

Explanatory note

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

Overview of Bill

Section 11 (Publication and broadcasting of names) of the *Children (Criminal Proceedings) Act 1987* (**the Principal Act**) prohibits the publication or broadcasting of the names of children (and persons who were children at the relevant time) in connection with certain criminal proceedings.

Section 11 was amended in 2001 to make it clear that the prohibition applied even if the person concerned was no longer a child at the time of the publication or broadcast and was further amended in 2004 to make it clear that the prohibition applied even if the person concerned was deceased at the time of the publication or broadcast.

The object of this Bill is to amend the Principal Act as follows:

(a) to enable the parents of a deceased child, or other senior available next of kin, to consent to the publication or broadcast of the deceased child's name,

(b) to provide that the prohibition does not apply to the publication or broadcast of names that had previously been published or broadcast before the clarifying amendments commenced in 2001 and 2004.

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 the date of assent to the proposed Act.

Clause 3 is a formal provision that gives effect to the amendments to the *Children (Criminal Proceedings) Act 1987* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendment to the *Children and Young Persons (Care and Protection) Act 1998* set out in Schedule 2.

Clause 5 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Children (Criminal Proceedings) Act 1987

Amendments relating to family consenting to publication or broadcasting of name of deceased child

At present, section 11 (Publication and broadcasting of names) of the Principal Act provides that the name of certain persons (namely, children and persons who were children at the relevant time) must not be published or broadcast in a way that connects them with specified criminal proceedings. For example, the prohibition relates to the following persons:

(a) a person who was a child when a witness to, or victim of, an offence,

(b) a person who is or was mentioned in criminal proceedings in relation to something that occurred when the person was a child,

(c) a person who was involved in criminal proceedings when a child,

(d) a brother or sister of a victim of an offence, where that brother or sister and the victim were both children when the offence was committed.

This prohibition applies to the publication or broadcasting of the name of a person even if the person is no longer a child, or is deceased, at the time of the publication or broadcast.

Section 11 (4) of the Principal Act at present provides that the prohibition does not apply in certain circumstances (for example, a child 16 years or older at the time of publication or broadcasting may consent to the publication or broadcast of the child's name).

Schedule 1 [2]–[4] amend section 11 of the Principal Act to provide, as a further exception, that the prohibition on publication and broadcasting does not apply to the publication or broadcasting of the name of a deceased child where a senior available

next of kin of the child has given consent to the publication or broadcasting, but only if it appears to the senior available next of kin, after making reasonable inquiries in the circumstances, that no other senior available next of kin objects to the publication or broadcasting of the name.

The **senior available next of kin** of a deceased child is defined as:

(a) a parent of the child, or

(b) if the parents of the child are dead, cannot be found, or for some other reason cannot exercise their parental responsibilities to the child:

(i) a person who, immediately before the death of the child, had parental responsibility (within the meaning of the *Children and Young Persons (Care and Protection) Act 1998*) for the child, or

(ii) in the case of a child who was in the care of the Director-General of the Department of Community Services immediately before his or her death—the Director-General.

(In the past, a person having parental responsibility for a child would have been described as the child's guardian or a person who has custody of the child. This terminology is no longer commonly used in family law.)

Therefore, as an example, after the amendments take effect, a parent may consent to the publication or broadcasting of the name of his or her deceased child in connection with criminal proceedings, but not if it appears to the parent (after reasonable inquiries) that the child's other parent objects to the publication or broadcasting of the name.

The amendments also provide that a senior available next of kin who is charged with, or is convicted of, an offence to which the criminal proceedings concerned relate cannot give consent, or object, to the publication or broadcasting of the name of a deceased child. For example, a parent charged with his or her child's murder cannot give consent, or object to the child's other parent giving consent, to the publication or broadcasting of the name of the murdered child.

At present, section 11 (1) (d) of the Principal Act provides that the name of a brother or sister of a victim of an offence to which criminal proceedings relate (where the brother or sister and the victim were both children when the offence was committed) must not be published or broadcast in a way that connects the brother or sister with the criminal proceedings concerned.

Schedule 1 [3] also inserts proposed section 11 (4G) into the Principal Act to provide that, when considering whether to give consent to the publication or broadcasting of the name of a deceased child, a senior available next of kin must, if the publication or broadcasting of the name of a brother or sister of the deceased child is also prohibited:

(a) make such inquiries as are reasonable in the circumstances to obtain the views of that brother or sister regarding the publication or broadcasting of the name of the deceased child, and

(b) take into account the impact of such a publication or broadcasting on that brother or sister.

Schedule 1 [1] makes a consequential amendment.

Amendment relating to publication and broadcasting of name where name previously published or broadcast

The *Criminal Legislation Amendment Act 2001* amended section 11 of the Principal Act to make it clear that the prohibition on the publication or broadcasting of a person's name in that section applied even if the person was no longer a child at the time of the publication or broadcast.

The *Crimes Legislation Amendment Act 2004* amended section 11 of the Principal Act to make it clear that the prohibition on the publication or broadcasting of a person's name in that section applied even if the person was deceased at the time of the publication or broadcast.

Schedule 1 [6] inserts clause 18 into Schedule 2 (Savings and transitional provisions) to the Principal Act to provide that section 11 does not apply to the publication or broadcasting of the following names in connection with criminal proceedings:

(a) the name of a person that had been published or broadcast before 21 December 2001 (the date on which that section was amended by the *Criminal Legislation Amendment Act 2001*), being a person who was not a child at the time of the publication or broadcast,

(b) the name of a person that had been published or broadcast before 24 March 2004 (the date on which that section was amended by the *Crimes Legislation Amendment Act 2004*), being a person who was deceased at the time of the publication or broadcast.

For example, proposed clause 18 of Schedule 2 provides that section 11 would not prohibit the publication or broadcast of the following:

(a) the name of a person who was a child when the person committed an offence, if the name of that person had been published or broadcast before 21 December 2001, but only if the person had reached adulthood before that publication or broadcast took place,

(b) the name of a deceased child that was published or broadcast before 24 March 2004, but only if the child had died before that publication or broadcast took place.

Other savings and transitional amendments

Schedule 1 [5] amends Schedule 2 to the Principal Act to enable savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

Schedule 1 [6] also amends Schedule 2 to the Principal Act to enact a savings and transitional provision as a consequence of the enactment of the proposed Act. The amendment provides that section 11, as amended by the proposed Act, applies in relation to proceedings whether commenced before or after the commencement of the proposed Act.

Schedule 2 Amendment of Children and Young Persons (Care and Protection) Act 1998

Schedule 2 makes a consequential amendment to section 105 of the *Children and Young Persons (Care and Protection) Act 1998* to make it clear that that section does not apply in relation to criminal proceedings. The amendment inserts a note to direct the reader to section 11 of the Principal Act, which does apply to criminal proceedings.