



SUPREME COURT  
T A S M A N I A

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# Media Guidelines

**January 2019**

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**NOTE:** The information in these media guidelines is provided as a guide only and should not be relied upon as legal advice. Journalists should obtain their own legal advice as required.

## INTRODUCTION

We have an open justice system. Two features of this system are that court proceedings are generally held in public and that accurate reporting of proceedings is encouraged.

The principle of open justice, enabling access to court decisions and processes, is fundamental in ensuring that courts remain transparent and accountable for their decisions.

In adopting a policy in line with those principles the Court's objectives are: to facilitate full and accurate reporting of the Court's proceedings and to enhance the communities understanding of, respect for, and confidence in, the court system.

There are, however, circumstances in which the Court is bound to protect personal and sensitive information and may suppress information or have documents edited prior to their disclosure. The power to make orders restricting publication is both statutory and part of the inherent jurisdiction of the Court.

The Supreme Court website publishes a specific webpage for journalists at :  
[supremecourt.tas.gov.au/for\\_the\\_media](http://supremecourt.tas.gov.au/for_the_media)

## QUICK GUIDE TO CRIMINAL COURT PROCEEDINGS

Crimes are either summary (dealt with by a magistrate) or indictable. Indictable matters are dealt with by a judge and jury, and are more serious.

A person who is charged with an indictable crime is referred to as a defendant. They will appear in the Magistrates Court before their matter is committed to the Supreme Court to be finalised.

If a defendant enters a plea of a judge hears the facts and plea in mitigation and then imposes a sentence.

If the defendant pleads not guilty, he or she will be committed to the Supreme Court for trial. The defendant can have witnesses questioned in the Magistrates Court before the trial starts. That is called a preliminary proceedings hearing.

The daily court list identifies which matters are to be heard in court each day.

They may be listed for a sentencing hearing (if the person pleaded or is pleading guilty) or for trial. They may also be listed for mention (to move it to another date), bail applications, pre-trial legal argument, or hearings called directions hearings where steps are taken to get the matter ready for trial.

Each judge has an associate, who sits in front of them, who call out the names of the people appearing in court and is responsible for ensuring the proceedings are recorded and administering oaths or affirmations. Each witness who attends court to give evidence makes a promise their evidence will be the truth by swearing an oath or making an affirmation. Juries will also take an oath or affirmation each time the court adjourns, promising not to discuss the evidence with anyone who is not a member of the jury.

There are lawyers for the State and defence lawyers in the court who sit at a table in between the public seating area and the judge.

The judge, the associate and all the lawyers wear black gowns and a wig.

## **COURT ETIQUETTE**

Judges are referred to as ‘Your Honour’ when spoken to in person.

It is customary to bow to the magistrate or judge when you enter or leave the courtroom. Please try to move around the court as unobtrusively as possible.

If you enter (or get up to leave) the court as an oath or affirmation is being administered to a witness or the jury, stand still until it is finished. Make sure all mobile phones or PDAs are switched to silent.

Only journalists are permitted to use electronic devices in court and no members of the public, including journalists, are permitted to take photographs or make recordings in the court.

No members of the public are permitted to speak with members of the jury about the case.

## **ENQUIRIES**

The three local Tasmanian newspapers publish the daily lists for the court sitting in the relevant region each day. The lists are also published on the Supreme Court Court’s website, posted in the foyers of the Supreme Court buildings and available through a free subscription service via JADE ([jade.barnet.com.au](http://jade.barnet.com.au)).

Only administrative information, or information which is otherwise publicly available such as the broad nature of the case, the names and dates of birth of the parties, the stage a hearing has reached, and when hearings have been scheduled is provided by staff.

Associates and attendants who receive personal enquiries in court or in the court environs should refer them to the Registrar unless they are of a purely practical nature, such as seating, listing or Court access arrangements.

## **REPORTING FROM COURT**

The *Court Security Act 2017* has expanded the means by which journalists are able to report from Court by allowing the use of electronic equipment. Journalists will be given identity badges to wear in the court room and will be required to sit in the designated media section to enable the Court and security officers to easily identify journalists.

## **USING ELECTRONIC EQUIPMENT IN COURT**

Any electronic recording (audio and video) of any court proceedings is prohibited unless approved by the presiding Judge. Requests to record court proceedings should be directed to the Registrar.

Subject to any restrictions by the presiding judge, journalists (as defined by the *Court Security Act 2017*) may use an electronic device or a recording device in court for electronic note-taking, messaging by text, and filing stories, so long as that use does not generate sound, involve speech or interfere with the proceedings, with the court recording system or other technology, doesn’t impede the administration of justice and complies with all laws relating to the reporting of court proceedings.

Blogging from the courtroom which allows public comment is not permitted.

Journalists reporting from court must 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. In

proceedings involving a jury, journalists must not publish material which has been dealt with in the absence of the jury.

Non-accredited journalists, free-lance writers, and members of the public are not permitted to use electronic equipment in court unless the use is expressly permitted by a judge. Such applications are to be made through the Registrar.

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

Media are entitled to film and photograph people in public places in the course of reporting on court proceedings but are to be mindful that parties and others involved in court proceedings are entitled to enter and leave court buildings without being, or feeling they are being, hassled or intimidated.

The Court encourages legal practitioners, court staff and media representatives to cooperate in arrangements such as predictable filming and photographing opportunities and camera pooling.

The Court will, when requested, assist in such arrangements through the Registrar; 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 SKETCH ARTISTS**

Media may make a request in writing to the Registrar to have a Court artist present during Court proceedings to sketch the accused.

Any request to use a sketch artist will be:

1. Determined on a case by case basis;
2. First assessed to determine whether it should be refused due to suppression issues;
3. Referred to the presiding judge for a final decision;
4. Subject to such conditions as the presiding judge deems appropriate.

If there is a jury present for the proceedings, they should never be the subject of a sketch. The presiding judge will advise them of this. The judge may also prohibit any sketching of witnesses, and counsel.

## **REPORTING GENERALLY**

It is important for journalists not to report allegations as fact. Attributing a quote from counsel to them is permissible if it is clear that is what is being reported. For example a report should say the prosecutor said “the accused pointed the shotgun at the witness and told them to lie on the ground” but not report that, as fact, is what happened.

Journalists should also report the basis on which the matter is before the court, whether it is a plea of guilty, one of not guilty with a trial following, or a special plea like not guilty by reason of insanity (*Criminal Justice (Mental Impairment) Act 1999*).

Nothing said in court in the absence of the jury should be reported. Legal arguments may be dealt with prior to a trial or during a trial and the judge will make rulings about those matters but the arguments are not to be reported as this could potentially jeopardise the right of the accused to a fair trial and have his or her matter determined on admissible evidence.

Additional considerations are where an order has been made for co-accused to be tried separately or where one accused has multiple matters. Judges may make non-publication orders but in the event they don't care should be taken to ensure future proceedings are not prejudiced by reports.

Judges are referred to as 'Your Honour' when spoken to in person and as Chief Justice X, Justice X, Associate Justice X or Acting Justice X in reports.

## **Contempt of Court**

Contempt of court relates to reports, including headlines, that may have a prejudicial affect on proceedings, particularly trials before a jury.

It is an area of law designed to ensure a person has a fair trial and any decisions are not influenced by unfair or prejudicial reports in the media. As well as relating to providing jurors with information they should not have, contempt also covers influencing witnesses. It is advisable not to interview witnesses or other people involved in the case until proceedings have been completed.

It is also important that journalists do not publish background material to a case that extends beyond the information that is provided to the jury, including any prior convictions.

Journalists should not report that a person is in custody on a matter for which they are being tried, or that a bail application was refused. It is prejudicial to the accused receiving a fair trial if that information, including photographs or footage that lead to such an inference, is published.

## **Defamation and privilege**

For court reporting purposes, a very basic definition is that something is defamatory if it is harmful to someone's reputation, and is published to a third party, which would cover any publication by the media.

Fair reporting of any proceedings of public concern provide a defence to the publication of defamatory matter (s. 29 *Defamation Act* 2005). This protection, called a privilege, covers reports of court proceedings that are faithful and accurate. It must therefore not be one-sided, for example, it cannot report the prosecution case prominently and ignore the defence and allegations stated in court must be reported as such, not as fact. If it is unlikely you will be reporting the entire proceeding, but only parts of it, it is important to report the trial is continuing to indicate it is not a complete report.

Privilege in this area relates to what is said in court, not comments made outside the court room.

## **RESTRICTIONS ON PUBLICATION**

Judgments or sentences involving particular matters which cannot be published may be de-identified, edited, or in the redacted, to enable publication without breaching legislation or judgements.

In some cases full versions of edited judgments or sentences may subsequently be published, if the reason for restriction is removed.

The *Evidence Act* 2001 imposes restrictions on publication of evidence or legal argument (section 194J) certain identifying particulars in certain circumstances (section 194K), evidence of allegations of sexual assault in civil cases (194L), sexual experience (section 194M) or disallowed questions (section 195).

A person who publishes or causes to be published anything in contravention of the *Evidence Act* 2001 may commit a contempt of court and be liable to punishment for that contempt.

Other legislation which restricts the publication of material includes the *Coroners Act* 1995, *Children, Young Persons and their Families Act* 1997, *Criminal Code* (Tas), *Defamation Act* 2005, *Family Violence Act* 2004, *Juries Act* 2003, *Justices Act* 1959, *Mental Health Act* 1996, *Police Offences Act* 1934.

## **Jury trials**

A person must not publish any information or image that identifies, or is capable of identifying, a person attending for jury service (section 57 *Juries Act* 2003). There are penalties for breaching that section. It is also impermissible to reveal anything about what was discussed in the jury room, even if a juror wishes to disclose that information.

When reporting a jury trial, members of the media may only report what is said in the presence of the jury. Journalists should not include personal comments or conclusions about the evidence or potential outcomes and must attribute statements to the speaker as opposed to stating them as facts.

Proceedings conducted in the absence of the jury, either pre-trial or during the trial (*voir dire*) must not be reported as it would jeopardise the fundamental principle of the justice system that the decision of the jury must be made only on the basis of evidence ruled admissible by the Court.

## **Suppression Orders**

Judges may make suppression orders that prohibit publication of a report of all, or part, of proceedings in Court, or all or part of an order, ruling or judgment. These orders are made to ensure criminal trials aren't prejudiced or aborted, that witnesses are protected and confidential or commercially sensitive information is protected.

To assist journalists to keep track of such suppression orders, a webpage is published at [supremecourt.tas.gov.au/for the media](http://supremecourt.tas.gov.au/for_the_media).

## **TRANSCRIPTS**

Journalists may apply to the Registrar to provide copies of transcript to assist media to more accurately report cases. Provision of a transcript is subject to payment of the prescribed fee.

## **SENTENCES AND JUDGMENTS**

Court staff will publish the judgment or sentence as soon as possible after approval by the presiding judge.

Sentencing comments and judgments are published via the Supreme Court's website ([supremecourt.tas.gov.au/decisions](http://supremecourt.tas.gov.au/decisions)), AustLII ([austlii.edu.au](http://austlii.edu.au)), or JADE ([jade.barnet.com.au](http://jade.barnet.com.au)) usually on the day of delivery.

Journalists may request copies of sentences or judgements. The document might not be immediately available if the judge wishes to revise it and does not wish to release an unrevised version. If unrevised material is provided journalists are not to attribute direct quotes to a judge.

Legislation, suppression orders or other restrictions also may mean some judgements and sentences, or parts of them, cannot be published.

# ACCESS TO DOCUMENTS AND OTHER MATERIALS

## General

In principle, documents tendered and written submissions relied upon in open court may be made available in appropriate circumstances for inspection by those wishing to report the proceeding. In all cases, access permission will be subject to the judge's overriding discretion.

All documents or things 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.

Confidentiality will usually attach to documents such as pre-sentence reports, psychological and psychiatric assessments, victim impact statements and other confidential communications will generally not be released to non-parties.

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

## Civil Files

Some documents in Court files in civil cases are able to be inspected. Requests to search an index or register are to be made in writing to the Registrar and accompanied by the prescribed fee. Documents may also be photocopied for a fee. Inspection is undertaken at the relevant Supreme Court Registry location.

There are documents which people who are not a party to a proceeding may not search or inspect except with the leave of the Court or a judge (*Supreme Court Rules* 2000 r.33(4)).

## Probate Files

The Registrar may grant permission for a relevant person in respect of a deceased to search, inspect or make a copy of a will or other document filed with the Registrar in respect of the deceased or inspect or make a copy of information contained in an election filed by the Public Trustee, or a trustee company in respect of the deceased (*Probate Rules* 2017 r.13).

## Criminal Files

Applications for access to documents on criminal files will be subject to the overriding obligation to ensure fair trials, and avoid miscarriages of justice and material may not be released because of the possibility of adversely affecting future criminal investigations.

The table below lists the court documents to which open access will be granted to non-parties (including media representatives) to inspect documents where no competing principles intervene and the documents which non-parties would not normally be permitted to inspect.

Open Access Documents	Restricted Documents
1. Indictment.	1. Depositions / Statements of witnesses
2. Transcript of opening address. *	2. Psychological assessments.
3. Transcript of evidence.	3. Pre-sentence reports.
4. Transcript of closing address. *	4. Other documents not tendered.
5. Transcript of prosecution facts, and plea in mitigation. *	5. Victim impact statements.
	6. Documentary exhibits**.

6. Comments on passing sentence. *	
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\* Not usually transcribed, but can be at cost, and subject to Court priorities.

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

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

Although proceedings under the *Proceeds of Crime Act 2002* (Cth) and the *Crime (Confiscation of Profits) Act 1993* are civil in nature, in general, the Court file is not open for inspection unless the Court, or Registrar otherwise directs. Application for access to the Court file should ordinarily be made in the first instance to the Registrar who will refer it to the presiding judge.

## **GENERIC VISUAL IMAGES OF JUDGES**

Photographing or filming judges moving outside a Court complex is not permitted, nor is publishing photographs of judges taken prior to their appointment to the bench.

Photographs of judges to be used in media reports should show them robed when sitting in the civil jurisdiction and robed and wearing a wig when sitting in the criminal jurisdiction (unless otherwise approved by the Court) and portrait photographs of the Judges are available for download at [supremecourt.tas.gov.au/for the media/judges official portrait photographs](http://supremecourt.tas.gov.au/for_the_media/judges_official_portrait_photographs) .

The Court from time to time will provide opportunities for pre-recorded visual images of judges (both still and video) to be obtained by media outlets and pooled video footage will be available from the media organisation nominated at the time to film the footage and they are to make it available to any media organisation which requests the images.

## **SPEECHES AND TALKS BY JUDGES**

Judges occasionally speak at appropriate public occasions, such as judicial conferences, meetings or seminars of professional bodies, and academic functions.

Views and opinions expressed in those speeches do not necessarily represent the views of the Supreme Court as a whole.

A selection of those speeches are published at [supremecourt.tas.gov.au/publications/speeches](http://supremecourt.tas.gov.au/publications/speeches).

J A Connolly  
Registrar

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