



Supreme Court
of New South Wales

MEDIA GUIDELINES

REPORTING CRIMINAL PROCEEDINGS IN THE SUPREME COURT OF NEW SOUTH WALES

These guidelines do not constitute legal advice. They have been provided to encourage and assist fair and accurate media reporting. Members of the media should obtain their own legal advice before reporting criminal proceedings.

April 2016

THE NSW SUPREME COURT'S CRIMINAL JURISDICTION

The NSW Supreme Court is the superior court of record in New South Wales. Its criminal workload is handled by the Common Law Division and involves homicide offences and offences where the prosecution seeks life imprisonment. Other matters involving serious criminality e.g. terrorism, or matters of public interest may be brought before the Court with the Chief Justice's approval. The Judges of the Common Law Division also hear bail applications and post-conviction inquiries.

NATURE OF CRIMINAL OFFENCES

Criminal offences on the statutes are either classed as summary or indictable. Summary offences are less serious and are determined by a Magistrate, sitting alone, in the Local Court. Indictable offences generally require a trial by Judge and jury and, depending on their seriousness, are heard in either the District or Supreme Courts. The Supreme Court deals with the most serious offences on the criminal calendar such as murder and manslaughter.

PRESUMPTION OF INNOCENCE/BEYOND REASONABLE DOUBT

An accused person is presumed innocent until his/her guilt is proven beyond reasonable doubt. The Crown must prove the accused's guilt beyond doubt. Another way of putting this is that the jury should ask itself "Is there any reasonable possibility that the accused is not guilty?"

"SUB JUDICE"

Sub judice is a Latin phrase for "under judgment" and means that a case is currently before a Court. An accused person is entitled to a fair trial and not "trial by media".

GENERAL REPORTING PRINCIPLE – FAIRNESS

In active legal proceedings, it is a criminal offence (contempt) for media organisations to publish or broadcast material that has, as a matter of practical reality, a tendency to interfere with, or prejudice, the due course of justice in the particular case.

In addition to compromising the right of an accused to a fair trial, unfair, unbalanced or careless media reporting can also influence potential jurors and witnesses. Judicial officers are generally considered to be immune to media influence; nevertheless, they encourage fair and accurate reporting.

JURY TRIALS AND JURORS

When reporting a jury trial, the media may only report what is said and done in Court *and* in the presence of the jury. Journalists are not entitled to include in their reports personal comments or conclusions in relation to what has happened or what is likely to happen.

Under the *Jury Act* 1977, it is an offence for the media to disclose the identity or address of a juror, although former jurors can be identified with their consent. Journalists should not approach jurors to obtain information about jury deliberations.

Journalists should not publish interviews or comments from those involved in cases, including witnesses and friends and family of an accused or victim, until the jury has returned verdicts and has been discharged.

TRIALS WITHIN TRIALS – “VOIR DIRE”

During a criminal trial, there may be a “voir dire”. This procedure occurs in the absence of the jury and examines various applications, often related to the admissibility of evidence. It is essentially a “trial within a trial”. Media may remain in attendance during the voir dire but cannot report the proceedings because the jury is not present. This includes the fact of any application, the evidence adduced, and submissions made, in support of any application, and judgment in any such application. At the conclusion of a criminal trial, voir dire judgments are usually made public by the Court.

NON-PUBLICATION AND SUPPRESSION ORDERS

From time to time, and to safe guard the administration of justice, a Judge may make an order under the *Court Suppression and Non-publication Orders Act* 2010. The Court’s Media Manager circulates these orders to an opt-in email list of journalists and media lawyers. Judges do not need to make orders where the law already provides automatic protections such as in the case of children and sexual assault complainants. Journalists are expected to be aware of relevant legislation.

THE INTERNET

Jurors are given detailed directions by Judges in relation to ignoring media coverage during a trial, and reaching a decision based solely on the facts before the Court. This includes commentary and articles on social media and the internet in general. Sometimes, a Judge is required to make specific orders to ensure this happens. Interstate and overseas journalists reporting Supreme Court criminal proceedings are bound by the same reporting rules and guidelines as “local” journalists.

AREAS REQUIRING CAUTION

There are certain, well-known areas of sensitivity in Supreme Court jury trials where extreme caution should be exercised and legal advice taken prior to publication. These include:

- Background information about the events which led up to and the circumstances of the arrest of the accused person. This includes police arrest and other footage.
- Information relating to charges outstanding here or elsewhere, in another state or country.
- Previous convictions of the accused person.
- Photographs of the accused person. Where identification may be an issue, it is essential that the accused not be depicted at all, whether by film, photograph, sketch, or detailed written or verbal description.
- Depictions or descriptions of the accused person may influence existing or potential identification witnesses, or generally hamper the accused person in establishing that he/she is not the person who committed the offence(s).
- Particular security arrangements in or around the court can be prejudicial because they can tend to suggest that there is something about the accused person or the offence(s) with which he/she is charged which necessitates such arrangements.
- Any photographs of the accused being escorted between the court building and the prison van.
- Anything which takes place in Court in the absence of the jury.
- Reference to any co-accused, the subject of related ongoing or concluded proceedings, not raised in Court before the jury.
- Jury discharges, except for the fact of the discharge and comments made by the Judge to the jurors in discharging them, subject to any non-publication or suppression order. New trials usually commence shortly after a discharge, meaning any reporting risks influencing the new jurors.
- Voir dire applications and judgments.

BAIL APPLICATIONS

Media can report Supreme Court bail applications, subject to any non-publication or suppression orders. However, documents tendered during bail hearings are rarely made public because they contain untested allegations. It is a matter for the presiding Judge as to whether an unpublished bail judgment can be accessed by the media.

TRIAL EXHIBITS

The media can apply, in writing to the Court's Media Manager, to access exhibits tendered during a trial. The Judge may seek submissions from the parties before ruling. Despite being tendered and therefore admitted into evidence, some exhibits may not be released publicly if they breach a non-publication or suppression order, could influence witnesses still to be called, or are not considered to be in the public interest e.g. gruesome crime scene photos. The Court is a temporary custodian of exhibits and generally returns them to the parties on verdict.

IMAGES OF JUDGES

Photos of Supreme Court Judges are not automatically released into the public domain due to ever-changing security concerns and risks. Media can request an official photo from the Court's Media Manager if one is available and approved. Photos of Judges used in media reports should show them fully robed and wigged (unless otherwise approved by the Court) because it offers some degree of anonymity. Media organisations are never permitted to film or photograph a Judge moving outside a Court complex, and should not use photos of Judges prior to them being appointed to the bench.

BROADCASTING COURT JUDGMENTS

Once permission to film a court judgment/sentence has been granted by the presiding Judge and Chief Justice, the approved pool camera/media outlet is required to follow these guidelines.

1. Only the Presiding Judge can be filmed. No other court staff can be captured on film. As a result cameras must not film the Judge walking into court and sitting at the bench as other court staff may be captured in the process.
2. The pool camera/media outlet is required to provide the footage/feed to any other requesting media outlet.
3. The pool camera/media outlet is required to provide a copy of the raw footage of the recording to the court's Media Manager within one week of the filming taking place.

Further information on the filming legislation and policy and the application form can be accessed on the court's website under Media Resources.

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