

**Submission  
No 1**

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

**Organisation:**

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The Hon Christine Robertson MLC

Chairperson

Standing Committee on Law and Justice

Parliament House

Macquarie St

Sydney NSW 2000

Dear Ms Robertson

I refer to the Inquiry into the prohibition on the publication of names of children involved in criminal proceedings. I have included below a number of comments related to the terms of reference for this Inquiry and I would be pleased if the Standing Committee on Law and Justice would consider these. My perspective is that of a (now retired) secondary school principal and former head, for five years, of the peak secondary principals' organization in NSW – the NSW Secondary Principals' Council.

**Why is this Inquiry proceeding?**

I note that that the media release about this inquiry refers to “a number of recent crimes perpetrated by people under the age of 18”. Media reports about incidents always create interest in law and justice issues but I would be alarmed if the deliberations of the Committee were to be driven by particular incidents or related media reporting. I would hope that any “need to reconsider” the prohibition on naming young offenders should be driven by evidence and not by media reports.

This means that the onus is on any committee member, who favours changing the current legislation, to demonstrate the need for change. Such proposals must be based, not on any reported cases, but on substantial evidence that the proposed change stands a good chance of being

successful. To this extent I would be alarmed if any proposals for change were recommended in the absence of corroborated research findings from Australia or overseas.

In my experience public policy on education is rife with populist changes which have few links with proven good practice. My impression is also that there have been far too many changes made to criminal law and sentencing in NSW in the absence of evidence, resulting in what is demonstrably bad public policy. For this Inquiry the starting point should be: whose interest would be served by any changes to the current legislation? While I believe the interests of children should come first I also believe that, where there are claims that other interests may be well served by changes, such claims also need to be tested and backed by research.

Let me provide an example. It is highly likely that some members of the Committee, along with some submissions, will argue that the removal of protection of children under any proposed change will act as a deterrent. Even in the adult world this is not necessarily the case, as any survey of crime and imprisonment rates in various jurisdictions will confirm. Members of the committee could start by comparing the imprisonment and crime rates in NSW and Victoria and asking about the cost/benefit outcomes for NSW.

Members of the Committee need to search for any evidence that harsher penalties actually reduce the incidence of crime and provide enhanced protection for the general community. It won't take long to realize that link between ever-increasing punishment and effective deterrence of crime is even more spurious in the case of adolescents, whose brain development can explain (but not excuse) behaviour which is disproportionately impulsive. If harsher sanctions do not reduce the incidence of crime in general, how successful might these be in the case of perpetrators whose stage of brain development favours action based on impulse, not premeditation.

In effect, if the task of your Committee is to find “the extent to which section 11 of the Act is achieving” a number of objectives, you also need to demonstrate the corollary: that, in the case of children, any proposed changes can achieve anything better, for anyone at all.

### **The perspective of schools**

The perspective I bring to this submission is that of a school principal for 15 years, most of this time spent in one community. Over this time I came into contact with a variety of young people and was able to track students through school and often for many years after they left school. They often remained in contact or I was able to know of their doings through families and friends.

In my working life I have developed many submissions, carefully annotated with statistical evidence and the findings of research. When thinking about this inquiry I kept coming back to the stories about so many of these students.

I can relate the story about the family whose teenage son was a chronic truant who escaped the best diagnosis we could provide at the time. He went on to live a semi-homeless existence, returning only to steal goods to feed his drug habit. His family had the support of the school and the police but it was only years later that his mental illness was effectively diagnosed. After suitable treatment it seems he will have a reasonable chance of living in the mainstream, which hopefully will include employment. While he was charged as a juvenile for a number of offences he at least has a chance of rejoining society, after almost a decade of unspeakable misery, without the additional burden of being permanently labelled for the difficulties he faced in his younger years. What would you say to his long-suffering family who always stood by him, if he had to carry his naming and shaming into his otherwise improving adult years?

In my time as principal of a boys' school I had to deal with countless incidents in which teenage boys would impulsively commit acts which brought them to the attention of the police. On so many occasions boys would escape with a caution but occasionally they needed to be formally charged. On so many occasions this helped focus their attention and ensued that the incident became a 'one-off' or at least was not repeated with any degree of seriousness. The vast majority of these students went on to a successful working and adult life. I am reminded of one tear-away youth who benefitted from the intervention of the police, the school and his long-suffering mother. His name now regularly appears in the production credits for so many ABC TV productions. What chance would he have had if his life beyond school if his name was to be paraded in public view?

### **An unfair go**

In both of the above cases the recalcitrant student came from attentive families who did their very best under difficult circumstances. It was always hard for the younger brothers and sisters who had to make their way through the same school community, trying to avoid the errant trail blazed by their older brother. This is quite manageable within a school community, because principals and teachers usually work very hard at not passing judgment on the families of troubled youths. As the younger siblings came into high school we would always try to shield them from the fallout created by their older sibling. We would always take the children from 'that family' into our school and make sure they were able to participate in, and enjoy, the benefit of a rewarding school life.

If the prohibition on publishing and broadcasting the names of young offenders is removed there is a multiplier effect on siblings, families and communities. Any principal can strive to make sure that teachers effectively exercise professional judgment and balance in the way they treat young people.

Are the members of your Committee confident that the wider community will apply equally considerate principles of fair go?

I have a wider concern relating to publishing the names of troubled young people. The reality is that the greater proportion of these are enrolled in our public schools, being the schools which must enrol all children in a designated area. An additional reason is created by the shifting of ‘troublemakers’ out of (government-funded) private schools into public schools. In the world of what we curiously call “choice of schools” private schools have (and usually exercise) the right to enrol whoever they wish. I elaborate on some of these issues in my recent book *The Stupid Country – how Australia is dismantling public education*.

There are ample statistics to show that public schools disproportionately take on the heavy lifting associated with high-maintenance students. The schools achieve remarkable success against the odds. What they don’t need is to have the odds greatly increased by becoming known as schools of last resort for troubled youths. This will certainly become a self-fulfilling prophecy if and when the names of troubled young people and their families become even more common knowledge in every community.

### **Yesterday’s crime; today’s errant behaviour?**

I mentioned above that young people who break the law sometimes do need to face more than a reprimand. Under possible changes to the current legislation the often useful outcome of formal charges might not proceed. Certainly school principals (and I would imagine, the police) would think very carefully about taking a child to a court when it would also mean parading his or her identity with all the consequences for the child, the family, the school and the wider community. I can well imagine many school principals who, when faced with the certainty that reporting might

create a lifetime hurdle for their students, might seek other options. This would be the case notwithstanding more stringent reporting requirements on schools.

We are also faced with the real possibility of criminal records following young people well beyond the days when their misdemeanor was a crime. As a school principal I was ever-alert to the problem of addictive substance abuse and made sure that many educational and intervention programs were in place. In the early 1990s, when drug-related incidents at my school were extremely rare, it was relatively easy to exclude students who brought marijuana to school. Not only were the police involved but the students had to find another school, often a traumatic experience for the student and family, and one which they don't easily forget. I don't believe such incidents are necessarily more frequent today but what has changed is that public schools (and many private schools) are less willing to simply write off a child because of what is often just a silly act – a great step forward.

I actually look back with some misgivings at the ease in which I labeled students in this situation, especially when social mores in relation to dealing with substance abuse seem to have changed. Notwithstanding the regulations under which principals have to act today (providing less discretion) we may face the situation where they may suppress transparent action, being reluctant to act in situations which may jeopardise the student's school and later opportunities.

This will add considerable stress to the working lives of school principals, something they simply do not need. What they do need is as much flexibility as possible to deal with the huge variety of challenges adolescents provide each day. They can't operate under 'one-size-fits-all' solutions and certainly are going to be most unwilling to be a party to any public naming and shaming of young people.

## Conclusion

In dealing with children each and every day of their working lives school principals are very aware of the need to state clear rules and deal with those who break the rules. Schools are full of programs and interventions to catch kids in safety nets and both punish and rehabilitate offenders. Mixed in with the mechanisms of rules and punishment are always the processes of rehabilitation and hope. We are overwhelmingly successful because even some of our most recalcitrant offenders, in the midst of everything else, are given messages of hope. Our experience is always that a good measure of self-belief, hope and opportunity provides the best pathway to rehabilitation.

If you expose our children to the full range of adult rules, adult processes and adult consequences you not only negate the good work done in schools but you also substantially reduce any possible chance of their success in later life. Notwithstanding the other messages in this submission, the members of your Committee need to consider the downstream costs to the whole community of repeatedly failed rehabilitation, the need for recurring intervention in adult life, the legal and social costs and the opportunity cost of yet more people unable able to contribute to their community and nation.

I urge the Committee to recommend against changing the Children (Criminal Proceedings) Act 1987.



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