

COVERING THE COURTS

A Q&A guide for journalists

COURT PROCEEDINGS

Is it judge or justice in the County Court?

In the County Court, you should refer to “judge” in all circumstances, other than the chief judge - and not to “justice” (this applies to the Supreme Court) when writing court stories. In the Magistrates’ Court, you should refer to “magistrate” and not judge or justice.

What types of criminal offences are there?

- Criminal offences are either summary or indictable.
- Indictable offences are dealt with by a judge and jury, and cover the more serious criminal charges.
- Summary offences and some less serious indictable offences are dealt with by a magistrate.

What happens when someone is committed for trial?

If someone is committed for trial, the vast majority of criminal trials will then go to the County Court. The Supreme Court deals with murder charges and other serious and complex offences, such as terrorism offences.

A plea of not guilty means the charges are being contested, whereas a plea of guilty means there is no contest that the crime has occurred, and the only task for the court is to impose sentence.

Where the plea is not guilty, a trial will proceed before a jury. Where the plea is guilty, the accused is then dealt with by the judge by way of plea hearing (pre-sentence hearing) and then sentencing.

It is important to include whether the accused has pleaded guilty or not guilty in your reporting.

REPORTING ON A TRIAL

How do I report on alleged crimes?

It is important to remember when covering a trial that the accused is innocent until proven guilty, and alleged crimes should not be stated as fact.

For example:

CORRECT: ‘A woman accused of snatching a tray of rings from a jewellery shop window ...’

INCORRECT: ‘A woman who snatched a tray of rings from a jewellery shop window has gone on trial in the County Court’

You may quote the prosecutor, but your report must make it clear that you are quoting someone saying that in court, not stating it as fact without attributing it.

For example:

CORRECT: 'The prosecutor told the jury that the woman snatched a tray of rings ...'

INCORRECT: 'The woman snatched a tray of rings...'

How do I report a trial before a jury?

Reporting a trial before a jury needs care - this is the area where contempt is a particular concern.

The key rule when reporting a trial before a jury is **not to report anything that is said in court in the absence of the jury.**

You are also prohibited from any contact with jurors, and must protect jury identity and confidentiality at all times.

In summary, reporters should be extremely careful to avoid:

- Reporting anything said in the absence of the jury
- Revealing prior convictions
- Breaching any suppression orders
- Reports that imply guilt or innocence of the accused
- Reports, including interviews, that could affect witnesses
- Comments, as distinct from reports of the court case
- Confessions
- Pictures of the accused where identity is an issue
- Any contact with jurors.

If in doubt, seek legal advice.

What is a *voir dire* and can I report this?

There are often parts of a trial called a *voir dire*. The term essentially refers to oral evidence and argument in court to decide which way a case should be conducted. The court will not be closed, and reporters are able to stay.

You must not report anything said in the absence of the jury – including during a *voir dire*.

If there is anything newsworthy or interesting, it must wait until after the trial is over and there is no longer a risk of the jury hearing material which has been excluded.

What are pre-trial issues and can I report on them?

It is common for pre-trial issues to be resolved by the trial judge in criminal trials to save time and interruption once the case opens before a jury. They often involve issues such as admissibility of evidence.

As with a *voir dire*, these proceedings should be regarded as part of the trial, and not able to be reported because they are made in the jury's absence.

Can I report on evidence ruled as inadmissible?

Sometimes a judge rules certain evidence to be inadmissible and the safe rule here is not to report it.

If something has been reported and is later ruled inadmissible, the safe rule is not to report it again. Once ruled out, it should not be reported. The safe rule with online publications is to remove any links to earlier reports of the evidence which has been excluded, and any reference to the inadmissible material which is available in the online publication.

How do I report in the case of separate trials?

Care is needed if a co-accused is to have a separate trial, or the accused faces several separate trials.

Judges can make suppression orders preventing or limiting reporting until all trials before juries are completed.

If a related trial is imminent, your report of the first trial should be written with the need to prevent prejudice to the subsequent trials.

What are out of court sessions and can I report on them?

Out-of-court sessions are usually conducted by bail justices or, if appropriate, by a magistrate on 24 hour call. These hearings are open, and should be accessible to the public, including the media. Reporters are able to be present in most instances, subject to security considerations in particular cases.

Out of court sessions can be regarded as quasi-court proceedings, therefore extreme caution should be exercised before reporting references to prior convictions or admissions made by an accused without seeking legal advice.

CONTEMPT OF COURT

What is contempt of court?

Contempt of court as it affects the media generally refers to reports and headlines which could have a prejudicial effect on proceedings. In practice these are usually cases which are tried by a jury and criminal proceedings.

Contempt of court is an area of the law that is designed to ensure that a fair trial is achieved - without unfair or prejudicial reports from the media. Competing against this is the public interest in a right to free speech. The law favors the right to a fair trial, and courts are always very keen to prevent 'trial by media'.

Anyone committing contempt may be fined or jailed for a fixed period of time.

What is sub judice contempt?

Sub judice is Latin for 'under judgment'. From the time somebody is arrested, charged or a warrant is issued, up to the moment when the court finishes dealing with it, the case is said to be sub judice.

While a case is sub judice, you are strictly limited as to what you can report. Sub judice contempt means that while a case is before the courts or proceedings are pending, there are dangers for the media if reports reveal prejudicial material.

Prejudice can simply be interpreted as strongly supporting the case one way or another.

Fining Nationwide News \$75,000 for contempt of court for a comment about Mr Brian Quinn, then on trial, Justice Gillard said:

"Mr Quinn was entitled to a trial by 12 members of the community, free from bias or prejudice, he was entitled to be tried by a jury who decided the case in accordance with the evidence free from outside influence. Trial by media is unacceptable. The sub judice rule in its application ... is simple, unequivocal and easy to comprehend. (It) forbids any publication of the circumstances of the trial or the character of the accused which had a tendency to prejudice the trial, and the only real exception ...is a fair and accurate report of the proceedings. All members of the media would be well-advised to proceed on the basis that other than reporting the actual proceedings in the court, nothing should be stated in the media concerning the trial, the court, the accused or witnesses."

When does the contempt period begin?

The contempt period begins when a charge is laid, a warrant is issued or someone is arrested (or with a civil case, when a writ is issued) and finishes when the proceedings are over.

Technically the contempt period ends when the time for an appeal has expired and there is no possibility of a retrial before another jury.

Does contempt just involve influencing jurors?

No. Contempt can also cover influencing witnesses. It is therefore unwise to interview people involved in cases, including witnesses, and publish those interviews before proceedings are completed.

What should reporters avoid when reporting?

In summary, reporters should be extremely careful to avoid:

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If in doubt, seek legal advice.

If a case received extensive publicity at the time of the offence, can I give this background?

Reporters should be careful not to background the case beyond what is told to the jury. This is of particular relevance to television reports using file footage.

Can I state that the accused is in custody?

Reporters should avoid stating that accused people on trial are in custody or giving a prison address.

It is considered prejudicial to the accused to reveal either that he or she was denied bail or is in jail on another offence. Photographs of accused people in handcuffs exiting a prison van could also be a problem before a verdict has been reached if the jury does not know that the accused is in custody.

DEFAMATION AND PRIVILEGE

What is defamation?

For court reporting purposes, something is defamatory if it is harmful to someone's reputation and is published to a third party.

What about court reports – can these be at risk of being deemed defamatory?

The law gives a protection to reports of what is said in court so that material which could otherwise be deemed defamatory can be safely reported.

This protection, called a privilege, covers reports of court proceedings that are faithful and accurate. There is no danger of being sued for defamation for a court report, provided it is fair and accurate.

The privilege applies only to what is said in court, and not to comments made outside the court. It is important that your copy makes it clear what is said in court and what is said outside.

As it is highly unlikely that you will be reporting the entire proceeding but only parts of it, it is important to state in your copy: "The trial (or hearing) is continuing" - therefore indicating that it is not a complete report.

RESTRICTIONS ON REPORTING

What statutory restriction on reporting should I review?

There are several hundred statutory restrictions on reporting across a number of Acts of Parliament. Reporters should make themselves familiar with the more common and important pieces of legislation and seek legal interpretation. Legislation is often reviewed and amended by Parliament and reporters need to keep abreast of any amendments.

In particular, reporters should familiarise themselves with the following:

Section 4 of the Judicial Proceedings Reports Act 1958: prohibits the direct or indirect identification of people who are the victims of sexual assault. For example, where the victim is related to the offender, the offender cannot be named, because to do so would identify the victim. There are also restrictions on what may be reported at committal hearings of sex offence cases.

What is a suppression order?

All courts have powers to make suppression orders, prohibiting reporting of all or specified parts of proceedings. It is contempt of court to disobey an order. If a reporter thinks it is unreasonable, they can apply to the court to have it lifted or modified.

If I don't use a person's name am I meeting the suppression order requirements?

Not necessarily – a person does not need to be named to be identified. Details of the circumstances can also lead to identification so it is important to be mindful of this.

With photographs or footage, concealing the face may also not be sufficient to prevent identification. Distinctive clothing, a broken arm, or other visual feature may identify someone.

Can I identify someone in witness protection?

It is an offence under section 10(5) of the *Witness Protection Act 1991* to disclose information about the identity or location of someone in witness protection, or even to disclose that a person is in the program.

How do I report on someone being referred to by their initials in a case?

In some instances people in civil cases and children are referred to by initials to protect their privacy. This should be respected, even if it is not covered by a pseudonym order.

FURTHER INFORMATION

Where can I find out more information?

For additional guidelines and court reporting information, the following resources may be helpful:

- *Guidelines for the media*, [County Court Victoria](#)
- *Media Policies and Practices*, [Supreme Court Victoria](#)
- *Court Reporting in Australia*, [Peter Gregory](#)
- *Contempt & court reporting in Australia*, [The News Manual Online](#)
- *ABC all-media law handbook : for journalists, presenters, program makers, authors, editors and publishers*, [ABC Legal Services](#)
- *The journalist's companion to Australian law*, [Geoffrey Gibson](#)
- *Media law in Australia*, [Mark Armstrong](#), [Michael Blakeney](#), [Ray Watterson](#)
- *The journalist's guide to media law*, [Mark Pearson & Mark Polden](#)
- *The Law of Journalism in Australia*, [Sally Walker](#)

This Q&A was informed by a document originally published in 2006 by Prue Innes - a former court and legal reporter for The Age and former Courts Information Officer in Victoria. The notes have been edited and updated to reflect changes in legislation, technology and court policies. The Supreme Court has given permission for the County Court to use these original notes.