

Media Statement

15 December 2023

Statement from the ODPP in response to R v Martinez [2023] NSWDC 552

The following comments can be attributed to a spokesperson for the ODPP:

The Director intends to make a complaint to the Judicial Commission concerning the judgment delivered by Judge Newlinds SC in this matter.

The ODPP unequivocally rejects any suggestion that it makes prosecution decisions lazily or on the basis of political expedience, or that it operates according to “some sort of unwritten policy”, as the judge has speculated. Such remarks unfairly impugn the integrity of the Director of Public Prosecutions and the staff of the ODPP.

Comments which fail to meet the minimum standards of temperance and impartiality expected of judicial officers have the capacity to undermine public confidence in the administration of justice.

Decisions about the institution and maintenance of a prosecution are made in accordance with the Prosecution Guidelines, which were developed in consultation with all stakeholders in the NSW criminal justice system.

Each matter is assessed on the strength of the available evidence – including the reliability and credibility of witnesses – with the paramount consideration being whether the prosecution is in the public interest. The viability of a prosecution is constantly under review.

It is well known that prosecuting matters involving highly intoxicated complainants involves complex issues of fact and law. In circumstances where the accused, in their police interview, acknowledged the complainant’s level of intoxication and the impact this had on her capacity to consent, there was a factual issue in this matter to be put before a jury.

Further, three separate accused have pleaded guilty to sexual offences in relation to the complainant.

The ODPP is also concerned that the judge appears to misapprehend the operations of the ODPP, which are governed by the DPP Act.