

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

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Date received: 7/12/2007



***Human Rights and Equal
Opportunity Commission***

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Submission of the

**HUMAN RIGHTS AND EQUAL OPPORTUNITY
COMMISSION**

to the

**NSW LEGISLATIVE COUNCIL'S STANDING
COMMITTEE ON LAW AND JUSTICE**

on the

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

7 December 2007

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A. Introduction

1. The Human Rights and Equal Opportunity Commission (HREOC) thanks the NSW Legislative Council's Standing Committee on Law and Justice (the Committee) for its invitation to make a submission to the inquiry into the prohibition on the publication of names of children involved in criminal proceedings (Inquiry).
2. HREOC is established by the *Human Rights and Equal Opportunity Commission Act 1986* (Cth) (HREOC Act). HREOC is Australia's National Human Rights Institution.
3. HREOC's functions are set out in section 11 of the HREOC Act and include promoting an understanding and acceptance, and the public discussion, of 'human rights' in Australia.
4. 'Human rights' are defined for the purpose of the HREOC Act to include the rights and freedoms set out in the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of the Child (CRC).
5. Although New South Wales is not a direct signatory to the international instruments to which Australia is a party, the obligations undertaken by the Commonwealth are nonetheless applicable to New South Wales.

B. Recommendations

6. Australia's human rights obligations clearly indicate that the names of juveniles involved in criminal proceedings should not be published.
7. HREOC recommends:
 - a. that the current prohibition on the publication of the names of juveniles involved in criminal proceedings remain; and
 - b. that the current exemptions to the general prohibition on the publication or broadcasting of a young person's name should only occur with the consent of a court after it has made the 'best interests' of the child a primary

consideration.

C. The current prohibition on publication

8. Section 11 of the *Children (Criminal Proceedings) Act 1987* (NSW) (the Act) prohibits the publication and broadcasting of the names of child offenders, child witnesses and other children who are involved in criminal proceedings.
9. This general prohibition is qualified by subsection 11(4) of the Act which permits publication in the following circumstances:
 - a. if a child is 16 or older and has given consent;
 - b. if a child is under 16 and has concurred with judicial consent;
 - c. if a child is under 16 and considered incapable of concurring with judicial consent; and the court is of the opinion that the public interest requires publication;
 - d. in a matter involving deceased child, with the consent of a senior available next of kin; or
 - e. at the time of sentencing for a young person convicted of a serious indictable offence, if the interests of justice outweigh the prejudicial effect on the person whose name is to be published.
10. In the Act, a child is defined as a person under the age of 18 years. In this submission the use of the words juvenile and young person also indicate a person who is under the age of 18 years.

D. Australia's human rights obligations regarding juvenile justice

11. The CRC and the ICCPR set out the human rights obligations relevant to the juvenile justice system.

12. The Beijing Rules for the Administration of Juvenile Justice (Beijing Rules) and the Riyadh Guidelines on the Prevention of Juvenile Delinquency (Riyadh Guidelines) help to interpret those principles.
13. The obligations set out in these human rights instruments establish the following general principles for the administration of juvenile justice:
 - a. the 'best interests' of the child must be a primary consideration in all actions concerning the child (article 3, CRC);
 - b. arbitrary or unlawful interference with a child's privacy is prohibited (article 16, CRC and article 17, ICCPR);
 - c. the privacy of a juvenile offender must be respected at all stages of criminal proceedings (article 40(2)(b)(vii), CRC) to avoid harm caused by undue publicity (rule 8.1, Beijing Rules);
 - d. the 'age' of an offender should be taken into account in the administration of justice (article 40, CRC and article 14(5), ICCPR). This may mean juveniles are treated differently from adults (rule 2.2(a), Beijing Rules);
 - e. 'degrading treatment or punishment' is prohibited (article 37, CRC and article 7, ICCPR);
 - f. rehabilitation and reintegration into society is a primary objective of the administration of juvenile justice (article 40, CRC);
 - g. a child's sense of dignity and worth and respect for a child's human rights must be promoted in the administration of juvenile justice (article 40, CRC);
and
 - h. all children have the right to a fair hearing (article 40(2)(b)(iii), CRC and article 14(1), ICCPR).
14. The Beijing Rules elaborate on the protection of privacy for a juvenile offender and state that:

"8.1 The juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling.

8.2 In principle, no information that may lead to the identification of a juvenile offender shall be published.”

E. Changes to the prohibition may breach Australia’s human rights obligations

15. The current prohibition on the publication of a juvenile’s name is supported by the human rights principles set out in the CRC, ICCPR, Riyadh Guidelines and Beijing Rules.
16. The Riyadh Guidelines specifically note that ‘in the predominant opinion of experts, labelling a young person as “deviant”, “delinquent” or “pre-delinquent” often contributes to the development of a consistent pattern of undesirable behaviour by young persons’ (Principle 5, Riyadh Guidelines).
17. HREOC agrees that the effect of the community stigma created by publication of a juvenile’s name is counterproductive to the best interests of the child, diminishes a young person’s sense of dignity and worth and is contrary to the principle of rehabilitation.
18. Community stigma may also affect the child’s right to a fair trial. To the extent that publication may manifest as a punishment in itself, it may also violate the prohibition against degrading treatment or punishment.
19. Therefore, any changes to the current prohibition on the publication of a juvenile’s name may breach Australia’s human rights obligations. In determining, the validity of the prohibition (terms of reference 1), the Committee should take into account that the current prohibition currently upholds Australia’s human rights obligations and therefore remains valid. HREOC recommends that the current prohibition remain. **[Recommendation no. 1]**

F. Improvements to the Act

20. The current exemptions to the prohibition allow for the publication or broadcast of names in circumstances where the public interest prevails and/or the child (or relative in cases where the child is deceased) has provided consent.

21. HREOC recommends that the current exemptions to the general prohibition on the publication or broadcasting of a young person's name should only occur with the consent of a court after it has made the 'best interests' of the child a primary consideration. **[Recommendation no. 2]**
22. In HREOC's view, it would only be in rare and remarkable circumstances that the publication of a juvenile's name would be justified.