

# Magistrates Courts

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## Practice Direction No. 4 of 2023

Issued: 3 October 2023

### Non-publication orders – *Criminal Law (Sexual Offences) Act 1978*

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This Practice Direction applies to a defendant charged with a prescribed sexual offence<sup>1</sup> under section 7 of the *Criminal Law (Sexual Offences) Act 1978* (the Act) whether the defendant was charged before or after the commencement date of 3 October 2023 (s.17 of the Act).

#### Purpose

1. The purpose of this Practice Direction is to facilitate procedural consistency in the determination of Applications for Non-Publication Orders.
2. While it is recognised that local conditions may require adjustment to the practices and procedures set out in this Practice Direction, adherence to this Practice Direction is encouraged, wherever possible.
3. Nothing in this Practice Direction is to be taken as removing or limiting the discretion of a Magistrate.

#### Application for a non-publication order

4. An eligible person may apply to a Magistrates Court for a non-publication order prohibiting the publication of identifying matter relating to the defendant before the defendant is committed for trial or sentence or sentenced on the charge (s.7(2) of the Act). An eligible person means, in relation to a prescribed sexual offence, the complainant, the defendant or the prosecution (s. 3 of the Act).
5. The application is to be made on the form **Annexure A** – Application for a Non-Publication Order (the Application). The application should ordinarily be filed in the Magistrates Court registry where the prescribed sexual offence will be heard.
6. A Notice of Application in the form **Annexure B** – Notice of Application is to be filed with the Application for a Non-Publication Order.
7. The Registrar will endorse the location and date of hearing on the Notice of Application. This document is then referred to in this direction as the “*endorsed notice of application*”.
8. The Registrar of the Court where the Notice of Application was filed will send the endorsed notice of application, by email to accredited media entities.
9. Applicants for non-publication orders should be aware that the endorsed notice of application will ordinarily be treated by the Court as an open, non-confidential

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<sup>1</sup> *Prescribed sexual offence* means any of the following offences – rape; attempt to commit rape; assault with intent to commit rape; an offence defined in the Criminal Code, section 352.

document. However, if the applicant is a complainant in a prescribed sexual offence the name of the complainant and contact details (unless the contact is a legal representative) will be redacted from the endorsed notice of application before accredited media entities are provided with the endorsed notice of application.

10. An application for a non-publication order may be supported by an affidavit or affidavits. If waiver of the requirement to provide the affidavit to other parties is to be sought the affidavit should be provided in an unsealed envelope noting "**Affidavit not to be viewed or provided to any party without direction of a Magistrate**".

### **Accredited Media Entities**

11. Accredited media entity means an entity listed as an accredited media entity in the Supreme Court's media accreditation policy in [Supreme Court of Queensland Amended Practice Direction Number 8 of 2014](#).
12. Under s. 7A of the Act the Court must, on receiving notice of intention to make an application for a non-publication order take reasonable steps to ensure that each accredited media entity is notified of the application.
13. Under s. 7A (2) of the Act the notification may be by electronic communication or another way that the Court considers appropriate.
14. Any accredited media entity wishing to be notified under section 7A of the Act of applications for non-publication orders or of the making of a non-publication order must nominate an email address for receipt of notifications.
15. Any accredited media entity wishing to nominate a single email address for receipt of notifications may provide that email address by contacting the Principal Information Officer, Supreme and District Courts, [mediaSDC@justice.qld.gov.au](mailto:mediaSDC@justice.qld.gov.au).
16. Any notifications by the Court under section 7A of the Act will ordinarily be given only to the email address nominated pursuant to paragraph [15].
17. Any accredited media entity that has previously nominated an email address and later wishes to be removed from the notification list or change that address may contact the Principal Information Officer, Supreme and District Courts, [mediaSDC@justice.qld.gov.au](mailto:mediaSDC@justice.qld.gov.au).
18. If the other parties to the application or accredited media organisations neither consent nor oppose the making of the orders sought, they are not required to attend the hearing of the application.
19. Any accredited media entity seeking further details regarding notices given under s.7A of the Act should direct their inquiries not to the Court but to the applicant or the applicant's legal representatives, in accordance with the details provided in the notice.

### **Interim order and Waiver**

20. An application for an interim order may be made prior to the giving of the Notice of Application using the form **Annexure A**. An application for waiver (s.7(4) of the Act) of the requirement to give notice may be made at the same time as an application for an interim order or a final non-publication order using the form **Annexure A**.
21. An interim order may be made without consideration being given to the merits of the application (s.7D of the Act).
22. The Applicant should provide a draft interim order in the form **Annexure C** – Interim Non-Publication Order – with appropriate amendments, when making the application for an interim order.
23. When considering the interim order application a Magistrate may make directions

including but not limited to when, where and by what means for example, by video-link, the Application is to be heard and the giving of the endorsed notice of application to eligible persons and accredited media.

24. Upon making the interim order a copy of that interim order will be sent electronically to any accredited media entity who has nominated an email address for receipt of notifications.
25. When the Court makes an interim order the Court will hear and decide the application as a matter of urgency and where practicable within 72 hours after making an interim order (s. 7D(3) of the Act). Examples of where it may not be practicable to hear in 72 hours will include where the Court is not sitting (for example, a Sunday).

### **Giving Notice and Service of the Application**

26. Unless the requirement to give notice has been waived the applicant will give to the Magistrate at the hearing of the application an affidavit attesting to giving of the endorsed notice of application and the application for a non-publication order to each eligible person in accordance with [Form 45 of the Criminal Practice Rules](#).
27. While the Act does not require the giving of the application before the hearing of a non-publication order the giving of the application will expedite the hearing of the matter in a Court.
28. Subject to any other order of a Magistrate the endorsed notice of application and the application may be given to the parties by sending a copy of the endorsed notice of application and the application by email.
29. If the applicant is a defendant, the defendant must not give personally to the complainant the endorsed notice of the application or the application. The endorsed notice of application or application can be given to the complainant by giving to the appropriate prosecuting authority (the Queensland Police Service or the Office of the Director of Public Prosecution) a copy of the endorsed notice and/or application for the prosecution to give a copy of that notice and/or application to the complainant or another person nominated to receive correspondence on the complainant's behalf (see s. 7(5) of the Act).
30. The appropriate prosecuting authority is the authority appearing to prosecute on the prescribed sexual offence charges.
31. The prosecuting authority may prove that an endorsed notice of application has been given to the complainant by filing an affidavit attesting to how the notice of application was given. The prosecuting authority may redact any contact details of the complainant from any material given to the Court, defendant or another party.
32. A Magistrate may vary any requirement to give an affidavit if satisfied by other evidence that the required notice of application has been properly given.
33. Proof that notice of the application has been given to accredited media entities can be given to the Court by the Registrar producing a copy of an email from the court to those accredited media entities who have supplied an email address in accordance with paragraph 15.

### **Hearing of the Application**

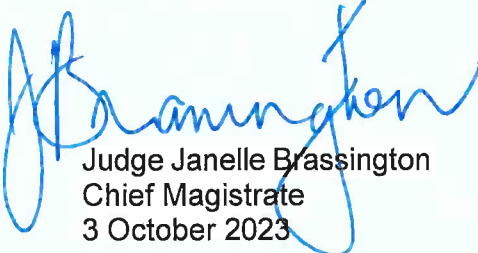
34. At the hearing of the Application, the applicant should provide a draft Non-Publication Order in the form **Annexure D – Non-Publication Order** – with appropriate amendments.
35. If a non-publication order is granted the notice of application and affidavit's will be marked as confidential with access restricted to ensure it is not opened or read, save

by order of a magistrate or judge.

36. Upon making the non-publication order a copy of that order will be sent electronically to any accredited media entity who has nominated an email address for receipt of notifications.

## Review

37. An application for review of a non-publication order may be made at any time by filing an application for review in the form **Annexure E – Application for Review of Non-Publication Order** and a Notice of Application to Review in the form **Annexure F – Notice of Application to Review**.
38. A review application may be made by the original applicant, the parties to the original application (complainant, defendant or prosecution), an accredited media entity or any other person who the court considers has sufficient interest in the question of whether the order should be made (s.7E(1)(b)).
39. The Registrar will endorse the location and date of hearing on the Notice of Application to Review. This document is referred to in this direction as the “*endorsed notice of application to review*”.
40. The applicant for review must give an endorsed notice of application to review to all the original parties, including if the applicant for review is not the original applicant, the original applicant.
41. The applicant for review must give the endorsed notice of the application to review to a complainant only by giving that notice to the prosecution who will then give a copy of the notice to the complainant or another person nominated to receive correspondence on the complainant’s behalf in relation to the matter. The prosecuting authority may redact any contact details of the complainant from any material given to the Court, defendant, or another party.
42. The Court will give the endorsed notice of an application for review to the accredited media under paragraph 15 of this Direction.
43. At the hearing of the application for review, the applicant should provide a draft Review of Non-Publication Order in the form **Annexure G - Review of Non-Publication Order** – with appropriate amendments.
44. If the non-publication order is varied or revoked a copy of that order will be sent electronically to any accredited media entity who has nominated an email address for receipt of notifications.



Judge Janelle Brassington  
Chief Magistrate  
3 October 2023

**ANNEXURE A to Practice Direction 4 of 2023**

**APPLICATION FOR A NON-PUBLICATION ORDER**

Section 7 - Criminal Law (Sexual Offences) Act 1978

In the Magistrates' Court  
at [venue] \_\_\_\_\_ Court Reference : \_\_\_\_\_

In the matter of:

[Prosecution]: \_\_\_\_\_

[Defendant] \_\_\_\_\_

Name of applicant: \_\_\_\_\_  
Complainant / Prosecutor / Defendant (delete non applicable)

Email address: \_\_\_\_\_

**NOTE: Pursuant to section 7(3) of the Criminal Law (Sexual Offences) Act 1978, the applicant must give three (3) business days' notice of this application to the Court and to each other eligible person, unless the Court is satisfied that there is good reason to waive the notice requirement, or it is in the interests of justice to do so.  
Eligible persons are the complainant, the prosecution and the defendant.**

- Application for:
- Non-Publication Order
  - Interim Non-Publication Order
  - Waiver of Requirement to Give Notice

Grounds of Application:

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This case is next listed for mention\*/hearing\*/committal\* at \_\_\_\_\_

on \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
[Applicant or applicant's legal practitioner]

**ANNEXURE B to Practice Direction 4 of 2023**

**NOTICE OF APPLICATION**

File Number:

To the Magistrates Court at [*Location*]

[*Prosecution*]:

\_\_\_\_\_

[*Defendant*]

\_\_\_\_\_

And to: [identify other proposed recipients of notice]

I, ..... **the applicant give notice of the making of an application for a non-publication order under s.7 of the *Criminal Law (Sexual Offences) Act 1978***

This application will be heard at the Magistrates' Court of [*Place*] at: \_\_\_\_\_  
(*Court location*)

on: \_\_\_\_\_ at: \_\_\_\_\_ AM/PM  
(*Date*) (Time)

Or soon afterwards as the business of the Court allows.

(to be completed by the registrar)

\_\_\_\_\_  
(*Registrar Signature and Date*)

You may, if you wish, be heard on this issue in court on the application hearing date. You may appear in person or be legally represented.

**NOTE: Pursuant to section 7(3) of the *Criminal Law (Sexual Offences) Act 1978*, the applicant must give three (3) business days' notice of this application to the Court and to each other eligible person, unless the Court is satisfied that there is good reason to waive the notice requirement, or it is in the interests of justice to do so.**

**Eligible persons are the complainant, the prosecution and the defendant.**

**IF THE DEFENDANT IS THE APPLICANT THE NOTICE TO THE COMPLAINANT MUST NOT BE GIVEN PERSONALLY TO THE COMPLAINANT BY THE DEFENDANT. THE DEFENDANT MUST GIVE TO THE PROSECUTION A COPY OF THE NOTICE WHO WILL THEN GIVE THE NOTICE TO THE COMPLAINANT OR ANOTHER PERSON NOMINATED TO RECEIVE CORRESPONDENCE ON THE COMPLAINANT'S BEHALF.**

*\*Delete if not applicable*

**NOTE: The Court will take reasonable steps to ensure that each accredited media entity is notified of the application in accordance with s. 7A of the *Criminal Law (Sexual Offences) Act 1978***

**BEFORE THE NOTIFICATION OF ACCREDITED MEDIA THE NAME OF THE COMPLAINANT AND CONTACT DETAILS WILL BE REDACTED FROM ANY NOTICE OF APPLICATION GIVEN TO ACCREDITED MEDIA AND DEFENDANT**

**ANNEXURE C to Practice Direction 4 of 2023**

**INTERIM NON-PUBLICATION ORDER**

*Section 7D - Criminal Law (Sexual Offences) Act 1978*

In the Magistrates' Court  
at [venue] \_\_\_\_\_ Court Reference : \_\_\_\_\_

In the matter of:

[Prosecution]: \_\_\_\_\_

[Defendant] \_\_\_\_\_

An application for a non-publication order having been made to this Court pursuant to s. 7 of the *Criminal Law (Sexual Offences) Act 1978*, until that application is determined, or this order is otherwise revoked:

1. The Court orders that publication of any identifying matter in relation to the defendant including:
  - a. The name of the defendant;
  - b. The address of the defendant;
  - c. The place of employment of the defendant; or
  - d. any other particular of the defendant or another person likely to lead to the identification of the defendant,

and any photograph, picture, videotape, digital image or other visual representation of the defendant or another person that is likely to lead to the identification of the defendant is prohibited pursuant to s 7D(1) *Criminal Law (Sexual Offences) Act 1978*.

2. The purpose of this order is to prevent publication of the matters referred to in paragraph 1 until a substantive application pursuant to s 7 of the *Criminal Law (Sexual Offences) Act 1978* can be heard.
3. For the purpose of this order, 'publication' means the dissemination or provision of access to the public by any means including, publication in a book, newspaper, magazine or other written publication; or broadcast by radio or television; or public exhibition; or broadcast or electronic communication.

.....  
Magistrate

Date: .....

**ANNEXURE D to Practice Direction 4 of 2023**

**NON-PUBLICATION ORDER**

*Sections 7B, 7C - Criminal Law (Sexual Offences) Act 1978*

In the Magistrates' Court  
at [venue] \_\_\_\_\_ Court Reference : \_\_\_\_\_

In the matter of:

[Prosecution]: \_\_\_\_\_

[Defendant] \_\_\_\_\_

An application for a non-publication order having been made to this Court by \_\_\_\_\_,  
[Name of Applicant]  
an eligible person pursuant to s. 7 of the *Criminal Law (Sexual Offences) Act 1978*, and having heard from  
(s.7C(1)):

- the applicant;
- the defendant;
- the complainant;
- an accredited media entity, namely.....
- .....(a person whom the court considers has sufficient interest in the question of whether the order should be made).

And having considered the following (s 7C(3)(b)):

- (i) the primacy of the principle of open justice;
- (ii) the public interest;
- (iii) any submissions made or views expressed by or on behalf of the complainant about the application;
- (iv) any special vulnerabilities of the complainant or the defendant;
- (v) any cultural considerations relating to the complainant or the defendant;
- (vi) the potential effect of publication in a rural or remote community;
- (vii) the potential to prejudice any future court proceedings;
- (viii) the history and context of any relationship between the complainant and the defendant (including, for example, any domestic violence history);
- (ix) other relevant matters namely,.....



The Court is satisfied the defendant is charged with a prescribed sexual offence<sup>2</sup> and that a non- publication order is necessary to (s. 7B):  
(One or more grounds may be relied upon)

- prevent prejudice to the proper administration of justice
- prevent undue hardship or distress to a complainant or witness in relation to the charge
- to protect the safety of any person.

The Court orders:

1. Publication of any identifying matter in relation to the defendant including:
  - a. The name of the defendant;
  - b. The address of the defendant;
  - c. The place of employment of the defendant; or
  - d. any other particular of the defendant or another person likely to lead to the identification of the defendant, including:.....  
.....

and any photograph, picture, videotape, digital image or other visual representation of the defendant or another person that is likely to lead to the identification of the defendant is prohibited pursuant to s 7D(1) *Criminal Law (Sexual Offences) Act 1978*. (s. 7C(4)(c))

For the purpose of this order, 'publication' means the dissemination or provision of access to the public by any means including, publication in a book, newspaper, magazine or other written publication; or broadcast by radio or television; or public exhibition; or broadcast or electronic communication.

2. Notwithstanding the order in paragraph [1] the order does not restrict the lawful publication of [any identifying matters not covered by the order for example, "any evidence, argument or other matter given or referred to in court proceedings".] (s. 7C(4)(b))
3. This order ceases to have effect when the defendant is committed for trial or sentence or sentenced on the charge or the charge is withdrawn, whichever happens first.

.....  
Magistrate

Date: .....

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<sup>2</sup> Prescribed sexual offence is defined in s. 3 of the *Criminal Law (Sexual Offences Act) 1978* to mean (a) rape (b) attempt to commit rape (c) assault with intent to commit rape (d) an offence defined in the Criminal Code, section 352

**ANNEXURE E to Practice Direction 4 of 2023**

**APPLICATION TO REVIEW A NON-PUBLICATION ORDER**

Section 7E - Criminal Law (Sexual Offences) Act 1978

In the Magistrates' Court  
at [venue] \_\_\_\_\_ Court Reference : \_\_\_\_\_

In the matter of:

[Prosecution]: \_\_\_\_\_

[Defendant] \_\_\_\_\_

Name of applicant: \_\_\_\_\_

Complainant / Prosecutor / Defendant / Accredited Media Entity / A person who the court considers has sufficient interest in the question of whether the order should be made (*delete note applicable*).

Email address: \_\_\_\_\_

I make application to review the non-publication order made on [date of order] before Magistrate [Name of Magistrate] at the Magistrates Court at [Place]

Grounds of Application:

_____ _____ _____ _____ _____
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This case is next listed for mention\*/hearing\*/committal\* at \_\_\_\_\_

on \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
[Applicant or applicant's legal practitioner]

**ANNEXURE F to Practice Direction 4 of 2023**

**NOTICE OF APPLICATION TO REVIEW**

File Number:

To the Magistrates Court at *[Location]*

*[Prosecution]:*

\_\_\_\_\_

*[Defendant]*

\_\_\_\_\_

And to: *[identify other proposed recipients of notice]*

**I, ..... the applicant give notice of the making of an application for review of a non-publication order under s.7E of the *Criminal Law (Sexual Offences) Act 1978***

This application will be heard at the Magistrates' Court of *[Place]* at: \_\_\_\_\_  
*(Court location)*

on: \_\_\_\_\_ at: \_\_\_\_\_ AM/PM  
*(Date)* *(Time)*

Or soon afterwards as the business of the Court allows.

*(to be completed by the registrar)*

\_\_\_\_\_  
*(Registrar Signature and Date)*

You may, if you wish, be heard on this issue in court on the application hearing date. You may appear in person or be legally represented.

**NOTE: The applicant must give three (3) business days' notice of this application to the Court and to each other eligible person.**  
**Eligible persons are the complainant, the prosecution and the defendant.**  
**IF THE DEFENDANT IS THE APPLICANT THE NOTICE TO THE COMPLAINANT MUST NOT BE GIVEN PERSONALLY TO THE COMPLAINANT BY THE DEFENDANT. THE DEFENDANT MUST GIVE TO THE PROSECUTION A COPY OF THE NOTICE WHO WILL THEN GIVE THE NOTICE TO THE COMPLAINANT OR ANOTHER PERSON NOMINATED TO RECEIVE CORRESPONDENCE ON THE COMPLAINANT'S BEHALF.**

*\*Delete if not applicable*

**NOTE: The Court will take reasonable steps to ensure that each accredited media entity is notified of the application in accordance with s. 7A of the *Criminal Law (Sexual Offences) Act 1978***  
**BEFORE THE NOTIFICATION OF ACCREDITED MEDIA THE NAME OF THE COMPLAINANT AND CONTACT DETAILS WILL BE REDACTED FROM ANY NOTICE OF APPLICATION GIVEN TO ACCREDITED MEDIA AND DEFENDANT**

**ANNEXURE G to Practice Direction 4 of 2023**

**REVIEW OF NON-PUBLICATION ORDER**

*Section 7E - Criminal Law (Sexual Offences) Act 1978*

In the Magistrates' Court

at [venue] \_\_\_\_\_

Court Reference: \_\_\_\_\_

[Prosecution]:

\_\_\_\_\_

[Defendant]

\_\_\_\_\_

An application for review of a non-publication order having been made to this Court pursuant to s. 7E of the *Criminal Law (Sexual Offences) Act 1978*, and having heard from (s.7C(1)):

- the applicant;
- the defendant;
- the complainant;
- an accredited media entity, namely.....
- any other person the court considers has sufficient interest in the question, namely.....

**The order of the Court is that the non-publication order made on [date of order] before Magistrate [Name of Magistrate] at the Magistrates Court at [Place] is**

- Confirmed
- Revoked
- Varied as follows:

.....

Magistrate

Date: .....