

Passed by both Houses



New South Wales

Courts Legislation Amendment (Broadcasting Judgments) Bill 2014

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney,*

, 2014



New South Wales

Courts Legislation Amendment (Broadcasting Judgments) Bill 2014

Act No , 2014

An Act to amend the *District Court Act 1973* and *Supreme Court Act 1970* to provide for a presumption in favour of the recording and broadcast of certain judgments of the District Court and Supreme Court given in open court.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Courts Legislation Amendment (Broadcasting Judgments) Act 2014*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

Schedule 1 Amendment of District Court Act 1973 No 9

Part 5

Insert after Part 4:

Part 5 Broadcast of judgments

177 Application of Part

- (1) This Part applies to proceedings in the Court other than:
- (a) proceedings that are held in closed court, or
 - (b) proceedings under the *Bail Act 2013*, or
 - (c) proceedings on an appeal under the *Children (Criminal Proceedings) Act 1987* or *Children and Young Persons (Care and Protection) Act 1998*, or
 - (d) proceedings under the *Crimes (Forensic Procedures) Act 2000*, or
 - (e) any other proceedings belonging to a class of proceedings that are excluded from the application of this Part by regulations made under subsection (2) (a).

Note. For examples of statutory provisions dealing with proceedings held in closed court, see section 10 of the *Children (Criminal Proceedings) Act 1987* and sections 291, 291A and 291B of the *Criminal Procedure Act 1986*.

- (2) The Governor may make regulations that:
- (a) exclude classes of proceedings in the Court from the application of this Part, or
 - (b) prohibit the recording of images of classes of persons in connection with the recording or broadcast of judgment remarks in proceedings to which this Part applies.

178 Interpretation

In this Part:

broadcast means a live or delayed broadcast by means of radio, television or the internet (including webcasts).

criminal trial means proceedings for the trial of an accused person for a criminal offence.

judgment remarks of the Court means:

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

member of an accused person's or victim's immediate family means:

- (a) the accused person's or victim's spouse, or
- (b) the accused person's or victim's de facto partner, or
- (c) a person to whom the accused person or victim is engaged to be married, or
- (d) a parent, grandparent, guardian or step-parent of the accused person or victim, or

- (e) a child, grandchild or step-child of the accused person or victim or some other child for whom the accused person or victim is a guardian, or
- (f) a brother, sister, half-brother, half-sister, step-brother or step-sister of the accused person or victim.

Note. “De facto partner” is defined in section 21C of the *Interpretation Act 1987*.

news media organisation means a commercial enterprise that engages in the business of broadcasting or publishing news or a public broadcasting service that engages in the dissemination of news through a public news medium.

recording means capturing audio or visual content, or both, for the purposes of a broadcast.

relevant person, in relation to proceedings, means each of the following:

- (a) the Minister,
- (b) a party to the proceedings (including, in the case of a criminal trial or other criminal proceedings, the accused person and the prosecution),
- (c) a witness in the proceedings,
- (d) a person seeking the Court’s permission for the recording or broadcast (or both) of judgment remarks of the Court that are made in the proceedings.

the rules means the civil procedure rules or criminal procedure rules (or both).

victim, in relation to a criminal trial, means a person against whom the criminal offence for which the trial is being conducted was alleged to have been committed.

179 **Presumption in favour of permitting recording and broadcast of judgment remarks**

- (1) A person may apply to the Court in proceedings to which this Part applies for the Court to permit the recording and broadcast of judgment remarks of the Court that are made in those proceedings.

Note. Sections 9 and 9A of the *Court Security Act 2005* prohibit the use of recording devices in courts, and the transmission of court proceedings from a courtroom, except in limited circumstances. One of those circumstances is when it has been expressly permitted by a judicial officer.

- (2) If such an application is made, the Court is to permit the recording of the judgment remarks of the Court, and their broadcast by one or more news media organisations (whether or not the organisations are also the applicants), unless the Court is satisfied that:
 - (a) an exclusionary ground referred to in subsection (3) is present, and
 - (b) except in the case of the exclusionary ground referred to in subsection (3) (d)—it is not reasonably practicable to implement measures when recording or broadcasting the judgment remarks (including by making an order under subsection (5)) to prevent the broadcast of any thing that gives rise to the exclusionary ground.
- (3) Each of the following is an **exclusionary ground** for the purposes of this section with respect to judgment remarks of the Court in proceedings:
 - (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 of the Court or by law,

- (b) that the judgment remarks will contain material:
 - (i) that is subject to a suppression or non-publication order by the Court or the disclosure, publication or broadcast of which is otherwise prohibited by law, or
 - (ii) that is likely to be prejudicial to other criminal proceedings (including proceedings for the same or a related criminal offence) or a current criminal investigation, or
 - (iii) that is 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,
 - (d) that the Chief Judge has directed that the judgment remarks not be recorded or broadcast because, in the Chief Judge's opinion, the broadcast of the judgment remarks would be detrimental to the orderly administration of the Court.
- (4) Without limiting subsection (2) or section 68 of the *Jury Act 1977*, images that identify any of the following persons must not be recorded in connection with the recording or broadcast of judgment remarks of the Court made in proceedings to which this Part applies:
- (a) the jurors in proceedings where the Court is sitting with a jury,
 - (b) an accused person or a victim in a criminal trial (or a member of the accused person's or victim's immediate family),
 - (c) any other person belonging to a class of persons the recording of images of whom is prohibited by regulations made under section 177 (2) (b).
- Note.** Section 68 of the *Jury Act 1977* makes it an offence for a person to wilfully publish any material, broadcast any matter or otherwise disclose any information which is likely to lead to the identification of a juror or former juror in a particular trial or inquest.
- (5) The Court may, on the application of a relevant person in the proceedings or of its own motion, make such orders as it thinks fit for the purpose of preventing the recording or broadcast of any thing that gives rise to an exclusionary ground or preventing a contravention of subsection (4).
- (6) The rules may make provision for regulating the manner in which recordings of judgment remarks of the Court for broadcasts permitted by the Court are made, including:
- (a) limiting the number and kinds of persons who may be involved in making such recordings in the courtroom, and
 - (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 subsection (4), and
 - (c) providing for the shared use of recordings among broadcasters.
- (7) Nothing in this section limits:
- (a) the circumstances in which the Court may decide to permit the recording or broadcast of judgment remarks of the Court, or
 - (b) the persons (in addition to news media organisations) to whom the Court may, subject to rules made for the purposes of subsection (6) (a), decide to grant permission to record or broadcast judgment remarks of the Court.

Schedule 2 Amendment of Supreme Court Act 1970 No 52

Part 9A

Insert after Part 9:

Part 9A Broadcast of judgments

126 Application of Part

- (1) This Part applies to proceedings in the Court other than:
 - (a) proceedings that are held in closed court, or
 - (b) proceedings in exercise of the *parens patriae* jurisdiction of the Court, or
 - (c) proceedings under the *Bail Act 2013*, or
 - (d) proceedings under the *Crimes (Forensic Procedures) Act 2000*, or
 - (e) proceedings under the *Crimes (High Risk Offenders) Act 2006*, or
 - (f) any other proceedings belonging to a class of proceedings that are excluded from the application of this Part by regulations made under subsection (2) (a).

Note. For examples of statutory provisions dealing with proceedings held in closed court, see section 119 of the *Adoption Act 2000*, section 10 of the *Children (Criminal Proceedings) Act 1987* and sections 291, 291A and 291B of the *Criminal Procedure Act 1986*.

- (2) The Governor may make regulations that:
 - (a) exclude classes of proceedings in the Court from the application of this Part, or
 - (b) prohibit the recording of images of classes of persons in connection with the recording or broadcast of judgment remarks in proceedings to which this Part applies.
- (3) The provisions of this Part extend to proceedings in the Court of Criminal Appeal and, accordingly, any reference to the Court in this Part is to be read as including a reference to the Court of Criminal Appeal.

127 Interpretation

In this Part:

broadcast means a live or delayed broadcast by means of radio, television or the internet (including webcasts).

criminal trial means proceedings for the trial of an accused person for a criminal offence.

judgment remarks of the Court means:

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

member of an accused person's or victim's immediate family means:

- (a) the accused person's or victim's spouse, or
- (b) the accused person's or victim's de facto partner, or

- (c) a person to whom the accused person or victim is engaged to be married, or
- (d) a parent, grandparent, guardian or step-parent of the accused person or victim, or
- (e) a child, grandchild or step-child of the accused person or victim or some other child for whom the accused person or victim is a guardian, or
- (f) a brother, sister, half-brother, half-sister, step-brother or step-sister of the accused person or victim.

Note. “De facto partner” is defined in section 21C of the *Interpretation Act 1987*.

news media organisation means a commercial enterprise that engages in the business of broadcasting or publishing news or a public broadcasting service that engages in the dissemination of news through a public news medium.

recording means capturing audio or visual content, or both, for the purposes of a broadcast.

relevant person, in relation to proceedings, means each of the following:

- (a) the Minister,
- (b) a party to the proceedings (including, in the case of a criminal trial or other criminal proceedings, the accused person and the prosecution),
- (c) a witness in the proceedings,
- (d) a person seeking the Court’s permission for the recording or broadcast (or both) of judgment remarks of the Court that are made in the proceedings.

victim, in relation to a criminal trial, means a person against whom the criminal offence for which the trial is being conducted was alleged to have been committed.

128 **Presumption in favour of permitting recording and broadcast of judgment remarks**

- (1) A person may apply to the Court in proceedings to which this Part applies for the Court to permit the recording and broadcast of judgment remarks of the Court that are made in those proceedings.

Note. Sections 9 and 9A of the *Court Security Act 2005* prohibit the use of recording devices in courts, and the transmission of court proceedings from a courtroom, except in limited circumstances. One of those circumstances is when it has been expressly permitted by a judicial officer.

- (2) If such an application is made, the Court is to permit the recording of the judgment remarks of the Court, and their broadcast by one or more news media organisations (whether or not the organisations are also the applicants), unless the Court is satisfied that:
 - (a) an exclusionary ground referred to in subsection (3) is present, and
 - (b) except in the case of the exclusionary ground referred to in subsection (3) (d)—it is not reasonably practicable to implement measures when recording or broadcasting the judgment remarks (including by making an order under subsection (5)) to prevent the broadcast of any thing that gives rise to the exclusionary ground.
- (3) Each of the following is an **exclusionary ground** for the purposes of this section with respect to judgment remarks of the Court in proceedings:
 - (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 of the Court or by law,
- (b) that the judgment remarks will contain material:
 - (i) that is subject to a suppression or non-publication order by the Court or the disclosure, publication or broadcast of which is otherwise prohibited by law, or
 - (ii) that is likely to be prejudicial to other criminal proceedings (including proceedings for the same or a related criminal offence) or a current criminal investigation, or
 - (iii) that is 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,
 - (d) that the Chief Justice has directed that the judgment remarks not be recorded or broadcast because, in the Chief Justice's opinion, the broadcast of the judgment remarks would be detrimental to the orderly administration of the Court.
- (4) Without limiting subsection (2) or section 68 of the *Jury Act 1977*, images that identify any of the following persons must not be recorded in connection with the recording or broadcast of judgment remarks of the Court made in proceedings to which this Part applies:
- (a) the jurors in proceedings where the Court is sitting with a jury,
 - (b) an accused person or a victim in a criminal trial (or a member of the accused person's or victim's immediate family),
 - (c) any other person belonging to a class of persons the recording of images of whom is prohibited by regulations made under section 126 (2) (b).
- Note.** Section 68 of the *Jury Act 1977* makes it an offence for a person to wilfully publish any material, broadcast any matter or otherwise disclose any information which is likely to lead to the identification of a juror or former juror in a particular trial or inquest.
- (5) The Court may, on the application of a relevant person in the proceedings or of its own motion, make such orders as it thinks fit for the purpose of preventing the recording or broadcast of any thing that gives rise to an exclusionary ground or preventing a contravention of subsection (4).
- (6) The rules may make provision for regulating the manner in which recordings of judgment remarks of the Court for broadcasts permitted by the Court are made, including:
- (a) limiting the number and kinds of persons who may be involved in making such recordings in the courtroom, and
 - (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 subsection (4), and
 - (c) providing for the shared use of recordings among broadcasters.
- (7) Nothing in this section limits:
- (a) the circumstances in which the Court may decide to permit the recording or broadcast of judgment remarks of the Court, or

- (b) the persons (in addition to news media organisations) to whom the Court may, subject to rules made for the purposes of subsection (6) (a), decide to grant permission to record or broadcast judgment remarks of the Court.