

**Inquiry into the prohibition on the publication
of names of children involved in criminal
proceedings**

Report 35

NSW Government Response

NSW Government response to the Legislative Council Standing Committee on Law and Justice Inquiry into the prohibition on the publication of names of children involved in criminal proceedings

On 16 October 2007 the Attorney General and Minister for Justice, the Hon John Hatzistergos MLC referred the following terms of reference to the Standing Committee on Law and Justice (the Committee):

That the Standing Committee on Law and Justice inquire into and report on the current prohibition on the publication and broadcasting of names under section 11 of the *Children (Criminal Proceedings) Act 1987* (the Act), in particular:

1. The extent to which the policy objectives of the prohibition remain valid, including to:
 - (a) reduce the community stigma associated with a child's involvement in a crime, thereby allowing the child to be reintegrated into a community with a view to full rehabilitation;
 - (b) protect victims from the stigma associated with crimes; and
 - (c) reduce the stigma for siblings of the offender and victim, allowing them to participate in community life.
2. The extent to which section 11 of the Act is achieving these objectives.
3. Whether the prohibition on the publication and broadcasting of names under section 11 of the Act should cover:
 - (a) Children who have been arrested, but who have not yet been charged;
 - (b) Children, other than the accused, who are reasonably likely to be involved in proceedings; and/or
 - (c) Any other circumstance.

Any other relevant matter involving the prohibition on the publication and broadcasting of names, including consideration of prohibitions in the *Young Offenders Act 1997* and the *Crimes Act 1900*.

The impetus for the referral was a number of recent high-profile crimes involving juveniles that prompted a call for the 'naming and shaming' of these offenders. Such public focus highlighted the need to reconsider the prohibition on naming young offenders who have been charged with serious crimes.

The Committee received submissions from 27 stakeholder organisations and private citizens, and heard evidence from a number of witnesses over three days of public hearings at Parliament House. The Committee, made up of members of the Australian Labor Party, the Liberal Party and the Greens published Report 35 *The prohibition of the publication of names of children involved in criminal proceedings* on 21 April 2008, which included eight unanimously endorsed recommendations.

This is the Government's response to the Report.

Recommendation 1

That the NSW Attorney General seek co-operation from the Attorneys-General in other states and territories in implementing a consistent prohibition relating to the publication of names of children involved in criminal proceedings regardless of in which state those criminal proceedings occur.

The NSW Government supports this Recommendation.

The Report refers to the anomalous situation that arises from the interaction of state and territory legislation across borders in the area of publication prohibition. That is, one state may prohibit the publication of the name of a juvenile involved in criminal proceedings in that state, but that would not prohibit publication of the juvenile's name in other states and territories.

The NSW Attorney General has referred this issue to the Standing Committee of Attorneys General (SCAG). Seeking national uniformity in this area is of the utmost importance, particularly given technological advances in publishing and broadcast formats such as Internet news sites which allow for immediate nation-wide reporting.

Recommendation 2

That the NSW Police Force identify an existing office within the NSW Police Force, such as the Office of the General Counsel, to be the primary recipient of all complaints relating to breaches of section 11 of the *Children (Criminal Proceedings) Act 1987* (NSW). The identified office should be responsible for investigating the complaint and forwarding a brief of evidence to the Office of the Director of Public Prosecutions.

The NSW Government supports this Recommendation.

The Office of the General Counsel (OGC) within the NSW Police Force is the most appropriate office to be the primary recipient of complaints relating to breaches of section 11. Mr Michael Antrum, General Counsel, noted in his evidence before the Committee that his Office has the internal and external expertise necessary to ensure that the investigations of such matters are conducted professionally.

As such, the NSW Government has determined that the OGC will have primary responsibility for investigating the complaint, preparing briefs of evidence, and referring all matters to the Office of the Director of Public Prosecutions (DPP). Although retaining corporate authority for coordinating and finalising the investigation, the OGC may refer complaints to relevant Commands for advice and response, including the Professional Standards Command for complaints which involve issues regarding the conduct of police officers.

Recommendation 3

That the NSW Police Force ensure that staff of the NSW Police Force and key organisations likely to become aware of breaches of section 11 are aware of the responsibilities of the office identified as the primary recipient of all

complaints relating to breaches of section 11 of the *Children (Criminal Proceedings) Act 1987 (NSW)*.

The NSW Government supports this Recommendation.

The Police Force Education Services have agreed to implement an appropriate communication strategy, including use of statewide e-mail, Police publications and the intranet. This communication strategy will include information on the process of reporting complaints to the OGC, and will involve all key stakeholders including State Crime Command, Professional Standards Command, Policy and Programs Command and Public Affairs.

The OGC will inform key external organisations of the new process of reporting complaints. This will include organisations likely to become aware of breaches of section 11 such as the Legal Aid Commission of NSW, Aboriginal Legal Service (NSW/ACT) Ltd, NSW Public Defenders Office, the office of the DPP, and organisations that provide legal and non-legal advocacy services for young people.

The NSW Government appreciates it is vital for the effective operation of the prohibition on the naming of juveniles that the reporting processes are well known and readily available to those most likely to be affected by it.

Recommendation 4

That the NSW Government amend section 11 of the *Children (Criminal Proceedings) Act 1987 (NSW)* to extend the prohibition on the naming of juveniles involved in criminal proceedings to cover the period prior to charges being laid and to include juveniles who are reasonably likely to become involved in criminal proceedings. The current wording within the Act that identifies the commencement of the prohibition as being the point at which charges are laid or a court attendance notice is issued should be removed. The new wording of the Act should make it clear that the prohibition commences at the moment a juvenile becomes the subject of, or is reasonably likely to become the subject of, police activity, including a juvenile about whom inquiries are being made, a juvenile from whom information is being sought, or a juvenile who is identified as a person of interest, or a juvenile who is a suspect or who is arrested.

The NSW Government does not support this Recommendation.

Such an extended prohibition does not presently exist in any other Australian jurisdiction. The NSW Government is committed to seeking a nationally consistent prohibition as referred to in its response to the Committee's first Recommendation. In light of this priority, it is not feasible to extend the prohibition beyond that which exists in any other state or territory and at the same time seek national uniformity.

Recommendation 5

That the NSW Government amend section 11 of the *Children (Criminal Proceedings) Act 1987 (NSW)*, including any extension recommended in this

report, in such a way as not to limit legitimate law enforcement and investigative activities conducted by the NSW Police Force, particularly in relation to the use of internal communication channels.

The NSW Government supports this Recommendation.

The NSW Government is committed to ensuring that the NSW Police Force is not hampered in carrying out its legitimate activities. The intent of section 11 is clearly to reduce, or protect juveniles from, the stigma associated with a publicly broadcast involvement with a crime. Although a strict interpretation could hamper significant tasks involved in operational policing, that is certainly not the activity sought to be prohibited. To avoid difficulties which could occur upon a strict interpretation of the law, the Government will introduce amendments which clarify that the present prohibition does not apply to legitimate law enforcement and investigative activities.

Recommendation 6

That the NSW Government amend section 11 of the *Children (Criminal Proceedings) Act 1987 (NSW)* to include the requirement that 16 to 18 year olds involved in criminal proceedings who wish to give permission for their name to be published can only give that permission in the presence of an adult, other than a member of the police force, who is present with consent of the child, or an Australian legal practitioner of the child's choosing.

The NSW Government supports this Recommendation.

A similar mechanism already exists in section 13 of the *Children (Criminal Proceedings) Act 1987* in relation to the admissibility of certain statements made to police. The consequences of giving permission for publication are potentially significant and far-reaching. Allowing juveniles the opportunity to seek advice when faced with the prospect of such publicity is entirely consistent with the intent and rationale of the prohibition. The NSW Government will bring forward legislative amendments to give effect to this Recommendation.

Recommendation 7

That the NSW Government consider the feasibility of applying the protections of section 11 of the *Children (Criminal Proceedings) Act 1987 (NSW)* to civil matters.

The terms of reference for the Inquiry requested that the Committee examine the prohibition on the publication and broadcasting of names of juveniles in relation to criminal proceedings only. They did not provide scope for considering the prohibition as it related to civil proceedings and as a result not all stakeholders and private citizens had the opportunity to make submissions to the Inquiry on this issue.

Recommendation 8

That section 11 of the *Children (Criminal Proceedings) Act 1987*, including any amendments recommended in this report, be worded in such a way as not to limit the legitimate activities of judicial officers and court staff conducted in the normal course of their work, and in particular not hinder their ability to post court lists, call defendants to court and request reports and other information relating to defendants.

The NSW Government supports this Recommendation.

The Government does not wish to limit the legitimate and vital activities of judicial officers and court staff. As with recommendation 5 in relation to the Police Force, in order to counter the potential effects of a strict interpretation of section 11, the prohibition should clarify that these activities are exempted in order to ensure the proper administration of the criminal justice system.

The NSW Government will bring forward legislative amendments to give effect to this Recommendation.

Other matters - the court's discretion to name on sentencing

Section 11(4B) presently allows a court that sentences a person on conviction for a serious children's indictable offence to authorise the publication or broadcasting of their name. The court cannot do so unless satisfied that such an order is in the interests of justice, and the prejudice to the person named does not outweigh those interests.

Submissions to the Inquiry suggested expanding the range of factors that the court must consider when deciding whether or not to authorise the publication or broadcasting of a child's name under section 11(4B). Although the Committee does not make any recommendations in this regard, the NSW Government is of the view that section 11 could provide greater legislative guidance in terms of the factors that courts should take into account in determining whether naming an offender is in the 'interests of justice'. This is not intended to limit judicial discretion in this area, but rather to provide guidance on the factors relevant to determining the interests of justice.

The Government will consult with the courts and other relevant stakeholders on any proposed amendments to ensure that an appropriate balance between maintaining a broad judicial discretion and providing some legislative guidance is achieved.