

# Media Policies and Practices



## Media Team contact details

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## OBJECTIVES

The Court's objectives in dealing with the media are:

1. To facilitate full and accurate reporting of what the Court does.
2. To take advantage of appropriate opportunities to further the community's understanding of the Court's function and its work.

## **MEDIA ENQUIRIES**

### **Supreme Court media enquiries**

Members of the media are welcome to contact the Court's Media Team at any time:

- Michelle Dall (0408 129 873): Monday, Tuesday
- Kerry O'Shea (0418 201 296): Wednesday, Thursday, Friday

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### **Routine enquiries**

Reporters generally ring associates to ask about a case:

- to determine their workload for the day – eg: which case to cover, which cases are interesting; or
- to ask for information about procedural matters, such as the progress of a case or trial.

Court reporters understand that information given in response to this type of query is not to be attributed to any person.

### **Transcript**

Reporters may request associates to provide copies of transcript.

Copies of transcript of criminal trials are provided free of charge to media with approval from the presiding judge. This is a long-standing practice, developed to assist media to more accurately report cases. If the presiding judge agrees, the associate may directly e-mail the transcript or parts of it to the media on request, or forward the media contact details to VGRS who will provide the transcript.

In civil trials, subject to the approval of the presiding judge, transcript of a trial or application may be made available to the media on request to the Media Team. A fee may apply if a request is made after the case has concluded.

### **Sentences and Judgments**

The media is often interested in sentences and judgments. They may ring an associate to seek a copy. Reporters should be encouraged to report as accurately as possible. The best way to encourage this is to give them access to the judgment or sentence in writing when it

is delivered. It is of significantly less value if there is delay in providing a copy. In any matter where there is media interest, copies should be made available, and wherever possible that should be done contemporaneously with the decision. See topic: 'Publishing Sentences and Judgments where there is Media Interest'.

## Concerns

Associates should not disclose any information about the Court to media representatives other than information which is of an administrative kind, which is otherwise publicly available, and which concerns cases with which their judge is dealing. Information which may be disclosed is information such as the broad nature of the case, the title of the case, the names of the parties, the stage a hearing has reached, and when hearings have been scheduled. If in any doubt they should check with the judge.

If any media enquiry makes an associate uncomfortable, he or she should inform the judge and refer the enquiry to the Media Team.

If unsure whether it is appropriate to disseminate any information — for example where a matter involves persons under the age of 18 years — the best strategy is for the associate to inform the media representative that the associate will call them back, and then ascertain what information may be given.

The Media Team will always assist in handling or taking over media inquiries.

Tipstaves who receive personal enquiries from the media in Court or in the Court environs should refer them to the associate unless they are of a purely practical nature, such as seating or Court access arrangements.

# OPEN JUSTICE AND LIMITED RESTRICTIONS ON PUBLICATION

We have an open justice system. Two features of this system are that court proceedings are held in public and that accurate reporting of proceedings is encouraged. Nevertheless, in some limited circumstances, orders are made which restrict what can be published. The power to make such orders is both statutory and part of the inherent jurisdiction of the Court.

## **Open Courts Act**

Under the *Open Courts Act 2013* ('OCA'), there is power to prohibit or restrict publication of a report of the proceeding itself or of information derived from the proceeding.<sup>1</sup> There are also provisions dealing with restraints on publication of material more broadly<sup>2</sup> and closing the Court.<sup>3</sup>

## **Grounds for making an order**

The grounds for making a suppression order under the OCA include where 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;
- to prevent prejudice to the interests of the Commonwealth or a State or Territory in relation to national or international security;
- to protect the safety of any person;
- to avoid causing undue distress or embarrassment to a complainant or witness in any criminal proceeding involving a sexual offence or a family violence offence;
- to avoid causing undue distress or embarrassment to a child who is a witness in any criminal proceeding.<sup>4</sup>

## **Applicants must give three business days' notice of an application**

Applicants must give three business days' notice to the Court and to all parties if they seek a suppression order.<sup>5</sup> But, the Court may dispense with this requirement if there is a good reason for the notice not being given or if it is in the interests of justice to do so.<sup>6</sup> For

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<sup>1</sup> OCA, s 17. The OCA does not limit the operation of other Acts that prohibit or restrict publication. A non-exhaustive list of such legislation is set out in s 8(2) of the OCA. In addition, ss 3 and 4 of the *Judicial Proceedings Reports Act 1958* and ss 77 and 78 of the *Juries Act 2000* prohibit publication in certain circumstances.

<sup>2</sup> OCA Pt 4.

<sup>3</sup> OCA Pt 5.

<sup>4</sup> OCA s 18(1).

<sup>5</sup> OCA, s 10(1).

<sup>6</sup> OCA, s 10(3).

example, in the course of the running of a trial, it may be necessary for an application to be made immediately without notice being given. The Court may make interim orders without determining the merits of an application pending the substantive hearing.<sup>7</sup>

## **The Court is required to notify media of all applications**

Typically, suppression orders are directed at the media. The OCA imposes an obligation on the Court to take reasonable steps to give notice to news media organisations if an application is made for a suppression order.<sup>8</sup> Rules of Court require the applicant to send an email notification to the Court in a prescribed format which contains the necessary information about the application.<sup>9</sup> The Court's Media Team then forwards that notice to self-nominated news media organisations at an email address they have provided. The applicant's lawyers are required to provide contact details so that the media may contact them (rather than the Media Team) to obtain further information.

## **Notification to the Media Team**

Associates and tipstaves must notify the Media Team (by email, instant messaging or telephone) as soon as they become aware that an application may be made for a suppression order, unless directed otherwise by the presiding judge. If the three days' notice period has been waived and the application is to be heard within 24 hours, associates must notify the Media Team by telephone or instant messaging.

As media is now instantaneous, it is the Court's practice to notify the media as soon as a suppression order is made. To this end, it is important for associates to forward a copy of any suppression order (including any interim order) to the Media Team immediately after it is made.

## **Duration and geographical extent of orders**

The OCA requires that orders have a specified duration.<sup>10</sup>

The OCA provides that suppression orders may extend beyond Victoria to 'anywhere in Australia'.<sup>11</sup>

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<sup>7</sup> OCA, s 20.

<sup>8</sup> OCA, s 11.

<sup>9</sup> *Supreme Court (General Civil Procedure) Rules 2005*, r 82.02; *Supreme Court (Criminal Procedure) Rules 2008*, r 16.02.

<sup>10</sup> OCA, s 12.

<sup>11</sup> OCA, s 21.

## **JOIN**

The JOIN web page contains information on this subject.

### **Publication on Austlii – restricted judgments, sentences and rulings**

Judgments, sentences and rulings sent to the library will not be published on Austlii if there is the letter 'R' after the VSC or VSCA number.

Some of these may, if the reason for suppression is removed, later be released in full. If so, the library should be notified that it is to be released and the 'R' removed.

### **Editing and redacting to enable publication**

Often, judgments or sentences involving particular matters which cannot be published can be published if appropriately expressed, or edited, or in the last resort redacted, so as not to reveal these matters. This is often preferable to withholding or restricting publication entirely.

Some of these may, if the reason for restriction is removed, later be released in full. Others may remain permanently redacted.

### **Personal details**

It is necessary to be mindful of not including unnecessary personal details in judgments and sentences, given their accessibility via the internet. Unnecessary use of names, addresses, dates of birth, significant numbers (such as tax file numbers, bank account numbers or Medicare numbers) and other identifying information which can be misused, should be avoided wherever possible.

# FILM, VIDEO AND AUDIO BROADCAST OF PROCEEDINGS IN COURT

## **Audio Broadcasting**

It is the general practice for sentences to be audio broadcast. Such broadcasts occur whether there is particular media interest in the matter or not. Judges need to be mindful of any suppression orders or other restrictions on publication which apply.

Judgments, or summaries of judgments, in civil proceedings and appeals may also be audio broadcast.

All audio broadcasting is subject to the overriding discretion of the presiding judge.

Except in exceptional cases, audio broadcasts should be via the Court's web-streaming facilities. Where this is done, a high resolution audio-only broadcast can be recorded, on a delayed basis, for uploading to a URL. The length of the delay is a matter for the presiding judge. Only a very short delay is needed if the only concern is to enable the broadcast to cease if something unforeseen should occur. Talkback radio stations operate successfully on seven second delay. The broadcast is disseminated to media via a URL link accessed by a password. The public can listen to but not download the broadcast from the web-site. If a judgment or sentence contains information of potential concern, it can be recorded only, and not streamed through the web, so as to enable submissions or review before publication. Delay inevitably reduces the likelihood of the material being used.

The audio broadcast of judgments or sentences should be transmitted in their entirety.

The Media Team should co-ordinate the arrangements for audio broadcasting.

## **Film and Video Broadcasting**

The decision to permit filming, or video release, is one which requires careful consideration. Before such a decision is made, the Chief Justice must be consulted, and the Media Team notified.

## **Photography**

The presiding judge may permit the use of still cameras in appropriate circumstances, with the consent of those who it is proposed to photograph.

# **JOURNALISTS USING ELECTRONIC EQUIPMENT IN COURT**

## **Use of electronic equipment in Court**

Regular court journalists will be accredited. Accreditation will be documented by a form signed by the journalist's News Director or Chief of Staff, and by the Media Team. Accreditation signifies that the journalist has an understanding of court proceedings, legislative requirements, suppression orders and the procedures and policies as set out in this document.

Subject to any prohibition by the presiding judge (see below), accredited journalists can use personal iPads, tablets, laptop computers, digital assistants, and mobile phones capable of transmitting emails, for electronic note-taking, messaging by text, and filing stories, so long as that use does not interfere with the proceeding. This equipment cannot be used to record proceedings other than in accordance with the *Court Security Act 1980*, the relevant substance of which is set out in the next section.

If a presiding judge prohibits the use of such equipment in his or her court by accredited journalists, he or she will specify this at the commencement of the hearing and a notice to that effect will be placed on the court door.

Accredited journalists may use electronic equipment for the publication of material on the internet (blogging, twittering and similar). In proceedings involving a jury, journalists need to take care not to publish material which has been dealt with in the absence of the jury. Blogging which allows public comment is not permitted.

Non-accredited journalists, free-lance writers, 'citizen journalists' and members of the public need to seek permission from the trial judge for the use of electronic equipment in Court.

It is important that journalists reporting from court ensure that any publication does not contravene any suppression order or any applicable legislation, and does not otherwise prejudice the trial or any related trial.

## **Electronic recording of proceedings – *Court Security Act 1980* ('CSA')**

The recording of all court proceedings, including proceedings in the Supreme Court, is governed by provisions of the CSA which were introduced into the Act by Parliament in 2014 and which became operative on 1 April 2015.

These provisions prohibit the intentional:

- recording of a proceeding (s 4A(1));
- publication of a recording of a proceeding (s 4B(1)); or
- transmission or giving of a recording of a proceeding to another person (s 4C(1)).

Parliament has made contravention of these provisions a criminal offence. There are some statutory exceptions which apply to representatives of news media organisations. Subject to any direction of the judge, a representative of a news media organisation may:

- make an audio recording of a proceeding for the purpose of preparing a media report (s 4A(3)(a)); and
- transmit an audio recording to another employee or agent of that news media organisation to enable that organisation to prepare a media report (s 4C(3)(a)).

It must be emphasised that recordings made by media representatives for the purpose of *preparing* a media report cannot be published or re-transmitted (other than internally).

If a representative of a news media organisation does wish to record a proceeding, they should inform the presiding judge or the associate beforehand and be prepared, if requested, to provide evidence that they are a representative of a news media organisation within the meaning of the CSA.

There are also exceptions which apply where judicial authorisation in the prescribed written form has been given. The Chief Justice has given express written permission to the Media Team (and relevant contractors) to make and publish recordings of proceedings where permission has been granted by the presiding judge. News media organisations provided with access to such recordings by the Media Team are given permission to publish those recordings subject to compliance with any order of the Court. The full terms of the Chief Justice's authorisation can be found on the Court website.

## **PHOTOGRAPHING AND FILMING BY MEDIA OUTSIDE COURT**

The Court has adopted the following principles in relation to filming and photographing in the vicinity of the Court buildings:

1. Parties and others involved in court proceedings are entitled to enter and leave court buildings without being, or feeling they are being, harassed or intimidated.
2. Media are entitled to film and photograph people in public places in the course of reporting on court proceedings.

The Court:

- expects media representatives, court staff and legal practitioners to adopt these principles, act in accordance with them, and, where appropriate, explain them to those potentially affected;
- encourages legal practitioners, court staff and media representatives to cooperate in arrangements such as predictable filming and photographing opportunities and camera pooling;
- will, when requested, assist in such arrangements through the Media Team; and
- will, where possible, make alternative electronic material related to court proceedings available so as to reduce media reliance on filming and photographing in the street.

## COURT ARTISTS

Media may from time to time seek permission to have a court artist present during proceedings to sketch the accused or witnesses.

It is for the presiding judge to determine whether this is permitted.

The use of Court sketch artists has a very long tradition. It ameliorates the effect of the general prohibition upon still cameras and reduces the motivation to photograph in the Court environs. Provided the artist is unobtrusive, and prior notice is given, the general practice is to permit artists to sketch in Court.

If there is a jury, they should be informed by the presiding judge that jurors are not being sketched, and, that they are not filmed or photographed.

# ACCESS BY THE MEDIA TO DOCUMENTS AND OTHER MATERIALS

## Civil

### **Court files**

Court files in civil cases are open to anyone to inspect on payment of the search fee. Documents may also be photocopied for a fee. Inspection is undertaken at the Supreme Court Registry located at 436 Lonsdale Street. Arrangements are in place for search and photocopying fees for media to be waived.

Documents ordered to be confidential cannot be inspected, nor can documents which the Prothonotary considers should remain confidential, unless leave is obtained.<sup>12</sup>

### **Documents tendered and written submissions relied upon in open court in civil proceedings**

In principle, documents tendered, and written submissions relied upon, in open C\court should be available for inspection by those wishing to report the proceeding.

The registry adopts the practice of filing exhibits to affidavits and written submissions in the confidential folder. Exhibits tendered in a hearing are in the custody of the associate. If the issue of access arises upon or shortly after the hearing the associate to the presiding judge should have all of the material. If the issue arises before or after the hearing some or all of the material may be with the registry.

As the matter under consideration here involves documents tendered and written submissions relied upon in a hearing there should always be a presiding judge.

Issues which need to be addressed where access is sought to exhibits tendered in a hearing or to written submissions relied upon in a hearing include the following:

1. It is necessary to ensure that the document has in fact entered the public domain – usually by its tender in open court (or if it is an exhibit to an affidavit by being ‘read’).<sup>13</sup>
2. It is essential that the integrity of original documents is protected.

These considerations are especially important where the document in question has been subpoenaed or otherwise obtained from a non-party.

Often, the provision of a photocopy will be the best means of giving access. Arrangements made for copying should cause minimal inconvenience to Court staff.

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<sup>12</sup> *Supreme Court (General Civil Procedure) Rules 2005*, r 28.05.

<sup>13</sup> *British American Tobacco Australia Services Ltd v Cowell* (2003) 8 VR 571; *Harman v Secretary of State for the Home Department* [1983] 1 AC 280.

The starting point is that all documents tendered in a hearing, and all written submissions relied upon in a hearing, in open court, should be available for inspection by those wishing to report the proceeding, unless confidentiality is specifically ordered.

Arrangements for access should be made with either the registry or the associate to the presiding judge, depending upon the location of the document.

If there is any doubt in relation to whether the document has been tendered, or the written submission relied upon, in open court; any concern as to the interests of a non-party; or any concern as to the practical arrangements for giving access, the presiding judge should be consulted. The presiding judge may require that notice be given to one or more of the parties or to a non-party before access is given.

The Court, through the Media Team, may alert media to proceedings issued and to hearings. The Court, through the Media Team, may provide to media copies of documents in unrestricted civil files.

## **Criminal**

Criminal files are not open for inspection without a direction from the Court, or from a designated Court officer.<sup>14</sup>

There is a 'protocol' governing the release of documents, which was devised by judges in the criminal division, and which has been in use for some years. A copy of the protocol follows.

Consideration must always be given to the potential relevance of statutory provisions restricting publication, non-publication orders and the possible consequences for the trial or for any other trial. In particular cases, material may not be released because of the possibility of adversely affecting future investigations.

## **Confiscation/forfeiture and proceeds of crime proceedings**

Although proceedings under the *Proceeds of Crime Act 2002* (Cth)<sup>15</sup> and *Confiscation Act 1997* (Vic)<sup>16</sup> are civil in nature, in general, the *Supreme Court (Criminal Procedure) Rules 2008* apply to the proceedings.<sup>17</sup> This means that the Court file is not open for inspection unless the Court, the Prothonotary, Deputy Prothonotary or Registrar otherwise directs. Consequently, any person who wishes to inspect a confiscation, forfeiture or proceeds of crime file will first have to make an application for a direction to permit this.

Application for access to the Court file should ordinarily be made in the first instance to the presiding judge or, if there is not one, the judge sitting in the Practice Court.

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<sup>14</sup> *Supreme Court (Criminal Procedure) Rules 2008*, r 1.11(4).

<sup>15</sup> Section 315.

<sup>16</sup> Section 133.

<sup>17</sup> *Supreme Court (Criminal Procedure) Rules 2008*, r 6.02

**PROTOCOL FOR THE RELEASE OF DOCUMENTS TO THE  
MEDIA IN CRIMINAL TRIALS**

<b>Documents that may be released</b>	<b>Documents that should not be released</b>
<ol style="list-style-type: none"><li>1. Indictment</li><li>2. Transcript of opening address</li><li>3. Transcript of evidence</li><li>4. Transcript of closing address</li><li>5. Transcript of plea</li><li>6. Documentary exhibits</li><li>7. Sentencing remarks</li></ol>	<ol style="list-style-type: none"><li>1. Depositions</li><li>2. Prosecution summaries</li><li>3. Psychological assessments</li><li>4. Pre-sentence reports</li><li>5. Other documents not tendered</li><li>6. Victim impact statements</li></ol>

These are broad divisions, and particularly when dealing with documents that may be released, there might be good reason not to grant access in a particular case.

Documentary exhibits would ordinarily include photographs, CDs, DVDs, and videotapes that have been tendered.

Victim Impact Statements read in court form part of the daily transcript, and their contents may be released as such. Victim Impact Statements tendered but not read should ordinarily not be released.

The possession, playing, supplying, copying, publishing and otherwise dealing with Police Records of Interview are subject to express statutory restrictions.<sup>18</sup> Records of Interview, even if tendered, cannot be released without a specific court order.

**Access to material should ordinarily be sought from the OPP, in the first instance. If necessary the issue can be raised with the associate to the presiding judge.**

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<sup>18</sup> See s 464JA and JB of the *Crimes Act 1958*.

## **PUBLISHING SENTENCES AND JUDGMENTS WHERE THERE IS MEDIA INTEREST**

Reporters should be encouraged to report sentences or judgments as accurately as possible. The best way to encourage this is to provide access to the judgment or sentence in writing when it is delivered. It is of significantly less value if there is delay in providing a copy. In any matter where there is media interest, sufficient copies should be made available, and wherever possible that should be done contemporaneously with the decision.

If cases have attracted media interest, copies of the judgment or sentence should be emailed to the Media Team as soon as they are delivered. If it is thought that an 'alert' should be posted on the website, the Media Team should be advised of that.

If the sentence or judgment is long, judges should understand that reporters without legal training will have to attempt to summarise it, usually under time pressure. If a matter is likely to be reported, judges should consider whether it is appropriate to prepare a summary for distribution with the judgment or sentence.

In all cases judges should strive to have judgments and sentences available to the library, for publication on Austlii, as soon as possible after they are delivered.

Judges should never distribute judgments or sentences externally as Word documents; PDF format should be used.

## 'GENERIC' VISUAL IMAGES OF JUDGES

On the understanding that it will:

- prevent the unsolicited photographing or filming of judges entering or leaving the Court, and
- prevent the use of visual images of judges obtained elsewhere,

the Court makes pre-recorded visual images of judges (both still and video) available to media outlets.

The participation of judges is encouraged. It remains a matter for each judge whether to participate or not.

It is anticipated that in the future photographs of at least some judges will be posted on the web-site. No judge's photograph will be posted without their express permission.

Judges need to be mindful of the fact that equipment capable of taking visual images is everywhere. Almost every mobile phone is also a camera.

## SPEECHES AND TALKS BY JUDGES

Judges should feel no inhibition in accepting invitations to speak at appropriate public occasions, such as judicial conferences, meetings or seminars of professional bodies, and academic functions. Judges must, of course, be mindful of the fact that they will be seen as representatives of the Court whenever they speak in public.

If a judge proposes to speak on any topic which might be, or be seen to be, controversial, or which relates directly or indirectly to any matter concerning the Court, the judge concerned should consult the Chief Justice first.

If speaking at events other than events of the kind referred to above, prior to publicly speaking, the judge should ascertain:

- (i) the nature and contents of publicity and advertising (including flyers etc) proposed;
- (ii) the identity of other speakers and persons to be on the panel/dais;
- (iii) what logo (if any) is to be on the lectern and on the backdrop of the stage;
- (iv) what groups (or whether the public) will be in the audience;
- (v) whether questions are to be received; and
- (vi) what publication or dissemination (if any) of the speech and proceedings is proposed (if permitted by the judge) and in what context.

Judges will understand that they should never make statements to the media or give interviews without consulting the Chief Justice first.

New judges should be especially mindful of the need to discuss with the Chief Justice in advance any media request for a photograph, filming, an interview, or a comment.

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