

STATUTORY PROHIBITIONS ON PUBLICATION for Media as at August 2020

Suppressed material must not be published. Material may be suppressed by way of statutory provision, an existing order of the court or a lower court, or an order made in the course of delivering judgment. It is your responsibility to take all necessary steps to prevent publication of suppressed material.

The following is a guide on those statutory provisions that prohibit the publication of certain information in certain circumstances. It is intended as a guide only; exceptions may apply.

1. Criminal matters

Trial information

[Section 7](#) of the Contempt of Court Act 2019 states that where a person has been arrested for or charged with a category 3 or 4 offence, it is an offence to intentionally publish or disseminate information that creates a real risk of prejudice to their right to a fair trial. This applies until the person is not charged, pleads guilty or the jury delivers its verdict, or the charge is disposed of, or a judge-alone trial starts. [Section 8](#) explains how the Court determines whether publication creates a real risk. For example, the Court may consider whether the material comments on the credibility of witnesses.

[Section 199C](#) of the Criminal Procedure Act 2011 allows the Court to itself make an order forbidding publication of trial-related information.

[Section 199A](#) of the same Act prohibits publication of details of the previous convictions of a defendant during the proceeding for a category 3 or 4 offence, unless the Court gives permission. [Section 9](#) of the Contempt of Court Act and [ss 199B](#) and [199D](#) of the Criminal Procedure Act allow the Court to order a person to take down or disable access to prejudicial information under their control.

Cases involving sexual offending for proceedings commenced on or after 5 March 2012

[Section 203](#) of the Criminal Procedure Act provides that the name, identifying particulars, address or occupation of any person against whom sexual offending has been or is alleged to have been committed must not be published.

[Section 201](#) of the same Act says that the name, identifying particulars, address or occupation of a person accused or convicted of incest or sexual conduct with a dependent family member must not be published.

For proceedings commenced prior to this date, see s 139 of the [Criminal Justice Act 1985](#). Note the law under the Criminal Justice Act is substantively the same as that in the Criminal Procedure Act, although the details of the exceptions applicable under each Act differ.

Child complainants and witnesses for proceedings commenced on or after 5 March 2012

[Section 204](#) of the Criminal Procedure Act provides that the name, identifying particulars, address or occupation of a complainant or witness under 18 years of age must not be published.

This prohibition does not apply to a child who dies as a result of the offending.

For proceedings commenced prior to this date, see s 139A of the [Criminal Justice Act 1985](#). Section 139A provides for a prohibition on publishing the name or identifying particulars of a witness under the age of 17 years. There is no specific protection for child complainants.

Other witnesses

[Section 111](#) of the Evidence Act 2006 provides that if a pre-trial witness anonymity order is made, no person may publish, in any report or account relating to the proceeding, the name, address or occupation of the witness, or any other particulars likely to lead to the witness's identification.

[Section 113](#) of that Act provides that if a witness anonymity order has been made, no person may publish, in any report or account relating to the proceedings, the name, address or occupation of the witness or any other particulars likely to lead to the witness's identification.

Youth Court proceedings

[Section 438](#) of the Oranga Tamariki Act 1989 provides that no person shall publish any report of proceedings commenced in the Youth Court against a child or young person, except with leave of the Court that heard the proceeding. This prohibition does not apply to proceedings that are transferred from the Youth Court to the High Court. It applies only to proceedings before the Youth Court and appeals from the Youth Court.

Sentence indications for proceedings commenced on or after 5 March 2012

[Section 63](#) of the Criminal Procedure Act provides that information about a request for a sentence indication or a sentence indication that has been given must not be published. This prohibition lasts only until the defendant has been sentenced or the charge has been dismissed.

Criminal Investigations Bodily Samples

[Section 14](#) of the Criminal Investigations (Bodily Samples) Act 1995 provides that when an application is made for an order authorising the taking of a bodily sample from a suspect of or over the age of 17 years, no person shall publish in any report or account relating to any proceedings on that application, the name of the respondent [suspect] or any name or particulars likely to lead to the respondent's identification.

[Section 19](#) of that Act also provides that when applications are made for an order authorising the taking of a bodily sample from a suspect under the age of 17 years, no person shall publish, in any report or account relating to any proceedings on the application, the name of the respondent [suspect] or the parents or any person having the care of the respondent, or any other name or particulars likely to lead to the respondent's identification.

Criminal Records

[Section 13](#) of the Criminal Records (Clean Slate) Act 2004 provides that if:

- (a) An application is made for an order that a rehabilitation period need not be completed; or
- (b) An application is made for an order that a rehabilitation period need not be completed and that the applicant's conviction ought to be disregarded; or
- (c) An appeal is lodged against a refusal to make an order sought in an application described at (b), then –

the name of the applicant or appellant or any particulars leading to their identification must not be published in any report or account of the proceedings.

Bail hearings

[Section 19](#) of the Bail Act 2000 provides that no person may publish a report of any matters dealt with at a bail hearing, apart from the identity of the defendant applying for bail, the charges faced by that defendant, the decision of the court on that application and, if bail is granted, the conditions of bail.

The prohibition on publication lasts until the conclusion of the defendant's trial or any earlier time ordered by the court. The "conclusion of the defendant's trial" means the expiry of any period for an appeal of the decision or verdict at the trial, or if the decision or verdict is appealed, the date on which the appeal is finally determined or withdrawn.

Note the court may alter this prohibition under s 19(2) Bail Act to:

- Further restrict the matters that can be reported; or
- To allow publication of additional information.

Ensure you read any reminder notice on the front page of the judgment to understand any restrictions.

Extended supervision orders

[Section 107G\(10\)](#) of the Parole Act 2002 provides that [Subpart 3](#) of Part 5 of the Criminal Procedure Act 2011 (which relates generally to name suppression) applies, with all necessary modifications, to the hearing of an application for an extended supervision order, as if the hearing were a proceeding in respect of an offence under any of [sections 128 to 142A](#) of the Crimes Act 1961.

2. Family law matters

[Section 11B](#) of the Family Court Act 1980 provides that a person may not, without the leave of the court, publish a report of Family Court proceedings that includes identifying information where either a person under the age of 18 or a vulnerable person is the subject of, party to, applicant in, or referred to in the proceedings.

[Section 11C](#) defines the meaning of identifying information and [s 11D](#) defines the meaning of vulnerable person.

Sections 11B-11D apply to any proceedings commenced under the following statutes: [Adoption Act 1955](#); [Care of Children Act 2004](#); [Child Support Act 1991](#); [Oranga Tamariki Act 1989](#), in respect of applications for continued detention in a secured facility, applications relating to the care and protection of children and young persons, and applications relating to the trans-Tasman transfer of protection orders and protection proceedings; [Domestic Violence Act 1995](#);¹ [Family Violence Act 2018](#);² [Family Proceedings Act 1980](#); [Intellectual Disability \(Compulsory Care and Rehabilitation\) Act 2003](#); [Mental Health \(Compulsory Assessment and Treatment\) Act 1992](#); [Property \(Relationships\) Act 1976](#); and [Protection of Personal and Property Rights Act 1988](#).

See also the Ministry of Justice resource [Restriction on Publishing Judgments](#).

3. Immigration

[Section 151](#) of the Immigration Act 2009 provides that:

- The fact that a person is a claimant, a refugee, or a protected person, and the particulars relating to the person's claim or status, must be kept confidential at all times during and after the determination of the claim or other matter.
- It may be necessary for confidentiality to be maintained as to the very fact or existence of a claim or case. This will apply if disclosure of its fact or existence might identify the person concerned or be likely to endanger the safety of any person.

4. Miscellaneous

[Section 22](#) of the Contempt of Court Act 2019 makes it an offence for a person to publish false statement about a Judge or court, if the person knew or ought reasonably to have known that the statement could undermine public confidence in the court, and there is a real risk it could do so. [Section 24](#) allows the Court to order any person to take down or disable access to any such information under their control.

[Section 14I](#) of the Transport Accident Investigation Commission Act 1990 provides that no person may publish any report of an application for disclosure of:

- (a) A cockpit voice or video recording from a non-military aircraft or a transcript of a cockpit voice recording from a non-military aircraft; or
- (b) A document or record held by the Commission that contains information about an identifiable natural person that was supplied to the Commission in the course of an investigation –

without leave of the court.

¹ For proceedings commenced before 1 July 2019.

² For proceedings commenced on or after 1 July 2019.