kristian Silva, *The Age*, 7 June 2024.

⁸³ Adeshola Ore, 'He was Selfish': Greg Lynn covered up deaths because he believed he would be blamed' *The Guardian*, 12 June 2024.

profound at the time of the verdict, in the article ‘How Lynn could pull off the legal escape of the century’ where Lynn was described as a ‘wife-bashing, pet-killing, car-painting, camouflage-wearing gun crank ... a calculating psychopath’.⁸⁴ Later, with respect to WS, the article ‘Inside the lavish life of the Daylesford pub crash driver’⁸⁵ covered material that was not relevant to the case and even before decisions were made on the charges, thus confirming the research of Goodman-Delahanty and Tait, that the media present both *suspects* and defendants alike as negative people.⁸⁶

References to irrelevant and prejudicial information

Prior to charges being laid, there was much speculation in media articles that arguably incriminated EP: ‘What we know about the mushroom death lunch’⁸⁷ and ‘13 burning questions over death lunch’⁸⁸ in particular the latter article, where there are specific references to claims that EP might have been poisoning Simon Patterson (her ex-husband) prior to the fatal lunch. The frequent by-line that the media uses and which was applied on the day EP was charged, for example, ‘The Herald Sun is not suggesting Ms Patterson deliberately poisoned her guests’⁸⁹ can only be viewed as an affirmation of the circumstances. Nelson indicates that this standard industry practice designed, in part, to avoid defamation proceedings ‘suggests that perhaps a person is actually guilty – a kind of “watch this space”’.⁹⁰

Likewise, with respect to GL, a similar refrain existed both before the trial and post-verdict. At the time charges were laid in 2020, the *Herald Sun* touched on material that was not strictly relevant to the missing campers: the death of Lynn’s first wife.⁹¹ It was presented merely as a set of facts, but it carried one sentence that indicated that there was an incredulity among her friends, that she would take her own life, this setting up potential third party involvement in her death, which was picked up amplified by another media outlet.⁹² Following the lifting of the suppression order, the matter of Lynn’s alleged responsibility for the death of his first wife reared its head again increasing in volume (‘Secret diary detailed abuse, fear of camper killer’s wife before her death’;⁹³ ‘High Country Killer Greg Lynn’s chequered criminal past revealed’;⁹⁴ ‘Greg Lynn and the zig zag road deaths’.⁹⁵) If the motive for this media excursus into past events was for the purpose of punishing and shaming GL, as an extra-judicial form of punishment, it subverts both the presumption of innocence and therefore

⁸⁴ Andrew Rule, *Herald Sun*, 29 June 2024. Note that there is no medical evidence of psychopathy that was introduced in the trial.

⁸⁵ Sarah Perillo, *Herald Sun*, 13 December 2023.

⁸⁶ (n45).

⁸⁷ Mandy Squires, *Herald Sun*, 9 August 2023.

⁸⁸ Mandy Squires, *Herald Sun*, 15 August 2023.

⁸⁹ In the article by Mandy Squires ‘9 key plot twists in mushroom lunch mystery’, *Herald Sun*, 2 November 2023.

⁹⁰ Nelson (n33), 97.

⁹¹ Brianna Travers, Mark Buttler, Aneeka Simonis, ‘Tragic ex-wife of accused murderer Greg Lynn was left heartbroken’, 25 November 2021.

⁹² As innocuous as the narrative might have been, the story was picked up by another media outlet in an article that was not focused on the current charges, Holly Hales, ‘Missing Camper’s suspect’s tragic past revealed’, *News.com*, 25 November 2021.

⁹³ Erin Pearson, *The Age*, 2 December 2025.

⁹⁴ Ashley Argoon and Miles Proust, *Herald Sun*, 2 December 2025.

⁹⁵ John Silvester, *The Age*, 3 July 2024.

his right to a fair trial.⁹⁶ The timing of some of these media articles were in the period (December 2025) while the Court of Appeal was considering GL's appeal (i.e. after the initial verdict in 2024).

For WS, while the information conveyed by the media was not irrelevant per se, the desire to provide the public with early details of the crash events meant that they prematurely reported details of a medical episode with limited information. Articles bearing the headlines: 'Driver ignored insulin alerts'⁹⁷ and 'No evidence driver braked in Daylesford killer crash'⁹⁸ are such examples. The article specifying Swale ignored insulin alerts was a particularly problematic headline. While recognising the police had presented this information to the court, medical experts later gave evidence that he was likely not aware that he had been alerted because he had already entered the zone of a medical episode. It was not a case of wilful ignorance or a case of him deliberately driving in a straight line towards people, as the second headline would suggest.⁹⁹ The reporting of some of these events was premature and carried wrongful accusations or egregious implications which potentially undermine the presumption of innocence. These examples from EP, GL and WS confirm Stoyanova's research that much damage can occur to the defendant's reputation by the media in the investigative or pre-trial phase.¹⁰⁰ In addition, the reporting in WS confirms the views stated by some researchers that most media reporting is 'one-sided ... biased' in favour of the prosecution and the police.¹⁰¹

Focus on justice secrecy

After the suppression order was lifted on 8 August 2025, in relation to EP, there was an extensive array of articles in the media that conveyed that the public had been effectively misled, information had been hidden from them with the clear innuendo from these articles that the public had a right to know all these details and secrets of the pre-trial evidence (for example, 'Suspicious, Mystery illnesses and a jar of vomit: What the Erin Patterson jury was never told'¹⁰² and 'The Secret poison papers and an imaginary cat: What the jury didn't hear in Erin Patterson's trial'.¹⁰³ There were many stories which focused, in particular, on the three alleged attempts on Simon Patterson's life,¹⁰⁴ for

⁹⁶Ryan Coulling and Matthew Johnston, 'The criminal justice system on trial: Shaming, outrage, and gendered tensions in public responses to the Jian Ghomeshi verdict' (2018) 14(2) *Crime Media and Culture*, 311-331.

⁹⁷ Kristian Silva and Leanne Wong, *ABC News*, 11 December 2023.

⁹⁸ Erin Pearson, *The Age*, 17 September 2024.

⁹⁹ In fact, the Magistrate determined that it was a case of automatism and a conviction was not likely in those circumstances (Dalton, (n72)). This ruling follows the case of *R v Schaeffer* [2005] 13 VR 337 – that it was not a conscious, voluntary or deliberate action).

¹⁰⁰ Stoyanova, (n74), 277.

¹⁰¹ United States study by Shirin Bakhshay and Craig Haney, 'The media's impact on the right to a fair trial' (2018) 24(3) *Psychology, Public Policy, and Law*, 326–340, 327.

¹⁰² Nino Bucci, *The Guardian* 8 August 2025, <https://www.theguardian.com/australia-news/audio/2025/aug/08/what-the-mushroom-murders-trial-jury-wasnt-told-full-story-podcast> Tone of this article/podcast is that jury were not privy to details that media believes they should have been including and extensive discussion of the fact that Erin had tried to poison Simon Patterson on three prior occasions. Justice Beale had ruled that many of these details were inadmissible during a series of pre-trial rulings, a view which the Court of Appeal agreed with in their judgement (*DPP v Erin Patterson* [2025] VSCA 82). In addition, the charges regarding Simon Patterson were regarded as weak which is why the DPP discontinued the charges. It is unclear why it is necessary then for this media article to extensively discuss and effectively disagree with the ruling by the court, that there was not enough evidence to proceed on these charges.

¹⁰³ Erin Pearson, *The Age*, 7 August 2025

¹⁰⁴ Bucci, (n102).

example, ‘Suspensions and a spreadsheet: Did Erin try to kill her estranged husband?’.¹⁰⁵ An appeal has been indicated and if, by chance, a retrial is ordered, these details will pose problematic for the courts to suppress and find an impartial jury, especially in Morwell.

Similarly with GL, material that jurors were not told at trial (under rules as to admissibility) were presented as ‘secrets’: ‘What the jury was not told in the case of the missing campers’.¹⁰⁶ This form of media analysis panders to the sector of the population harbouring deep resentments towards the justice system, especially where the information is presented without clear explanations of the permissible legal grounds for the suppression of particular details.

Suppression order Fury

The TS case appears to have been transformed into one, by the media, where the granting of the suppression order itself seems to have superseded the rape conviction as their prime focus. For 18 months the name of the accused was suppressed,¹⁰⁷ which effectively prevented the media from reporting anything about the case pre-trial and during the trial. That event, by itself, led to a form of tonal aggression in the reporting of TS’s case in gaining the suppression order which is quite palpable, with the clear implication that those who can pay from wealthy families will succeed: ‘How famous family fought to hide crimes’¹⁰⁸ and ‘How Tom Silvagni kept his name out of the headlines before his rape conviction.’¹⁰⁹ This displays a ‘rich person buys secrecy’ type commentary. It must be remembered that TS was merely exercising valid legal rights under s.18(b) of the *Open Courts Act*.

The mental health grounds that were the basis for the suppression order from the outset appear, in some articles, to be referred to in a scoffing manner, the tone carrying an air of unbelievability and scathing.¹¹⁰ In ‘Everybody Hates you every single day: Why the Silvagni case is the tip of the iceberg’, the author suggests that the mental health argument is used by Silvagni as a ‘loophole to hide from the embarrassment of the criminal charges against [him]’ and ‘the mental health exemption’ seems to be ‘for those who can afford lawyers and psychiatrists to argue it...’¹¹¹ The message is clear, that reputational damage to the family is being covered under a cloak pertaining to mental health. As Stoyanova has opined, ‘Emphasizing certain personal characteristics of the defendant that intentionally or unintentionally evoke deeply embedded emotions, such as anger or fear, can significantly increase viewership by provoking an emotional reaction within a substantial segment of the audience. However, this practice also reinforces bias and hatred perpetuating the perception of an individual or certain group as inherently criminal.’¹¹²

¹⁰⁵ Ashley Argoon, *Herald Sun*, 21 June 2025. Note that the trial was proceeding at the time of this media release.

¹⁰⁶ Erin Pearson, *The Age* 26 June 2024

¹⁰⁷ Details set out in a series of cases: *Silvagni v County Court of Victoria* [2025] VSC 492 and *DPP v Tom Silvagni (Review of Suppression Order)* [2025] VCC 1838.

¹⁰⁸ Laura Placella, *Herald Sun*, 12 December 2025.

¹⁰⁹ Kate Ashton, *ABC News*, 7 December 2025.

¹¹⁰ There a suggestion by Quill, in an opinion published after the verdict, that the *Open Courts Act* should be amended so as to eradicate mental health as a ground for suppression orders under ‘protection of personal safety’ grounds: Justin Quill, ‘How Tom Silvagni used wealth to fight for secrecy and why it is good he lost’ *The Australian*, 11 December 2025. Actually, the headline is incorrect because for 18 months a suppression order was in place on specific grounds supported by legislation.

¹¹¹ Michael Bachelard, *The Age*, 3 March 2026

¹¹² Stoyanova, (n74), 289.

The case in relation to TS, post-conviction and the lifting of the suppression order, provided another avenue for the ‘open justice is being threatened’ mantra to gain ground. This is reflected in articles including ‘If justice needs to be seen to be done, it is playing hide and seek’¹¹³ and ‘The document helping lawyers keep their client’s names secret’.¹¹⁴ After the release of the McMillan and Lidberg report in early March 2026, there have been a number of media articles on the point: ‘Attorney-General considers overhaul of secrecy laws used by high-profile defendants’¹¹⁵ and ‘Call to axe privacy shield for high-profile accused’.¹¹⁶ What these articles do accurately report, is the disjunct between the law’s ability to control mainstream media transgressions by comparison to those contained in social media.

Victims denied justice

After the charges were dropped in WS’s case, the media fury escalated, with headlines including: ‘No value on five lives’¹¹⁷ with the tone of the article indicating that justice had not been served. Indeed, the fact he was not charged and was released, unleashed a tirade on the judicial system, the police and the courts. The *Herald Sun* article ‘It has killed us even more’ carried tones that the family of the victims had been treated as ‘second class citizens... in Australia’.¹¹⁸ What this case illustrates, is that victims or their families have little role or control in the trial of an accused person or even the decision to charge someone. Following the charges being dropped, the OPP was prompted to issue a statement about their reasons for not proceeding to directly indict WS (i.e. against the Magistrate’s decision).¹¹⁹ The media coverage at this point was amplifying the ‘justice has failed’ message, which was also a feature of the Greg Lynn trial, particularly in relation to the acquittal of Hill.¹²⁰

Summary of Results

In relation to *mainstream* print media, the examination of the reporting *during* the trial in relation to EP and GL would reveal that the current laws would be regarded as adequate to contain the threat. This may be due to what might be termed, the ‘Pell’ effect. When examining these two cases in Victoria over the relevant period (and after the Pell contempt judgement in 2021), the research did not find any significant attempts by print media across the main four newspaper outlets studied in Victoria to undermine the presumption of innocence in a significant manner during the reporting of the matters that would undermine the *trial* phase of the proceedings. However, much material that was potentially damaging was referred to with respect to EP, GL and later WS in the *pre-trial* phases.

However, one has to be careful about drawing the more favourable conclusion with respect to EP and GL, cases that did proceed to trial, because in all instances, suppression orders and other pre-

¹¹³ Patrick Elliget, *The Age*, 12 December 2025.

¹¹⁴ Erin Pearson, *The Age*, 12 December 2025.

¹¹⁵ Chip le Grand and Daniella White, *The Age*, 4 March 2026.

¹¹⁶ Chip le Grand and Erin Pearson, *The Age*, 5 March 2026.

¹¹⁷ Erin Pearson, *The Age*, 19 September 2024.

¹¹⁸ Ashley Argoon and Brooke Grebert-Craig, *Herald Sun*, 2 November 2024.

¹¹⁹ OPP, *Media Statement on Decision not to directly indict William Swale*, 1 November 2024, <https://www.opp.vic.gov.au/media-statement-decision-not-to-directly-indict-william-swale/>

¹²⁰ As expressed by the family members of Hill: Anthony Dowsley and Sarah Perillo, ‘Justice for Dad’: Russell Hill’s daughter moves to sue Greg Lynn’ *Herald Sun*, 22 October 2024.

trial rulings were in place during extensive periods of media coverage which controlled the release of potentially damaging material to the defendant's case. In addition, the relevant Judges worked hard during the trial to contain any daily threats – most particularly in the Erin Patterson trial.¹²¹ There were, arguably, some clear breaches of contempt that were also not actioned, most particularly in EP's case, in relation to comments made by Kyle Sandilands.¹²² It is likely, given the media reporting that followed the lifting of the suppression orders described above in this Report, that without those suppression orders, the media would have acted to release that information on the grounds of open justice and transparency, notwithstanding that some of the material was not immediately relevant to the case and would raise concerns as to *sub judice* contempt.

The research did find a significant potential impact on the presumption of innocence and a right to a fair trial in relation to the intervening period post sentence and prior to an appeal being heard, once the suppression orders had been lifted, and this was acutely so with respect to TS (whose whole pre-trial and trial phases had been subject to a long-term suppression order). The rate at which newspaper articles increased in volume post-verdict was significant for EP, GL and TS, but the tone of the articles was negative, judgmental and in many cases damaging. This is particularly concerning for GL because a re-trial has been granted in his case but the date for the trial has needed to be pushed out given the media commentary surrounding the post-trial result.¹²³ Indeed at the 2026 bail application pending retrial, the lawyer representing GL indicated he would seek a permanent stay as there is 'no chance of a fair trial in 2026 or 2027' due to the activities of the media between the verdict and the appeal.¹²⁴ The presiding Judge agreed that there had been 'publicity so extensive... and so damaging that a fair trial was not currently possible'.¹²⁵ GL's case highlights that media interference puts the court in a position where they have, no alternative, other than to issue more suppression orders. This does raise questions over the basic premise of the recent report by McMillan and Lidberg¹²⁶ lambasting the current alleged number of suppression orders which they opine undermines the principle of open justice.

¹²¹ Alexander Darling and Gemma Grant, 'Inside the Battle to give Patterson, fair murder trial' *The Age*, 10 July 2025.

¹²² Marta Pascual Juanola, 'Kyle and Jackie O escape charges over mushroom trial commentary' *The Age*, 12 November 2025. The offending words from Sandilands were: 'Hasn't she done something like this before ... [a reference to the charges relating to Simon Patterson that were discontinued and as such are not proven]...but the rest of us already know ...you can tell by looking at her. Just lock that bitch up'.

¹²³ On 26 March 2026 GL unsuccessfully argued for a take down order with respect to disparaging media articles that have been covering events related to GL since the verdict and after the appeal technically acquitted him: *King v Lynn* [2026] VSC 148. The judgment appears to negate a suppression order or take down order being issued where 'there is an air of futility in making orders that would result in some of the material about which complaint is made being taken down, while the same or similar material would remain accessible to potential jurors' Justice Beach, [48]. His Honour is referring to social media or other outputs that are outside the control of the court.

¹²⁴ *Re Lynn Bail* [2026] VSC 86, [14]

¹²⁵ *Ibid* [30]. However, the Judge in the application neither granted bail nor later supported a take down order (*R v Lynn Take Down Application* [2026] VSC 557).

¹²⁶ (n63).

PART 6: RECOMMENDATIONS

1. Specific contempt of law legislation should be enacted. There needs to be a clear pathway for how the power is invoked with respect to contempt, by whom and what the maximum penalties are.¹²⁷ In addition, a decision needs to be made as to whether *sub judice* contempt is to be regarded as a criminal offence simpliciter. In the United Kingdom, the Law Commission suggested that social media breaches of contempt orders might be more readily investigated if an investigative body (i.e. the police) had the ability to do so, i.e. they are labelled as criminal.¹²⁸

2. Social media outputs that have the potential to threaten the presumption of innocence need to be controlled through contempt of court or suppression orders. The permanent nature of social media posts, their anonymous nature, the easy ability to post them and for posts to be re-published¹²⁹ represent a present and ongoing threat to the administration of justice. Current contempt laws are not adequate to withstand the threat. One might ask, what can the legislators do to contain the threat? Likewise, suppression orders, are effectively being undermined by the existence of social media outputs, as identified in *DPP v Silvagni*.¹³⁰ While ‘suppression orders are effective at suppressing information when it is the preserve of basically mainstream publishers, when it remains available through open media sources it renders futile judicial efforts to protect the jury’.¹³¹ This is, in part, due to the requirement that there must be a ‘real and substantial risk’¹³² of prejudice to the administration of justice which may be difficult to prove with singular social media, posts, for example. Mainstream media organisations are rightfully concerned about their requirement to adhere to suppression orders while ‘reckless keyboard warriors will defy them in the Wild West of social media’.¹³³

3. Suppression orders must be clearer to all parties with reasons published in all cases.¹³⁴

Establishing a register to understand when reporting restrictions are in place for all forms of media; a form of centralised on-line system would be preferred and helpful and contribute to a more meaningful relationship between the courts and the media. Examination of the current Supreme

¹²⁷ VLRC, Recommendation 77, (n7), 288-289.

¹²⁸ Law Commission, *Contempt of Court: Report Part 1 (on Liability)*, Law Com No.123, (Law Commission, UK, 2025), para 2.57.

¹²⁹ *News Digital Media Pty Ltd v Mokbel* (2010) 30 VR 248, 268.

¹³⁰ (*DPP v Silvagni Review of Suppression Order*) [2025] VCC 1838 per Justice Palmer, who allegedly stated: ‘Silvagni’s identity as the individual responsible for the rape was common knowledge via social media, and he had even noticed it in his own conversations with people who were not aware of his connection to the case.’ (Andi Yu and Kristan Silva ‘Tom Silvagni revealed as man from high-profile Victorian family convicted of rape’ *ABC News*, 11 December 2025. These exact words are not obvious in the judgement of Justice Palmer, but the Judge does acknowledge the issue, [18]. See also *R v Lynn Take Down Application* [2026] VSC 148 where a similar statement referring to ‘futility’ was made by Justice Beach in declining to issue a take-down order, [48].

¹³¹ Richard Ackland, ‘Legal Frictions: The Law has Failed to Keep Pace with Modern Journalism and Risks Becoming a Drag on Democracy’ *The Walkley Magazine* (online, 24 July 2018) <https://medium.com/the-walkley-magazine/legal-frictions-96ee2b03b983>

¹³² Rolph, (n6), 187 and fn 194 referencing a long list of Victorian cases that confirm this test for Victoria including the judgement of Mason CJ in *Hinch v Attorney-General (Vic)*(1987) 167 CLR, 15, 27.

¹³³ Elligett, (n113).

¹³⁴ S.14A of the *Open Courts Act*, currently requires this, but McMillan and Lidberg suggests this is not always complied with, (n63), 11.

Court 'request to be notified system'¹³⁵ excludes social media users and the efficacy of this system in promoting open justice and understanding for when suppression orders are in place, is currently questionable and the source of media criticism.

4. Active consideration to be given to suppression orders being imposed in sensationalised cases between verdict and potential appeal, particularly where an existing suppression order has already in place during the pre-trial and trial period. The current time period for lodging an appeal is 28 days after sentencing.¹³⁶ Once it is clear that an appeal will be run, then repeated reporting may undermine the presumption of innocence and a right to a fair trial, should a retrial be ordered. Interim orders could be usefully employed here.

5. Consideration should be given to re-legislating the use of more judge alone trials in matters where the case involves major circulation points on foot that would suggest a potential breach of the presumption of innocence is imminent, widespread and will be prolonged. In Queensland, for example, trials may be heard by a judge alone where 'there has been significant pre-trial publicity that may affect jury deliberations'.¹³⁷

6. Media liaison or information officers must be a permanent fixture in courts in all jurisdictions. While recognising there is currently an extensive court media liaison service in Victoria,¹³⁸ and a process in place for notifications to the media as to current applications for suppression orders,¹³⁹ there is clearly a disjunct between what media believe they should be allowed to publish and what courts think they can, despite the existence of Court guidelines directed to the media.¹⁴⁰ McMillan and Lidberg suggest that a round-table be organised to bring together the court's judiciary, media officers and media outlets to 'restart communications between the courts and media outlets in the interest of open justice and quality court reporting and to restore public faith that justice is being administered transparently'.¹⁴¹ A reporter's Charter might be another option setting out the rights and obligations of journalists reporting court proceedings.¹⁴²

PART 7: CONCLUSIONS

The judiciary and the machinery of justice must ensure that the media do not become a proxy judge and jury in cases which have the potential to become sensationalised. In all four cases, there was media coverage (at various times but more particularly post-verdict and pending an appeal or a retrial) that was capable of undermining the presumption of innocence and fair trial principles. The difficulty is, that without extensive and sensitive research into the views of jurors in leading trials, we

¹³⁵ As specified in Supreme Court of Victoria, *SC Gen 9 Notifications under the Open Courts Act 2013*, Practice Note 1 December 2025 <https://www.supremecourt.vic.gov.au/areas/legal-resources/practice-notes/sc-gen-9-notifications-under-the-open-courts-act-2013>

¹³⁶ This is across all Victorian courts: s.255(1) Appeals from Magistrate Court as to conviction, s274(1) Appeals from County Court as to conviction, *Criminal Procedure Act* (2019). Though this period has recently been doubled in the Supreme Court (so is now 56 days).

¹³⁷ *Criminal Code* (Qld) (1899) s.615(4)(c).

¹³⁸ As detailed by Chief Justice Niall, in relation to the Supreme Court of Victoria, (n67).

¹³⁹ Supreme Court of Victoria, (n135).

¹⁴⁰ For example, in Victoria, The County Court of Victoria guidelines, (n47).

¹⁴¹ McMillan and Lidberg, (n63), 7.

¹⁴² House of Commons Justice Committee, *Open Justice: Court Reporting in the Digital Age*, Fifth report of Session 2022-2023, London UK, <http://committees.parliament.uk/publications/33518/documents/182166/default/>

may never know how they have been impacted. But equally, we cannot rely on the unblinkered notion that the jury will, in sensationalised cases where extensive media coverage exists, abide by directions from their judicial officer to disregard prejudicial information. As stated in the 2020 NSW Open Justice Report, ‘There is a difference between preserving the public interest in open justice, reporting what is in the public interest, and allowing the media to report on what it considers might interest the public’.¹⁴³ It is not currently a requirement of the Victorian *Open Courts Act* when deciding on a suppression order, to determine if the public has an interest in knowing the information.

The project demonstrates the media’s role in reinforcing, maintaining, or changing public perceptions of people, and provides examples of the impact, and potential influence, of the media on public attitudes and opinions that may subsequently impact not only members of a jury but also governments’ responses and future policies. As Chief Justice Mortimer has reflected: ‘let us remember that the law operates on the lives of human beings, and in every juicy item where it might be said that this creature ‘open justice’ demands disclosure, there is a human being who may be personally affected by the suppression decisions that courts make’.¹⁴⁴

Limitations and further research

The research was a 6 month pilot restricted to focusing only on one jurisdiction, across four major newspapers (Victoria) and four selected cases. The project could be further expanded to cover all Australian jurisdictions in a comparative study and also to incorporate an extensive qualitative study of social media outputs connected to relevant cases. The latter is particularly appropriate, given as Rolph suggests¹⁴⁵ that the contempt laws in Australia while effective against mainstream media, are less effective with respect to social media posts, where a post taken in isolation is unlikely to pass the test for contempt (i.e. that there a risk of serious interference with the administration of justice).

A 2026 report by McMillan and Lidberg released in Victoria, provides a more pressing ground for research given it raises a concern (whether unfounded or not) about the number of suppression orders in Victoria viz-a-vis interstate counterparts.¹⁴⁶ Comprehensive research needs to be undertaken to assess the veracity of these views and from that research, decisions can be made about how contempt laws and suppression laws should co-exist. It is likely, though unproved, that many suppression orders are taken to avoid trials being interrupted with contempt matters. Research is needed to investigate the rate of contempt transgressions that could potentially be labelled as such but are not proceeded with. This may require qualitative research , garnering the views of judicial officers across a range of courts seeking examples from their experiences. From this research, we would gain further insight on whether the current contempt laws are fit for purpose.

Further research should also be conducted in Australia on the impact of media publicity on jurors. It appears to be a regular claim in opposition to a suppression orders by the media and their legal representatives, to insist that any potential prejudice arising from reporting of the trial can be

¹⁴³NSW Law Reform Commission, (n51), [10.108]

¹⁴⁴ Deborah Mortimer, ‘Reflections on the concept of ‘open justice’ (2025) 26 *Media and Law Review* 165, 172.

¹⁴⁵ CAMLA, Interview with David Rolph, *CAMLA Bulletin*, December 2023, 23-24, 23

https://www.camla.org.au/wp-content/uploads/2025/01/CAMLA_Bulletin_Dec_2023.pdf

¹⁴⁶(n63).

avoided by appropriate directions to the jury in any subsequent trial.¹⁴⁷ However, even the High Court of Australia have suggested that this is not immutable.¹⁴⁸ There is recent evidence in empirical studies from the United States that ‘although psychologists have consistently and repeatedly found that jurors do not disregard inadmissible evidence when instructed to do so by a judge, the law continues to assume they do’.¹⁴⁹

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¹⁴⁷ This was certainly raised the Pell case and debated afterwards (Bosland, (n42), 462); and recently in *King v Lynn* [2026] VSC 124. The case which is often cited in Victoria in this respect is *News Digital Media Pty Ltd v Mokbel* [2010] VSCA 34 where it is stated that Mokbel was acquitted by a jury despite the fact that extensive disparaging material had been published in the media about him and for which a takedown order was unsuccessful because the court thought the market had been so saturated by media coverage already. The *Mokbel* case is referred to as an example of the need to place confidence in the jury to disregard prejudicial information about the accused, but the situation is, that we have no idea how many other cases they have been swayed by media sensationalism.

¹⁴⁸ *Moore (a pseudonym) v The King* [2024] HCA 30.

¹⁴⁹ Pamela Sandberg, Tess Neal, Karey L O'Hara, 'Can Jurors Disregard Inadmissible Evidence? Using the Multiphase Optimization Strategy to Test Interventions Derived from Cognitive and Social Psychological Theories' (2024) 15(1) *Behavioural Sciences*, 7, 14.

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Further information

Monash University
Wellington Road
Clayton, Victoria 3800
Australia

T: +61 3 99051457
E: gayelansdell@monash.edu

www.monash.edu.au