

**INQUIRY INTO INQUIRY INTO THE PROHIBITION ON
THE PUBLICATION OF NAMES OF CHILDREN INVOLVED
IN CRIMINAL PROCEEDINGS**

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10 December, 2007

The Hon Christine Robertson MLC
Chair
NSW Legislative Council Standing Committee on Law and Justice
Parliament House
Macquarie Street
SYDNEY NSW 2000

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Dear Ms Robertson,

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

The Council of Social Service of New South Wales is unable to make a full submission on the issue of the prohibition of the publication of names of children involved in criminal proceedings at this time. However we would wish to place on record our support for the continuation of such a prohibition, and our reasons for that support.

Other organisations will have the knowledge of case law to argue around individual circumstances, but our position is one based on the principles that have guided policy on juvenile justice in this and most other states and territories for many years – namely the recognition that children do not have the same developmental capacity for judgement and decision-making as adults; that the privacy of children should be respected according to our obligations under international law; and that the aim of the justice system in relation to children is and should remain, rehabilitation.

There have been recent calls to review the position in relation to naming child offenders arising out of some high profile cases specifically involving sexual assault offences. However there is currently provision in the legislation to allow publication of names where a child has been convicted of a "serious children's indictable offence", the publication is in the interests of justice and where this does not outweigh the prejudice to the child. These decisions can only be made on a case by case basis, on merit by the sentencing judge.

NCOSS believes that the current legislation balances well the need to protect the privacy of the child and to further their rehabilitation against the principle of open justice. We do not believe that automatically naming children will act in any way as a deterrent. Rather naming is more likely to have the effect of making it more difficult for a child offender to re-enter the community, to find accommodation and employment, and to be protected from further involvement in criminal activity. In the

"Google" age, the past is much more likely to come back to haunt, and child offenders are more vulnerable to ongoing stigma if naming becomes a more widespread practice in "lesser" crimes.

The practice in the United Kingdom of naming and shaming juveniles on Anti-Social Behaviour Orders (ASBOs) is a different model but one that possibly carries some lessons for us here. ASBOs are civil orders aimed at preventing people from engaging in anti-social behaviour and from entering defined areas in order to protect the public interest. They are also a means of government attempting to reassure a community about public safety and are touted as a deterrent to others. Naming can go as far as the publication of photos, publication in local media and distribution of leaflets.

Critics of the naming process have asserted that this can lead to stigmatisation of families or certain communities and can result in vigilante-style behaviour in retaliation. The reality also seems to be that they are relatively ineffective with a National Audit Office report in December 2006 claiming that over 55% of those on orders did not comply and that 20% breached the Order more than five times. (This information has been obtained from an article on ASBOs on the web at www.caslon.com.au/offendersnote4.htm) The relevance of the ASBO experience is that it appears to demonstrate that naming is both ineffective as a deterrent, and may act in a counterproductive manner as a badge of honour for some offenders.

NCOSS would argue that it is never wise to change the law on the basis of a few rare cases or temporary publicity. Recent publicity in the media recently, for example, around the case of a P Plate driver held responsible for the deaths of his fellow passengers after irresponsible driving, seemed to make an assumption that there is no punishment if the driver is not named. This is clearly not true – the legal system still plays out and appropriate sentences are handed down in such cases. The call for naming in this case seems to be driven by the immediate emotional response of understandably grief stricken parents, but it is completely counter to the best outcomes for rehabilitation of the offender.

Many of those who enter the juvenile justice system are themselves victims of childhood abuse and neglect. The fact that this is where they end up is in itself a reflection on our failure as a society to protect and support many children and young people who need help not further shaming if they are to enter the adult world as productive citizens. Protection and support of young offenders is the best means of ensuring rehabilitation in the future and this must remain the core purpose of our justice system for children and young people.

Yours sincerely



Alison Peters
Director