



Courts Legislation Amendment (Broadcasting Judgments) Bill 2014

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Extract from NSW Legislative Council Hansard and Papers Wednesday 10 September 2014.

COURTS LEGISLATION AMENDMENT (BROADCASTING JUDGMENTS) BILL 2014

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Second Reading

The Hon. DAVID CLARKE (Parliamentary Secretary) [4.18 p.m.] on behalf of the Hon. John Ajaka: I move:
That this bill be now read a second time.

I seek leave to incorporate the second reading speech into *Hansard*.

Leave granted.

This bill amends the District Court Act 1973 and Supreme Court Act 1970 to create a presumption in favour of permitting the recording and broadcast of certain judgments given by those courts in open court, unless satisfied that one of a limited number of exclusionary grounds is present.

The presumption will also apply to proceedings in the Court of Criminal Appeal.

In announcing the Government's court broadcasting policy, the previous Attorney General, the Hon. Greg Smith, SC, MP, said:

Justice should be seen to be done and be accessible to all. Allowing more people to watch court decisions will help to show the considerations that go into the decisions judges make.

The Government thoroughly endorses that view.

While proceedings are generally heard in open court and the public are able to attend in person, with more than 170,000 criminal matters dealt with by our courts each year, the great majority of people rely upon electronic media for information about court cases.

New South Wales courts have allowed sentencing remarks to be broadcast previously, with four high-profile sentences filmed since 2009 and three documentaries made inside New South Wales courts since 2004.

However, there are currently no guidelines promoting consistency in deciding whether to allow cameras into the courts.

This bill seeks to bring greater transparency and consistency to the process.

I will now turn to the substantive provisions of the bill.

As I explained earlier, the bill creates a presumption in favour of granting applications by the media to record and broadcast certain "judgment remarks" given in open court.

The bill defines "judgment remarks" to mean:

- in relation to a criminal trial—the delivery of the verdict and remarks made by the court when sentencing the accused person that are delivered or made in open court, and
- in relation to any civil proceedings—remarks made by the court in open court when announcing the judgment determining the proceedings.

For the avoidance of doubt, I wish to emphasise that the bill does not apply to trials or civil hearings. It only applies to verdicts, sentencing remarks and civil judgments.

The chief risk associated with filming court proceedings is the defendant's right to a fair trial. This risk is most acute during the criminal trial process.

Therefore, the bill does not apply to the trial itself.

In further recognition that certain details contained in the courts' judgments may pose a risk to participants, related criminal trials or ongoing investigations, the bill also provides a limited number of "exclusionary grounds" upon which an application may be refused.

They are:

(a) that the broadcast of the judgment remarks would be likely to reveal the identity of a person in circumstances where the disclosure, publication or broadcast of the person's identity is prohibited by a suppression or non-publication order or by law;

(b) that the judgment remarks will contain material that is:

- subject to a suppression or non-publication order or the disclosure, publication or broadcast of which is otherwise prohibited by law, or
- likely to be prejudicial to other criminal proceedings (including proceedings for the same or a related criminal offence) or a current criminal investigation, or
- likely to reveal the existence of a covert operation carried out by law enforcement officials.

(c) that the broadcast of the judgment remarks would pose a significant risk to the safety and security of any person in the courtroom or who has participated or has otherwise been involved in the proceedings, or

(d) that the Chief Judge of the District Court or the Chief Justice has directed that the judgment remarks not be recorded or broadcast because, in their opinion, the broadcast would be detrimental to the orderly administration of the court.

The presence of exclusionary grounds (a), (b) or (c) will not be sufficient justification to refuse permission unless the court is also satisfied that it is not reasonably practicable to implement measures to prevent the broadcast of anything that would otherwise give rise to the exclusionary ground.

To ensure the orderly process of recording and broadcasting court proceedings, the courts will be able to make rules about the manner in which recordings of judgment remarks are to be made, including:

(a) limiting the number and kinds of persons who may be involved in making such recordings in the courtroom

(b) providing for measures to prevent the recording or broadcast of any thing that may give rise to an exclusionary ground or prevent a contravention of the requirement for images of certain persons not to be recorded, and

(c) providing for the shared use of recordings among broadcasters.

However, such rules cannot operate in a manner that is inconsistent with the presumption in favour of broadcasting. The Government's policy at this time is that broadcasting should be limited to verdicts, sentencing remarks and civil judgments.

For the avoidance of doubt, proceedings under the:

- Bail Act 2013
- Children (Criminal Proceedings) Act 1987
- Children and Young Persons (Care and Protection) Act 1998
- Crimes (Forensic Procedures) Act 2000, and
- the Supreme Court's inherent jurisdiction over the care and protection of children are expressly excluded by this bill. Proceedings that are held in closed court are also excluded.

The bill was subject to thorough consultation with the Chief Justice and the media to ensure that the legislation would operate to the mutual benefit of each.

I am advised that the Chief Justice is comfortable that the current drafting accommodates the courts' operational requirements.

The Media, Entertainment and Arts Alliance, the Australian Broadcasting Commission and FreeTV

Australia, representing commercial TV stations, were very welcoming of the initiative.

The provisions of this bill will apply across a range of media channels including television, radio and the internet—including webcasting.

The principle of open justice is fundamental to our court system.

This bill enhances that principle and recognises the demands of the modern technology-driven age in which we live.