



# Media

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<sup>1</sup> References to the law, policies and guidelines are current as at the date of publication. Users should confirm the currency of all source material at the time of using this document.

**A. INTRODUCTION**

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1. This National Legal Direction (**NLD**) provides guidance to employees of the Office of the Director of Public Prosecutions (Cth) (**CDPP**) about managing and responding to media enquiries or requests (including dealing with media representatives at court). The NLD also contains information about the role of the CDPP Media team (**Media team**).
2. The media provides an important avenue for the public to learn more about the work of the CDPP and partner agencies. Highlighting successful prosecution outcomes helps to reduce the incidence of crime in our community by deterring potential offenders. The media represents an important external stakeholder group, which is why there are specific protocols in place (as outlined in this NLD) to manage the relationship between the CDPP and media agencies.

**B. CDPP MEDIA TEAM**

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3. The Media team is responsible for managing media engagement and for responding to any media enquiries or requests. The Media team is contactable via phone on (02) 6206 5708 or via email at [media@cdpp.gov.au](mailto:media@cdpp.gov.au).
4. The Media team also facilitates the internal publication of daily media reports. If staff are aware of matters of particular significance (which may not be otherwise captured within daily media monitoring), the team is able to include additional search terms or create alerts for specific time periods. The Media team is also able to assist staff find media articles or coverage of interest.
5. The Media team is responsible for ensuring the CDPP establishes and maintains constructive relationships with journalists and media organisations. The team is a centralised point of contact within CDPP to help prosecutors and other employees manage media enquiries and proactive media engagement.
6. The Media team documents and tracks all media contact to help ensure the CDPP is transparent and accountable in its dealings and compliant with its obligations under relevant legislation.

**C. MEDIA ENGAGEMENT**

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7. In considering its level of engagement with the media, the CDPP will assess a range of matters including:
  - 7.1. the nature of the media enquiry or request;
  - 7.2. the likely impact of media reporting on current and future court proceedings;
  - 7.3. the need to ensure defendants receive a fair trial;
  - 7.4. any applicable court orders or Practice Notes;
  - 7.5. the desirability of ensuring media reporting is accurately informed by relevant information;
  - 7.6. the impact any media engagement may have on the CDPP or partner agencies;
  - 7.7. the views of any impacted partner agencies; and
  - 7.8. if the engagement relates to a specific prosecution:
    - (a) the stage of the relevant proceedings;

- (b) the public interest in the prosecution; and
- (c) the impact of the prosecution on general deterrence.

8. Where a media enquiry or request relates to a specific prosecution, the CDPP should consider notifying the relevant partner agency of the media enquiry. A coordinated approach to media enquiries with the relevant partner agency should be considered. In such cases, agreed key messages can be developed and shared to ensure media responses are consistent. Additional material may be added from the perspective of each agency where appropriate.

### **Relationship management**

9. Most of the work of the Media team occurs in response to media enquiries or requests (see guidance below). However, in some cases, the team will also explore proactive opportunities to strengthen relationships and further promote the work of the CDPP. Where this proactive engagement relates to a specific prosecution (or class of prosecutions), it will be done in consultation with the relevant Practice Group Leader.
10. Ongoing engagement with the media ensures that the Media team is able to respond quickly to any issue arising out of media reporting (such as where media reporting is in breach of a court order or statutory prohibition) and take steps to prevent prosecutions being compromised as a result of such reporting.
11. The CDPP has no obligation to monitor or correct any inaccuracies in media reporting.
12. However, where the CDPP becomes aware of media reporting inconsistent with a court order or statutory prohibition, the CDPP should contact the relevant media organisation to bring the issue to their attention (by way of notification only). In those circumstances, it will be a matter for the media organisation to consider the notification and act on it as they see fit. The CDPP may also raise any concerns regarding media reporting with the court.

### **Media releases and statements**

13. The Media team is able to facilitate the proactive release of a media release or statement in appropriate circumstances (for example, where a prosecution outcome is of public interest). The CDPP will decide whether to release information via a media release or statement having regard to the matters set out above.
14. The release of any media statement will be approved by the relevant Practice Group Leader. However, if a matter is particularly sensitive, clearance may also be sought from the Commonwealth Solicitor for Public Prosecutions (**CSPP**) or the Director. If either the Director, CSPP or Practice Group Leader are to be quoted in a release or statement, they must approve the content of the statement (in its entirety) prior to it being released.
15. CDPP media releases and statements are published on the CDPP website. Media releases cannot be altered or deleted once published. They are an historical, point-in-time record. This ensures the CDPP is accountable and transparent about the materials it releases into the public domain. In exceptional circumstances, the CDPP may add an addendum to a release or statement to make a correction or note the outcome of a subsequent appeal.
16. Prosecutors may, from time to time, be contacted by partner agency representatives in relation to the prospect of publishing a joint media release or statement. Prosecutors should direct any such

proposal to the Media team and assist by confirming whether the factual material included within any draft release or statement is accurate. If the prosecutor considers that the tenor of any draft release or statement is inappropriate, they should bring this concern to the attention of the Media team. The Media team will (in consultation with the prosecutor and their Prosecution Team Leader, Branch Head and Practice Group Leader) liaise with the representatives of the relevant agency to progress the possible joint release or statement.

17. If prosecutors become aware that a partner agency intends to publish a media release or statement (related to a prosecution or prosecution outcome), they should inform the partner agency that they should consult with the CDPP prior to any release to ensure accurate reporting. It is unlikely that any media release or statement can be amended or changed after publication.

### Case reports

18. The CDPP publishes case reports highlighting prosecution outcomes on the CDPP website and the Partner Agency Portal. These public reports are often complemented by internal news stories on The Desk. These case reports/news stories are to be tailored to the different audiences: the public; our partner agencies; and our staff.
19. Prosecutors should regularly consider whether a finalised prosecution would be an appropriate matter for a case report. If a prosecutor identifies an appropriate matter for a case report, they should discuss with their Prosecution Team Leader and Branch Head in the first instance. To facilitate the publication of a case report, prosecutors can either:
  - 19.1. prepare a draft report (and accompanying news story for The Desk) and share with the Media team for their advice and input. Following the Media team's review, the prosecutor should submit the draft report (and news story) for approval to their Practice Group Leader (via their Branch Head). Once approved, the prosecutor should provide settled versions to the Media team for their final review and publication; or
  - 19.2. liaise with the Media team, provide necessary information about the matter (eg statement of facts and sentence outcomes) and request the team draft a report (and accompanying news story for The Desk and/or the Partner Agency Portal) and share with the prosecutor for their advice and input. The prosecutor should also seek the views of their Prosecution Team Leader and Branch Head prior to making this request. Following the prosecutor's review, the Media team will submit the draft report and news story to the relevant Practice Group Leader for review and approval ahead of publication.

### D. MEDIA ENQUIRIES AND REQUESTS

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20. A media enquiry may be made to the CDPP in a number of ways. A media representative may:
  - 20.1. directly approach a staff member or external appearing officer at court;
  - 20.2. contact a CDPP office (or individual officer) directly; or
  - 20.3. approach the CDPP via email (either to an individual staff member or to a generic address).
21. **Where practicable, all media enquiries should be directed to the Media team in the first instance.** The team is best placed to manage all responses in consultation with the relevant Practice Group, negotiate sensitivities, obtain the appropriate clearances and approvals, and develop a

recommended response. Proposed responses prepared by the Media team will take into consideration the potential consequences of media coverage, including any impact on the CDPP's reputation.

22. Media enquiries and requests should be responded to in as timely a manner as possible, noting that media representatives are routinely subject to tight timeframes and deadlines. As a rough guide, the majority of enquiries should be responded to within 24 hours of receipt.

#### **E. DEALING WITH MEDIA**

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23. Any substantial engagement with the media (other than incidental communications set out at paragraphs 30-38 below) should be facilitated by the Media team.
24. As a general rule, only the Director, CSPP, Chief Operating Officer and Practice Group Leaders will speak with, or provide attributable quotes to, the media on behalf of the CDPP.
25. If substantial media engagement is to be undertaken by any other staff member, prior approval from the relevant Practice Group Leader is required.
26. Counsel retained by the CDPP are not to communicate with the media with respect to prosecutions for which they have been briefed, other than as set out in paragraphs 37 – 38 below.
27. Staff or counsel approached for comment by a media representative at court should decline to provide any comment in a polite and respectful manner. If circumstances permit, the staff member should provide the media representative with the contact details for the Media team.
28. Staff who wish to propose the CDPP proactively communicate with the media (if, for example, it is necessary to contact a media agency in relation to reporting that breaches a court order) should contact the Media team to discuss how to proceed.
29. Staff and counsel must not otherwise provide any "off-the-record", background, information or quotes to media representatives (directly or indirectly). While journalists may not report the staff member's or counsel's name, they may use the information in other ways, such as reporting: "It is understood that..." or "it is believed that...". Another common way to report "off the record" comments is: "a CDPP spokesperson said". Each of these "off-the-record" attributions are undesirable and must be avoided.

#### **Incidental communications with media at Court**

30. It is not unusual for media representatives to attend criminal proceedings. Media representatives may sit within the public gallery or within a designated media area.
31. Media representatives present in open court during a hearing are entitled to report on what was said during that hearing unless there is any order or prohibition in place to prevent them from doing so. The fast-paced and immediate nature of media reporting is such that media representatives will generally rely on what they saw and heard in court, rather than seeking any additional information or quotes from participants.
32. If a staff member has any interaction with a media representative at court, they should notify the Media team of the interaction and provide details of the exchange. This ensures the Media team is aware of information likely to appear in the media.

33. Where media coverage of a court appearance is anticipated ahead of time, prosecutors should notify the Media team in advance. The Media team is able to provide guidance and support to prosecutors. This includes having pre-prepared responses ready for general enquiries, working with prosecutors and Practice Group Leaders to identify and develop strategies for issues that may directly impact the CDPP and developing media statements or press releases (where appropriate).

#### Name of appearing officer

34. Media representatives may approach an appearing officer and ask them to clarify their name. The preferable approach is to request that the media representative use the generic term “a Federal Prosecutor” to identify any appearing officer – however, given that the appearing officer will have announced their name as part of their appearance in open court, there is nothing preventing the media representative from attributing any statements made by the prosecutor in open court to them individually.
35. When the Media team receives a request to confirm the name of a prosecutor, the team will ask journalists to use the term “Federal Prosecutor”. However, there is no way to enforce this terminology if a journalist chooses not to use it.
36. As journalists will often cover a number of different courts across several jurisdictions, it is a matter of good practice for prosecutors to ensure that any reference they make to the “DPP” or “Director” in open court (or in any exchange outside of court) is clearly a reference to the “Commonwealth DPP” or “Commonwealth Director” to avoid confusion or inaccurate attribution to a state/territory prosecuting agency.

#### Clarification of available factual information

37. If a media representative approaches an appearing officer asking them to clarify basic details related to the matter (such as the correct spelling of the defendant’s name, identity of the parties or of any witness already called, the number of charges and nature of order/judgment), the appearing officer may provide that information unless there is any order or prohibition in place to prevent them from doing so.
38. If the appearing officer is in any doubt as to whether it is appropriate to provide such information, they should refer the media representative to the Media team.

#### **Release of documents/material**

39. Materials that have not been tendered, handed up or disclosed in open court should not be provided to the media (even if referred to by the parties in submissions). Any application made by a media representative to a court to access such material should be opposed on the basis that the material sought does not form part of the court record.
40. Materials that have been tendered in open court should only be released by the court and in accordance with a court order.
41. Written outlines of submissions should not be released because they do not constitute evidence in the proceedings. The final judgment of the Court will provide sufficient detail and context for accurate media reporting.

### Media applications

42. From time to time, media agencies will make an application to a court for access to (or for a copy of) tendered or filed material. Once material has been tendered or filed with the court, it will generally be a matter for that court (depending on standard practices within the particular jurisdiction) to determine whether to release or provide access to the material to the third-party media agency.
43. If such an application is made, the Court may approach the parties to obtain their views as to whether it is appropriate to release a document. Where the Court invites submissions on such an application, the prosecutor should seek instructions from the relevant Practice Group Leader (via their Prosecution Team Leader and Branch Head) as to whether to oppose the application and, if so, on what basis.
44. In some circumstances, the CDPP will oppose such an application (for example, if the relevant document sought by the media agency contains personal information about a witness or victim or sensitive material such as descriptions of child abuse material). In those circumstances, the CDPP might indicate it would withdraw its opposition to the application if suitable redactions (to remove any personal, sensitive or confidential matters) were to be made to a version of the document (proposed to be released) prior to its release to a third party (media agency).
45. Prosecutors should not provide materials to media representatives at Court unless there has been a specific court order requiring the CDPP to do so. If such an order is made, prosecutors should inform the Media team as soon as possible.

### Direct requests for material

46. Media representatives occasionally approach a prosecutor (or the Media team) directly seeking to obtain materials. In such circumstances, the prosecutor should invite the media representative to make an application seeking access to the material to the court.

### Determining whether to oppose release of material

47. In determining whether it is appropriate to oppose an application for the release of tendered materials, decision makers should consider the following:
  - 47.1. The CDPP will generally not oppose media representatives being granted access to material that has been placed on the public record (such as charge sheets or statements of facts) as a result of having been filed or tendered in open court (subject to the matters set out in [47.3] and [47.4] below).
  - 47.2. It is not necessary to await the complete finalisation of a matter before material is released. For example, a statement of facts can be released on the day it was tendered without needing to await the Court handing down sentence on a later date. However, where materials have been handed up to the Court (or even where material has been formally tendered) as part of a preliminary hearing (such as a bail or interlocutory application), it is

generally not be appropriate for those materials to be released. This is due to the incomplete nature of the material and the preliminary stage of the proceedings.<sup>2</sup>

- 47.3. Where tendered materials or court orders contain sensitive information (such as personal information relating to a victim or uncharged persons) or where releasing the information could be unlawful (such as where the content of statements of facts in child abuse material-related prosecutions contain descriptions of material), access or release to media agencies should be opposed. The CDPP should only accede to the release of such material where an appropriately redacted or simplified version of the material is proposed to be released by the court.<sup>3</sup> If the CDPP's position is that redactions ought to be made prior to release by the Court, the prosecutor may assist the court by offering to prepare a proposed redacted version of the relevant document in a form capable of being released. However, the ultimate responsibility for approving the material to be released rests with the court.
- 47.4. The release of any material should be opposed where that release would be contrary to any implied *Harman* undertaking.<sup>4</sup>

## F. SOCIAL MEDIA

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### Organisation

48. The CDPP maintains a LinkedIn account managed by the Media team. The CDPP uses its LinkedIn account to proactively promote media releases and statements, case reports, publications, CDPP website content, partner agency content or employment opportunities.
49. The Media team also monitors social media as part of its broader media monitoring role.

### Staff members

50. All Australian Public Service (APS) employees have a right to participate in social media. However, staff should be aware that the personal behaviour of CDPP employees on social media can affect the confidence of the Australian community and the Government in the CDPP's role in the Australian justice system. The [APSC's Guidance for Australian Public Service Employees](#) provides a framework for CDPP employees on striking a reasonable balance between their rights as individuals and their obligations as public servants.

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<sup>2</sup> As at August 2024, the Supreme Court of NSW website contains the following relevant guidance for media in relation to 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.

<sup>3</sup> For example, a redacted version of a statement of facts may include a basic timeline of information and a charge list but must not include detailed descriptions of the child abuse material or information that might identify a victim.

<sup>4</sup> See *Hearne v Street* [2008] HCA 36; (2008) 235 CLR 125, in which the Court stated (at [96]): "Where one party to litigation is compelled, either by reason of a rule of court, or by reason of a specific order of the court, or otherwise, to disclose documents or information, the party obtaining the disclosure cannot, without the leave of the court, use it for any purpose other than that for which it was given unless it is received into evidence" [footnotes omitted].



**G. DOCUMENT RELEASE INFORMATION**

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**Document owner**

<b>Position</b>	Deputy Director, Legal Capability and Performance
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**Approval for release**

<b>Name</b>	Raelene Sharp KC
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