Second Reading

The Hon. JOHN HATZISTERGOS (Attorney General, Minister for Industrial Relations, Vice President of the Executive Council) [5.01 p.m.]: I move:

> That this bill be now read a second time.

The purpose of the Children (Criminal Proceedings) Amendment (Naming of Children) Bill 2009 is to rewrite section 11 of the Children (Criminal Proceedings) Act 1987. This is a particularly sensitive area of the law, which must balance the interests of open justice with the need to protect young people, including those who are victims. That is why in 2008 the Legislative Council's Standing Committee on Law and Justice was asked to review the laws surrounding the naming of juveniles. At that time, the committee included the following members: the Hon Christine Robertson, who is still the Chair of the committee; the Hon David Clarke, who continues to be the deputy chair; the Hon John Ajaka; the Hon Greg Donnelly; the Hon Amanda Fazio and Ms Sylvia Hale.

I understand the committee pursued its task in a sensible and bi-partisan matter, and was successful in putting politics to one side as it examined this complex and difficult issue. I thank all members of the committee for taking this constructive approach, and for developing several proposals that will improve the operation of the section. I also take this opportunity to relay some of the comments that were made during the inquiry and that I think demonstrate the extent to which members of the committee were able to rise above their political differences. On Monday 18 February 2008, the committee held the first of a series of public hearings. During that day's proceedings, the Hon David Clarke said, and I quote from *Hansard*:

> Juveniles are treated differently from adults in our criminal justice system, in part in recognition of the fact that they have not yet developed many of the abilities they will develop in adulthood.

He also said, "I have difficulty with your argument that the name of a 16-year-old should be published", and also, "A breach of this section can be a pretty serious breach of the rights of children." The Hon John Ajaka also made some noteworthy contributions that day. He said, and again I quote from *Hansard*, "Surely, 16- and 17-year-olds are still very immature". And after the former New South Wales Commissioner for Children and Young People, Ms Gillian Calvert, put forward the view that, "One of the dangers of naming [is that] for some young people it will become a badge of honour", the Hon. John Ajaka said, "It certainly encourages reoffending".

In a further show of bipartisanship, in April 2008 the committee released a unanimous report, which was endorsed by all members of the committee. In its report, the committee examined the impact of naming on children in relation to their rehabilitation and levels of recidivism, as well as the impact of naming on victims and their families. The committee gave careful consideration to the difficult balance between the need to protect young people and the need for transparency in the administration of justice. It found that the aims of the current prohibition in section 11 of the Act remain valid—namely, to protect children from the stigma of being associated with a crime, whether they be offenders, victims or witnesses, and to assist in their rehabilitation and recovery. The standing committee, therefore, unanimously concluded that the prohibition in section 11 should remain, but it noted the difficulties that the current configuration of the prohibition can cause some victims, their families, and media organisations.

The standing committee also noted the anomalous situation that results from the interaction of State and Territory legislation in the area of a publication prohibition. That is, one State may prohibit the publication of the name of a child involved in criminal proceedings in that State, but that would not prohibit publication of the child's name in other States and Territories. The standing committee's report, therefore, recommended that the cooperation of other States and Territories be sought with a view to implementing a consistent prohibition relating to the publication of names of children involved in criminal proceedings. That was seen by the committee to be of vital importance given technological advances in publishing and broadcasting, such as Internet news sites, which allow for immediate nationwide reporting.

I took the recommendation of the standing committee to the Standing Committee of Attorneys General in November 2008, where agreement was reached for a nationally consistent and effective prohibition relating to the publication of names of children. Whilst work continues on creating a nationally consistent approach to this issue, it is important to make our New South Wales laws as effective as possible. To this extent, the committee put forward a number of recommendations to amend section 11 of the Children (Criminal Proceedings) Act 1987. In formally responding to the committee's report in October last year, the Government indicated that it would bring forward legislation to give effect to most of these recommendations. It also indicated that it would seek to amend the section to provide greater guidance to courts in making orders to name juvenile offenders who have been found guilty of serious children's indictable offences.

While this bill gives effect to these commitments, and thereby proposes some substantive amendments to the operation of the provision, the Government has also taken the opportunity to re-draft and clarify the operation of the section. While the law and justice committee had already taken submissions and heard evidence from a wide range of stakeholders and community organisations in developing many of these proposed amendments, in

drafting this bill the Government has further consulted and sought the views of a number of bodies and organisations, including the Victims Advisory Board, which has representatives of victims of crime groups; legal practitioners, including the Law Society of New South Wales, the New South Wales Bar Association, Legal Aid New South Wales, the Senior Public Defender, and the Director of Public Prosecutions; New South Wales courts, including the Supreme, District and Local courts; and affected government bodies, including the Ministry for Police, Juvenile Justice, Aboriginal Affairs, and the Commission for Children and Young People.

I am pleased to report that all of these organisations and individuals indicated their support for the bill. The Government also sought the further views of representative organisations of the media, including Australia's Right to Know Coalition and the Australian Press Council, both of whom had made submissions to the committee's inquiry. The Australian Press Council indicated that it did not wish to provide any further comment. The Right to Know Coalition made some specific comments on the draft bill, which have been adopted in this final draft. I turn now to the details of the bill.

The bill replaces section 11 of the Children (Criminal Proceedings) Act 1987 with a newly drafted offence which, whilst substantively the same as the previous offence, provides greater clarity on the prohibition on publishing or broadcasting a person's name in a way that connects that person with criminal proceedings involving children, and sets out the exceptions to that prohibition. However, as I noted earlier, there are some significant amendments. First, the offence of the publication or broadcast of a name has been limited to the public or section of the public, such as by publication in a newspaper or periodical publication, by radio or television or other electronic means, by the Internet, or by any other means of dissemination. In line with recommendation 5 of the committee's report, the legitimate law enforcement and investigative activities undertaken by New South Wales police will not be captured, such as the broadcast of information via their internal communications channels, such as the police radio.

The bill is not intended to restrict the ability of police to inquire as to the whereabouts, movements, history or features of a child, such as a juvenile offender who has escaped from custody, or to inhibit information sharing for the purposes of investigation or law enforcement. Further, as per recommendation 8 of the committee's report, the offence is not intended to apply to the activities of judicial officers and legal practitioners that are undertaken in the normal course of a criminal proceeding. This might include, for example, a legal practitioner naming their client in the process of requesting medical or other expert reports. The bill also provides a specific exemption to the offence for anything done by a court staff member or court official in connection with a criminal proceeding, as long as it is done in the proper exercise of their official functions. This will ensure that functions carried out by court personnel carefully and competently as part of their job, such as posting court lists outside courtrooms or calling a child into court by name, will not be caught by this offence.

A second key amendment brought about by this bill is allowing a child who is over the age of 16 years to consent to the publication or broadcast of their name if that consent is given in the presence of a legal practitioner of the child's choosing. This amendment gives effect to recommendation 6 of the committee's report. Honourable members wishing to investigate this amendment further may wish to note the erratum published on the committee's website, which clarifies aspects of this recommendation. The recommendation was proposed following concerns with the current section, which enables a person of 16 years or older to consent to their name being published or broadcast without requiring them to obtain advice or guidance of any sort. It was felt that some 16- to 18-year-olds lack the maturity to make rational decisions about giving permission for their name to be published.

Consideration was given to allowing the consent to be given in the presence of an adult other than a member of the police force. However, concerns were expressed that the social circle of a child convicted of a serious offence may include immature adults who are not well placed to advise a child on such a decision, or may include an adult family member with competing interests to a child. The committee therefore proposed amendments to provide that a child aged 16 years or older can consent to the publication or broadcast of their name, but only if that consent is given in the presence of an Australian legal practitioner of the child's own choosing. The bill gives full effect to this recommendation. As noted earlier, in responding to the committee's report last year, the Government indicated that it would seek to provide greater legislative guidance to courts in ordering the naming of juveniles who have been found guilty of committing a serious children's indictable offence.

A third key element of this bill is that it sets out an inclusive range of circumstances that the court must consider in determining whether to authorise the publication of the name of a person being sentenced for a serious children's indictable offence. These include the level of seriousness of the offence, the effect of the offence on any victim, including the family of the victim in homicide cases, the weight to be given to general deterrence, the subjective features of the offender, and the offender's prospects of rehabilitation. The court must also consider such other matters as it considers relevant having regard to the interests of justice. This is intended to include, for example, the views of the victim of the offence in terms of how they believe the offence has affected them.

It is no coincidence that the court's determination in relation to the naming of a child occurs at the time that the young person is being sentenced, when the court is fully apprised of all the matters relevant to whether such an order should be made. At that time, the court is best placed to weigh the relevant circumstances at its discretion,

and to rely on the parties to put matters to it if necessary. However, the factors the court is required to consider in deciding whether to make an order to authorise the publication or broadcast of the name of a person are not intended to influence the court's discretion in relation to the imposition of the sentence itself, and vice versa.

A fourth key element of the bill is that it allows the court to give consent to the publication or broadcast of a deceased child's name, if the court is satisfied that the public interest so requires, in circumstances where the senior available next of kin of that deceased child cannot so consent. This provision received the support of Australia's Right to Know Coalition, which provided some useful suggestions for improving the operation of the proposed section that the Government ultimately accepted and included in the bill. As I have indicated, the amendments contained in the bill have been the subject of thorough consultation with key stakeholders, including victims of crime, media groups, the courts, legal practitioners, and police. The bill will improve the operation of this difficult and complex area of the law, and in doing so reflects the hard work undertaken by the Legislative Council's Standing Committee on Law and Justice in balancing the interests of open justice with the need to protect young people, including those who are victims. I commend the bill to the House.