

Children (Criminal Proceedings) Amendment (Naming of Children) Bill 2009

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Children (Criminal Proceedings) Act 1987* to rewrite the existing offence of publishing or broadcasting a person's name in a way that connects the person with criminal proceedings involving children, with the following changes:

- (a) the offence will be limited to publication or broadcast to the public or a section of the public (which will make it clear that the offence does not extend to limited publication and broadcast, such as by the police radio),
- (b) a specific exemption will be included for the proper exercise of official functions by court staff,
- (c) a child who is over 16 will only be able to consent to the publication or broadcast of the child's name if the consent is given in the presence of a legal practitioner of the child's choosing,
- (d) a court deciding whether to authorise the publication or broadcast of the name of a person being sentenced for a serious children's indictable offence will be required to have regard to certain specified matters (instead of the existing requirement that the court be satisfied that the making of the order is in the interests of justice and that prejudice to the offender does not outweigh those interests),
- (e) if there is no senior available next of kin who can consent to the publication or broadcast of the name of a deceased child, the court will be able to give that consent if the public interest so requires,
- (f) minor changes are made and provisions reorganised to aid understanding.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day to be appointed by proclamation.

Schedule 1 Amendment of Children (Criminal Proceedings) Act 1987 No 55

Schedule 1 [3] inserts a new Division consisting of proposed sections 15A–15G which are a rewrite, with the changes referred to in the Overview, of the existing section that makes it an offence in certain circumstances to publish or broadcast a person's name in a way that connects the person with criminal proceedings involving children.

Section 15A (2) provides for the limitation of the offence to publication and broadcast to the public or a section of the public, as referred to in paragraph (a) of the Overview.

Section 15G provides for court staff exercising official functions to be exempt from the offence, as referred to in paragraph (b) of the Overview.

Section 15D (3) provides for the new restrictions on when a 16 or 17 year old can consent to the publication or broadcast of their name, as referred to in paragraph (c) of the Overview.

Section 15C (3) provides for the matters to which a court is to have regard in deciding whether to authorise the publication or broadcast of the name of a person being sentenced for a serious children's indictable offence, as referred to in paragraph (d) of the Overview.

Section 15E (5) provides for the court to consent to the publication or broadcast of the name of a deceased child if there is no senior available next of kin who can consent and the public interest so requires, as referred to in paragraph (e) of the Overview.

Schedule 1 [1] repeals the existing section that the new Division replaces.

Schedule 1 [2] and [4] make consequential amendments.