Member	Michael O'Brien	Electorate	Malvern
Period	1 July 2026 to 30 September 2026		

Regulation 6 - Expense allowance and electorate allowance	
Total amount paid to member for electorate allowance	$11,376.74
Total amount paid to member for expense allowance	$0.00

Regulation 7 - Motor vehicle allowance	
Total amount paid to member for motor vehicle allowance	$5,768.63
Member did not receive the motor vehicle allowance in the previous quarter and member has elected to receive the motor vehicle allowance for this quarter	No

Regulation 9 - Parliamentary accommodation sitting allowance	
Total amount paid to member for parliamentary accommodation sitting allowance	$0.00
Suburb in which the member's parliamentary accommodation is located	n/a

Regulation 10 - Travel allowance claims

Date from	Date until	Reason for travel	Total amount paid	Town or city in which accommodation was located	Value of the accommodation

Total number of nights for travel allowance claims	0
Total amount paid to member for travel allowance	$0.00

Regulation 11 - Commercial transport allowance claims

Date from	Date until	Reason for travel	Total amount paid	Mode of transport	Value of transport

Total number of nights for commercial transport allowance claims	0
Total amount paid to member for commercial transport allowance	$0.00

Regulation 12 - International travel allowance claims

Date from	Date until	Reason for travel	Total amount paid
24/06/2026	6/07/2026	Flights to London and Dublin for meetings and conference attendance for electorate business	$9,959.09

Total number of nights for international travel allowance claims	12
Total amount paid to member for international travel allowance	$9,959.09

International Travel Report
The Hon. Michael O'Brien MP

Countries visited

London, United Kingdom
Dublin, Ireland

Meetings at UK House of Commons, Irish Dail and presentation at International Commercial Law Conference and associated meetings regarding legal policy issues.

Dates of travel
24 June, 2026 to Monday 6 July, 2026.

Type of business
Electorate business (undertaking research, participation in official activities to which the Member is invited).

Reason for travel
The primary reasons for the travel were two-fold. First, to meet with members of the Justice Committee of the UK House of Commons for policy discussions in relation to a policy proposal I am developing which would have important implications for the accountability of executive power in Victoria.

The other main reason for travelling was to attend and present at the International Commercial Law Conference held by the Victorian Bar at Trinity College, Dublin. This conference featured eminent speakers including senior judges and barristers from both Ireland and Australia. I was honoured to be invited to present to the conference in relation to the issue of suppression orders and media freedom in Victoria.

In addition to the above reasons, I also was able to:

- Attend the Palace of Westminster, including the House of Commons and House of Lords.

- Meet with a Minister in the Government of Ireland to discuss economic and political ties between Victoria and Ireland; and

- Meet with the immediate past President of the High Court of Ireland to discuss and compare approaches to current legal policy issues in Victoria and Ireland.

Dates and locations on which business was conducted (travel diary)

Business was conducted on the following dates and locations:

London
Thursday 25 June – Arrived London. Meetings with UK House of Commons Justice Committee.

Friday 26 June – Attended the Palace of Westminster, inc. House of Commons and House of Lords.

Saturday 27 June: Supposed to transit to Dublin. Flight cancelled at last minute which required staying in Heathrow in an additional night at airport-adjacent hotel.

Dublin
Sunday 28 June: Arrived in Dublin.

Monday 29 June: Attendance and visit at the Irish Dail (Parliament).
Meeting with Neale Richmond TD, Minister of State in the Department of Foreign Affairs and Trade with special responsibility for International Development and the Irish Diaspora.

Tuesday 30 June: Met with a member of the Irish Bar to discuss legal policy issues and the forthcoming conference.
Attended welcome reception for delegates to the International Commercial Law Conference.

Wednesday 1 July: Attended all sessions of day 1 of the International Commercial Law Conference. Attended the conference formal dinner addressed by the Chief Justice of Ireland.

Thursday 2 July: Attended all sessions of day 2 of the International Commercial Law Conference including presenting to the conference in session 10. Attended the farewell reception.

Friday 3 July: Meeting with the Hon. Nicholas Kearns, former President of the High Court of Ireland.

Saturday 4 July: Prepared for departure.

Sunday 5 July: Departed Dublin for Melbourne.

Monday 6 July: Arrived Melbourne.

Member's objectives

To meet with members of the Justice Committee of the UK House of Commons to assist in developing a policy proposal in relation to the accountability of the Director of Public Prosecutions to the Parliament of Victoria.

To attend and present at the International Commercial Law Conference held by the Victorian Bar at Trinity College, Dublin to discuss and debate current issues relating to the Victorian legal system, including the impact of Parliamentary legislation on the operation of the courts and press freedom.

To meet with senior legal and political figures to exchange information and views and to better understand approaches to common challenges across jurisdictions.

Parliaments and other organisations visited (if any)

UK House of Commons, inc. Justice Committee
UK House of Lords
Irish Oireachtas (Parliament)
Government of Ireland
Judges of the High Court and the Supreme Court of Ireland

Persons met in relation to the reason for the travel and the assistance or information obtained from such persons

UK House of Commons Justice Committee

I met with Mr Robi Quiqley, Clerk of the Justice Select Committee of the House of Commons and Dr Jack Simson Caird, Deputy Counsel, Justice Select Committee of the House of Commons (the Committee).

Both gentlemen provided me with great assistance in better understanding how the Committee operates. In particular – and by sharp contrast to the Parliament of Victoria and its committees – the Committee regularly invites the UK's Director of Public Prosecutions (DPP) to appear before it to give evidence.

The appearance of the DPP before the Committee enables its members to discuss matters of public concern with him. The DPP generally appears at least annually before the Committee but can appear more often if warranted.

It was also of note that I was advised that the DPP does not resist appearing before the Committee. In fact, it was put to me that the DPP appreciated the opportunity to engage with the Committee to discuss issues of public concern.

Further information regarding the assistance and information provided by Mr Quigley and Dr Simson Caird are incorporated in later sections of this report regarding results achieved and recommendations arising from the visit, as this visit has sharpened my view that we have significant lessons to learn from the House of Commons and its Justice Committee that would better ensure executive

accountability to the legislature as well as serving the broader public interest in relation to the operation of the justice system in Victoria.

Government of Ireland

I was honoured to meet with Minister Neale Richmond TD, Minister of State in the Department of Foreign Affairs and Trade with special responsibility for International Development and the Irish Diaspora.

I had met with Minister Richmond a number of years ago, as he was then co-Chair of the Oireachtas (Irish Parliament's) Friends of Australia group when he was serving in the Seanad Éireann (Senate of Ireland). He has subsequently been elected to Dáil Éireann, which is the lower house of the Oireachtas, representing the Dublin-Rathdown constituency.

Minister Richmond not only has a particular interest in Australia, but his current portfolio includes special responsibility for the Irish Diaspora. Given how many Australians have or claim a level of Irish descent (Australia's Governor-General recently put the figure at one in ten[1]), as well as the number of young Irish people who come to Australia each year, our discussions were particularly apt.

The Minister and I canvassed a number of topics including the current state of Irish, Victorian and Australian politics. The current Irish government is a coalition of the two traditional rival parties formed out of the Irish civil war, Fianna Fail (FF) and Fine Gael (FG). These traditional rivals came together in response to an increase in the vote for Sinn Fein (SF). During the Troubles, SF was widely regarded as the political wing of the Provisional IRA. While the party would dispute that characterisation today, there is little dispute that SF's platform is far more left wing and aggressively nationalist than those of the more centrist FF or FG.

The last two Irish governments have seen a coalition of FF and FG, with the roles of Taoiseach (Prime Minister) and Tánaiste (Deputy PM) swapping between the parties at the halfway point in the parliamentary term. SF has provided the role of Opposition.

Among the Irish population there is some concern at the number of their young professionals who leave Ireland, including those who come to Australia, especially doctors and nurses. While a number of these young people return to Ireland at some point, it is an issue to be conscious of in the future.

Interestingly, the opportunity to play AFL and AFLW has also been a high-profile issue for supporters of Irish football conducted by the Gaelic Athletic Association (GAA), who are concerned at some of their best young players being 'poached' (as they see it) for Aussie rules. While the GAA operates as an amateur competition with

[1] https://www.instagram.com/reel/DbRTbKAov5A/?utm_source=ig_web_copy_link&igsh=MzRlODBiNWFlZA==

players not being paid, some of their best players see career opportunities by coming to Australia.

Of note is that the County Mayo football team has just won the All-Ireland Senior Football Championship, breaking a 75-year drought. One of the stars of the Mayo team is Kobe McDonald, who has signed with St Kilda FC as a rookie. Whether he can help the Saints to break their 60-year premiership drought remains to be seen.

Compared with our last meeting, which was dominated by the impending impact of Brexit on Ireland's economy and relationship with the UK, the consequences of Brexit were not nearly as dire as had been previously feared. Political issues had been largely resolved in terms of cross-border issues and there had been some additional investment attracted to Ireland from overseas businesses who wished to be located in an EU country that was English-speaking and had a common law system.

With the Irish Government opening a Consulate-General office in Melbourne in the past year, the commitment to enhancing relationship between Victoria and Ireland appears strong. As Co-Chair of the Victorian Parliamentary Friends of Ireland, I am very pleased to see that the important cultural, sporting, employment and economic ties between our state and Eire appear to be going from strength to strength.

The Hon. Nicholas Kearns, former President of the High Court of Ireland

Judge Kearns had spent some time in Australia through family ties and has a great interest in legal developments here. The opportunity to spend some time with the judge was very informative, especially as his judicial career had been so varied. As well as being appointed to the Supreme Court of Ireland and serving as President of the High Court of Ireland for six years during a judicial career encompassing 17 years, the judge also served on Ireland's Special Criminal Court (SCC). The SCC is a juryless criminal court which tries serious crimes including organised crime and terrorist offences, often in circumstances where a jury trial may be regarded as susceptible to jury tampering or intimidation. The SCC is still politically controversial (due to its deprivation of the option of trial by jury) but has served an important role in tackling serious criminal matters in Ireland that might otherwise be difficult to determine.

I am very grateful to the judge for being so generous with his time.

International Commercial Law Conference, Victorian Bar

The International Commercial Law Conference featured a large number of eminent presenters who all provided important insights into a range of current legal questions. The panels were very interesting and featured members of the Victorian, Australian and Irish judiciary, as well as the Victorian and Irish Bars. As Ireland is a common law country and has a similar legal system to Victoria – with the exception

of the European Union legal overlay – there were many similarities in terms of the challenges posed by both systems.

It is not feasible to distil all of the learnings, as well as policy and legal issues, canvassed across the days of the conference. However, a recitation of the topics and panel compositions will indicate the depth and quality of the matters considered.

- Mr Sean Guerin SC, President, Irish Bar

<u>Case management and the resolution of commercial disputes</u>

- The Hon. Mr Justice David Barniville, President, High Court of Ireland
- The Hon. Justice Jim Delany, Supreme Court of Victoria
- Her Honour Judge Sharon Burchell, County Court of Victoria
- Mr Sam Rosewarne KC, President, Commercial Bar Association of Victoria
- Mr Rossa Fanning SC, Attorney-General for Ireland

<u>Modern corporate governance and directors' duties</u>

- Mr Phillip Crutchfield KC, Victorian Bar
- Mr Joe Longo, former ASIC Commissioner
- The Hon. Justice Penny Neskovcin, Federal Court of Australia
- The Hon. John Middleton AM, KC
- Mr Michael Borsky KC, Victorian Bar

<u>Renewable energy projects, arbitration and foreign state immunity</u>

- Ms Amy Hando, Victorian Bar
- The Hon. Justice Ian Waller, Supreme Court of Victoria
- Mr Anthony Strahan KC, Victorian Bar
- Mr Michael Collins SC, Law Library of Ireland
- Mr Jonathon Redwood SC, Victorian Bar

<u>Litigating with and against Government</u>

- The Hon. Justice Sam Hay, Supreme Court of Victoria
- Mr Mark Costello KC, Victorian Bar
- Ms Catherine Kelso, Partner, Gilbert and Tobin
- Mr Michael Thomas, Victorian Bar
- Mr Paul McGarry SC, Law Library of Ireland

<u>Advocacy and AI</u>

- Ms Fiona Ryan SC, President, Victorian Bar
- Ms Justice Eileen Roberts, High Court of Ireland
- His Honour Judge Michael Wise, County Court of Victoria
- Ms Hannah McIvor, Victorian Bar
- Mr Rohan Lupton SC, Law Library of Ireland

<u>Conference dinner guest speaker</u>

- The Hon. Mr Justice Donal O'Donnell, Chief Justice of Ireland

Reciprocal enforcement of judgments in Australia and abroad

- The Hon. Justice Timothy McEvoy, Federal Court of Australia
- Ms Caren Geoghegan SC, Law Library of Ireland
- Dr Laura Hilly, Victorian Bar
- Mr Damien McAloon SC, Victorian Bar

Class actions: the Victorian approach

- Ms Kateena O'Gorman SC, Victorian Bar
- Ms Imogen McGrath SC, Law Library of Ireland
- Mr Kieran Hickie, Victorian Bar
- Mr Mitchell Grady, Victorian Bar
- Ms Xuelin Teo, Victorian Bar

Force Majeure: the impact of geopolitics on international and domestic contracts

- The Hon. Justice Trish Matthews, Supreme Court of Victoria
- Mr Justice Mark Sanfey, Court of Appeal
- Mr Nik Dragojlovic, Victorian Bar
- Ms Amanda Storey, Victorian Bar
- Ms Bernadette Quigley SC, Law Library of Ireland
- Ms Geraldine Gray, Victorian Bar

Reconciling wagering and integrity in sport

- Mr Paul Hayes KC, Victorian Bar
- Her Honour Judge Katherine Bourke, County Court of Victoria
- Mr Will Houghton KC, Victorian Bar
- Ms Susan Ahern SC, Law Library of Ireland
- Ms Louise Reilly SC, Kellerhals Carrard
- Mr Sandip Mukerjea, Victorian Bar

Commercial advocacy, live-streaming, open justice

- Ms Justice Mary Rose Gearty, High Court of Ireland
- Ms Gina Schoff KC, Victorian Bar
- The Hon. Michael O'Brien MP, Parliament of Victoria
- Ms Georgia Douglas, Victorian Bar
- Mr Declan Peacock, Victorian Bar

In terms of the presentation I gave regarding the use of suppression orders and media freedom in Victoria, the recommendations are incorporated later in this report.

Reference to documents or publications obtained or considered to be of interest in a Parliamentary sense

Extract from role of the Justice Committee

> The Justice Committee was appointed by the House of Commons to examine the expenditure, administration and policy of the Ministry of Justice and associated public bodies, (to include the work of staff provided for the administrative work of courts and tribunals, but excluding consideration of individual cases and appointments, and excluding the work of the Scotland and Wales Offices and of the Advocate General for Scotland); and administration and expenditure of the Attorney General's Office, the Treasury Solicitor's Department, the Crown Prosecution Service and the Serious Fraud Office (but excluding individual cases and appointments and advice given within government by Law Officers).

https://committees.parliament.uk/committee/102/justice-committee/role/

Extract from the Standing Orders of the House of Commons

152. Select committees related to government departments

(1) Select committees shall be appointed to examine the expenditure, administration and policy of the principal government departments as set out in paragraph (2) of this order and associated public bodies.

(2) The committees appointed under paragraph (1) of this order, the principal departments of government with which they are concerned and the maximum numbers of each committee shall be as follows:

Name of Committee	Principal government departments concerned	*Maximum members*
12 Justice	Ministry of Justice (including the work of staff provided for the administrative work of courts and tribunals, but excluding consideration of individual cases and appointments, and excluding the work of the Scotland and Wales Offices and of the Advocate General for Scotland); and administration and expenditure of the Attorney General's Office, the Treasury Solicitor's Department, the Crown Prosecution Service and the Serious Fraud Office (but excluding individual cases and appointments and advice given within government by Law Officers)	11

https://publications.parliament.uk/pa/cm201719/cmstords/1020/body.html

Summaries of the study areas pursued in the countries visited

Summary of the results achieved and any recommendations arising

I will combine these two categories (to the extent that they have not already been canvassed in this report) as they necessarily overlap in terms of the content.

Accountability of the Director of Public Prosecutions to the Parliament

The office of Director of Public Prosecutions (DPP) was established in 1982 by the Director of Public Prosecutions Act 1982 (Vic). This was an initiative of the Cain Labor government which sought to enhance the independence of prosecutorial decisions from the government of the day. The office of DPP is recognised in Part IIIA of the Constitution which provides, inter alia, that the DPP:

- is appointed for a minimum of 10 years and a maximum of 20 years;
- is appointed on the same remuneration and pension entitlements as a judge of the Supreme Court and which cannot be reduced whilst in office; and
- can only be removed by a vote of both houses of Parliament.

In short, the DPP is given the same protections as a judge of the Supreme Court, with the exception that the DPP has a fixed (long) term appointment.

Section 10 of the Public Prosecutions Act 1994 (Vic) provides:

> **10 Director is responsible to Attorney-General**
>
> (1) The Director is responsible to the Attorney-General for the due performance of his or her functions and exercise of his or her powers under this or any other Act.
>
> (2) Subject to this Act, nothing in subsection (1) affects or takes away from the authority of the Director in respect of the institution, preparation and conduct of proceedings under this or any other Act.

However, the DPP has effective operational independence from the Attorney-General in relation to prosecutorial decisions[2].

Beyond the obligation to lay (via the Attorney-General) an annual report before Parliament[3], there is very little that requires the DPP to be accountable to the Parliament for the exercise of his/her very important and extensive powers.

[2] One exception being the ability of the Attorney-General to enter a *nolle prosequi* (or decision to discontinue criminal proceedings) as per section 25.
[3] Section 12.

Why does this matter?

It matters because our Westminster system of democracy provides that the executive is required to be responsible to the legislature for the exercise of its powers.

Ministers, who exercise executive authority, must not only be Members of Parliament but must answer questions in the Parliament.

The Chief Commissioner of Police – who exercises executive power - appears before the Public Accounts and Estimates Committee of Parliament each year.

Even the Governor – the ultimate symbol of executive power - will appear before Parliament at the opening of Parliament to deliver a speech on behalf of the new government, which is then subject to parliamentary debate.

However, the DPP has no such mechanism for the accountability of their exercise of powers before the Parliament.

In the High Court of Australia decision in *Ayles v The Queen* [2008] HCA 6 at [71], Justice Kiefel made the following observations concerning the distinction between the province of the executive and the province of the courts in prosecutorial decisions:

> 71 In *Director of Public Prosecutions (SA) v B*[66] Gaudron, Gummow and Hayne JJ referred to the fundamental importance of the line drawn between the decision whether to institute or continue criminal proceedings, the province of the executive, and decisions directed to ensuring a fair trial and the prevention of abuse of the court's processes, the province of the courts. In *Maxwell v The Queen*[67] Dawson and McHugh JJ pointed out that, save where it is necessary to a fair trial or the prevention of abuse, courts in Australia do not purport to exercise control over the institution and continuation of criminal proceedings[68]. In *Barton v The Queen*[69] it was said that it ought now be accepted that certain decisions involved in the prosecution process are insusceptible of judicial review. They include the decision whether to lay or prosecute a particular charge. In *Maxwell v The Queen* the refusal of the trial judge to accept a plea, which the prosecution would accept, was considered to be of the nature of a review[70].

Highlighting the fact that the prosecutorial function is an executive, rather than a judicial one, in *Maxwell v The Queen* [1996] HCA 46, Justices Dawson and McHugh noted:

> In R v Brown the Court of Criminal Appeal recognised the substantial practical limitations upon the power of the courts to control the exercise by prosecuting authorities - in that case the Director of Public Prosecutions - of their discretion in such matters as the choice of the offence with which an accused is to be charged or the acceptance of a plea of guilty to a particular charge. The Court rightly observed that the most important sanctions governing the proper performance of a prosecuting authority's functions are likely to be political rather than legal.

If the decision to lay charges, withdraw charges or to not lay charges is an exercise of executive power – and it is - where is the accountability for the exercise of that power to the legislature?

Effectively, there is none in Victoria.

While the determination of charges brought by the DPP is made through the judicial system, many matters may never see the inside of a courtroom because the DPP has declined to lay charges.

One recent example is the then-DPP's decision to refuse to lay charges over the Lawyer X scandal, despite the Office of Special Investigator (OSI) undertaking an exhaustive 2-year investigation gathering 5000 pages of evidence and recommending that charges be laid.

The DPP's decision to refuse to allow any charges to be brought in this scandal – a clear exercise of executive authority – was a controversial one ("Special investigator probing Lawyer X case lashes Victoria's chief prosecutor for refusing to charge those involved", ABC online, 21 June 2023 https://www.abc.net.au/news/2023-06-21/lawyer-x-gobbo-investigator-nettle-criticises-prosecutor-judd/102504738).

While the DPP chose to provide a statement to Parliament (dpp-response-to-osi-special-report.pdf), which was essentially a response to the OSI's statement**,** there was no opportunity for the legislature to question the DPP on this matter.

By contrast, the Justice Committee of the House of Commons regularly has the UK DPP appear before it.

If the House of Commons – the Mother of Parliaments – has the DPP appear before it while respecting the independence of the office, why does this not occur in Victoria?

I stress that this is not an argument for political interference in the operational decisions of the DPP. The proposal for the Victorian DPP to appear before the Parliament respects the independence of the DPP, just as does the House of Commons.

However, independence does not, or should not, mean unaccountability.

There are many issues concerning the operations of the Victorian Office of Public Prosecutions that Members may wish to discuss with the DPP.

For example, in 2014 the Parliament of Victoria passed the Sentencing Amendment (Coward's Punch Manslaughter and Other Matters) Act 2014. This Act provided for a mandatory minimum 10-year sentence for a person convicted of killing another through a 'coward's punch', defined as being caused by a fatal, unexpected single strike to the head or neck.

Despite the law being on the books for 12 years, it has been used exceedingly rarely. The most prominent case is that of the coward punch killing of Box Hill Hospital doctor Dr. Patrick Pritzwald-Stegmann in 2017, where the offender was sentenced to

a minimum term of 10.5 years. It is not clear if the charge has been successfully prosecuted since then.

It would be of interest to Members, and the broader public, to understand why the DPP has been reluctant to use this law. Are there issues with the wording of the statute which make it difficult to apply (and which Parliament could resolve)? Are there concerns that judges do not like mandatory minimum sentencing and which therefore leads the DPP to prefer a plea deal on a manslaughter charge rather than a contested coward's punch charge?

We are left to speculate because Victoria's DPP does not appear before any committee of the Parliament of Victoria in order for those questions to be asked and answered.

The UK DPP appeared before the UK House of Commons Justice Committee most recently on 30 June 2026[4]. At the hearing, the UK DPP answered questions in relation to a wide array of matters including:

- court backlogs in hearing criminal matters and the impact on the Crown Prosecution Service (CPS);
- the impact of a newly created offence relating to assaults on emergency workers;
- systemic issues which led to the failure of a prosecution of the Irish band Kneecap and what measures had been put in place to remedy the systemic issues;
- the interactions that victims of crime might expect to have with the CPS during the criminal justice process and whether these are adequate; and
- the impact of changes to bail laws on the CPS's policy relating to opposing bail.

Each of these issues are in the public interest. In no case has the independence of the UK DPP been compromised by appearing before the Justice Committee and discussing them.

It is time that the Victorian DPP had the same degree of transparency and accountability for the exercise of executive power as does their UK counterpart.

I recommend that the next Parliament provide for the Victorian DPP to appear on a regular basis before an appropriate joint committee of the Parliament – possibly a reconstituted Integrity and Oversight Committee or similar – subject to similar protections in relation to not discussing individual cases or appointments – so that there is appropriate accountability for the significant executive power the office exercises over Victorians.

[4] https://committees.parliament.uk/oralevidence/17873/html/

Operation of the Open Courts Act in relation to suppression orders

In presenting to the International Commercial Law Conference on the topic of commercial advocacy, live-streaming and advocacy, I considered the background to Victoria's Open Courts Act 2013.

In particular, there is an apparent disconnect between the intentions of the Parliament in legislating this statute and the way in which it has been applied by the courts.

When the Open Courts Bill was introduced in 2013, the then-Attorney-General noted:

> This bill is an important part of the government's reforms to strengthen the Victorian justice system. Open justice demonstrates publicly that laws are being applied and enforced fairly and effectively. Open justice also promotes personal responsibility. Unless there is good reason to the contrary, the community is entitled to know what is being said in court where there are allegations that the conduct of an individual or organisation is in breach of the law. When an individual or organisation acts contrary to law, they should expect to be held accountable, not only to judges and magistrates, but also to the community.

The Attorney went on to note that Victoria's Bill was more rigorous than the standards proposed by the Standing Committee of Attorneys-General in that:

> …the bill omits the open-ended and poorly defined general 'public interest' ground that was included in the model bill.

It is true that the Bill reframed one of the tests for a suppression order from being to "protect the physical safety of any person" to "protect the safety of any person".

Victorian courts have subsequently interpreted this change as expanding the scope of the type of safety for which a person can seek the protection of a suppression order to include, for example, psychological safety.

This ground has been used on numerous occasions to justify either a suppression or pseudonym order; often in criminal matters but sometimes in civil matters as well.

Defendants in serious criminal matters including rape may succeed in obtaining the benefit of a suppression order by arguing that adverse publicity may cause such damage to their mental health that they may harm themselves.

Notably, the then-Attorney has recently commented that this was <u>not the intention</u> of the Government in enacting the new law.

In the case of WEQ and Medical Board of Australia, the Victorian Court of Appeal noted:

> "…the principle of open justice is not displaced simply because a suppression order would spare a party (and their family members or associates) embarrassment, shame or humiliation. The possibility of reputational damage or embarrassment to a party (and to their associates) is an incident of the

> principle of open justice and not usually a reason to depart from it by making a suppression order".

But when does one party's "embarrassment, shame or humiliation" become a risk to their psychological safety (and subsequent physical health) warranting a suppression order? All too often it would appear, especially in Victoria.

Media organisations[5] have made the argument that the Open Courts Act should be amended so that s.18(1)(c) would read (underlined words to be added):

> The order is necessary to protect the physical safety of any person from a real and substantial risk from another person;

These two qualifiers would prevent an applicant from essentially threatening harm to themselves as a basis for obtaining a suppression order.

It is my recommendation that the next Parliament enact this or a similar amendment to the Open Courts Act to ensure that the current loophole can be closed and that this statute may become true to its name.

[5] https://www.news.com.au/national/victoria/melbourne-media-unit-to-demand-end-to-court-secrecy-for-offenders/news-story/3048ca990855fc520c7648c568cacec0

Appendix

The town, city or suburb in which the accommodation was located; and the value of the accommodation (if claiming the cost of accommodation)

London: $1215.35 (including breakfast each day x 2 nights).
Dublin: $2360.20 (including breakfast each day x 8 nights).

The mode and value of commercial transport (if claiming the cost of commercial transport)

Airfares
Melbourne to Abu Dhabi; Abu Dhabi to London: airfare $6601.49; London to Dublin (rescheduled flight): airfare $978.91; Dublin to Dubai; Dubai to Melbourne: airfare $6339.94.

Taxis/rideshares - $397.49
Tube (London) - $87.66
Airport Hoppa Bus - $13.42
Luas (Dublin) - $4.31