

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

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TCO/12951

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

17 DEC 2007

Dear Ms Robertson,

On behalf of the Premier, I write concerning your current inquiry into the prohibition on the publication and broadcast of the names of children involved in criminal proceedings.

I attach the New South Wales Government's submission to this inquiry. I trust this information will be of assistance.

Yours sincerely

A handwritten signature in black ink, appearing to be 'John Schmidt', written over a horizontal line.

John Schmidt  
for Robyn Kruk  
Director General

## NSW GOVERNMENT SUBMISSION TO THE LAW AND JUSTICE COMMITTEE'S INQUIRY INTO THE PROHIBITION ON THE PUBLICATION AND BROADCAST OF NAMES OF CHILDREN INVOLVED IN CRIMINAL PROCEEDINGS

This submission has been prepared by the New South Wales Government to assist the Standing Committee on Law and Justice in its inquiry into the prohibition on the publication and broadcast of the names of children in criminal proceedings. The submission explains the operation of section 11 of the *Children (Criminal Proceedings) Act 1987* and outlines the section's history and the policy objectives behind it. Finally, some matters are raised for the Committee's consideration.

### Section 11 in outline

Section 11 of the *Children (Criminal Proceedings) Act 1987* prohibits the broadcasting or publication of the names of children involved in criminal proceedings, or any information that might lead to their identification (for example, a picture, or details about the child's school or the parents' occupations). The prohibition specifically covers:

- any criminal defendant who was a child at the time of the alleged offence;
- witnesses, including victims, who are children at the time of giving evidence, or were children at the time of the incident referred to;
- any child mentioned in a criminal proceeding, or any person mentioned in a criminal proceeding who was a child at the time of the incident referred to; and
- the sibling of a victim, if both were children when the alleged offence was committed.

As the prohibition includes any information that might lead to identification, it can have the effect of restricting publication of the names of a parent or adult relative of a child (including an adult sibling). This includes a parent or relative who might be a defendant, eg in a child abuse case.

The prohibition is ongoing after proceedings end, and continues even when the person turns 18. However, the subject of the prohibition can consent to the publication of their name if they are 16 or over. For children under 16, the court may consent to publication, if the child concurs (or if the court considers that publication is in the public interest, if the child is incapable of concurring).

If a young person is convicted of a "serious children's indictable offence" (ie homicide, offences carrying a maximum penalty of life or 25 years' imprisonment, and some other serious sexual and firearms offences), the court may authorise the publication of the young person's name (whether the young person consents or not).

Breach of section 11 is an offence with a maximum penalty of a \$5500 fine and/or 12 months imprisonment for an individual, or a \$55,000 fine for a corporation.

### History

Section 11 of the *Children (Criminal Proceedings) Act 1987* has been amended several times since it was enacted in 1987. Recent amendments of note are:

- In 1999, the Act was amended to allow courts to authorise the naming of juveniles convicted of "serious children's indictable offences" (as noted above).
- In 2001, the Act was amended to clarify that the prohibition applied even if, at the time of the publication or broadcast, the person was no longer a child. Until this amendment was made, it was arguable that people could be named when they turned 18.
- In 2004, the Act was further amended to clarify that dead children were covered by the prohibition. At the same time, the prohibition was extended to siblings of victims, because even where they are not involved in their sibling's case, they could still be affected by the publicity surrounding it.
- In July 2007, the Act was amended to allow a senior available next of kin (ie parent or guardian) of a deceased child to consent to the publication or broadcast of the child's name (this does not include a senior available next of kin who is the accused or is convicted in the criminal proceedings). The senior available next of kin must make reasonable inquiries to ensure that no other senior available next of kin objects to the disclosure of the name. In addition, the senior available next of kin must seek the views of any siblings of the dead child and consider the impact of disclosure on them.
- The 2007 amendments also provided that the prohibition did not apply to names that had been published or broadcast before the clarifying amendments in 2001 and 2004 (for example, Bronson Blessington, who was convicted in 1992 at the age of 14 of the murder of Janelle Balding).

### **Policy objectives**

The prohibition represents an exception from the general principle of open justice: that court proceedings are conducted in public and can be reported in the media. This principle ensures the transparency of the justice system. However, in the case of children, publicity can easily be damaging, and the prohibition in s 11 is considered to be warranted, both for offenders and victims or other witnesses.

The terms of reference for the Committee require it to consider the validity of the current policy objectives. The Government welcomes the Committee's views and provides the following information as background.

### **Offenders**

The provision is intended to afford young offenders the opportunity of rehabilitation, which may be jeopardised by public exposure. However, offenders remain accountable for their actions as they are dealt with by the full process of law. There appears to be little empirical evidence that the shame of being publicly named has any deterrent effect on young people. However, there may be a risk that for some children, naming may actually have the opposite effect by providing them with some notoriety.

For young offenders, the section ensures that they have an opportunity to leave their offending behind, without the stigma of public identification. In particular, public identification might damage the prospects of young Aboriginal people, who are over-represented in the criminal justice system, or young people in rural and remote communities, who are at particular risk of being ostracised by the community.

The section is in line with the principles set out in section 6 of the *Children (Criminal Proceedings) Act*, to which a court is required to have regard when exercising criminal jurisdiction with respect to children. These principles include: an acknowledgement that children bear responsibility for their actions, but require guidance and assistance because of their immaturity; and that it is desirable to allow children to continue with their education or employment and live in their own home.

The provision is also consistent with Australia's obligations under Article 40 of the UN Convention on the Rights of the Child to respect the privacy of children in relation to criminal proceedings, and the Standard Minimum Rules for the Administration of Juvenile Justice (also known as the Beijing Rules), which state the importance of the right to privacy and state that, in principle, information that may lead to the identification of a juvenile should not be published.

Nonetheless, the provision is intended to strike a balance between the rights of the child and the community's right to knowledge about the administration of justice. For this reason, courts may allow publication of the names of young people convicted of particularly serious offences.

#### *Victims, witnesses and others linked to criminal proceedings*

In the case of victims and other child witnesses, the prohibition is intended to protect children from the stigma associated with crime and shield them from the publicity that often surrounds cases. A side-effect of this is that parents or other relatives accused of child abuse also cannot be named. While this may be controversial in some cases, it reflects the overriding importance accorded by the section in its current form to protecting victims and witnesses from damaging publicity.

The provision contains some exceptions. Older children can agree to disclose their names. Moreover, where a child victim is dead, senior next of kin may give permission for the name to be published (recognising that families may want a child's name to be known – for example, this may help police with their enquiries).

#### **Other provisions**

Other prohibitions on naming children in relation to the justice system are as follows:

- The *Children and Young Persons (Care and Protection) Act 1998*, s 105, prohibits the publication of the names of children (aged 18 and under) who are involved in care proceedings before the Children's Court (or other care proceedings, such as conferencing or any form of alternative dispute resolution). The prohibition applies until the young person turns 25, or dies. The maximum penalty is a \$22,000 fine

and/or 2 years' imprisonment for an individual and a \$220,000 fine for a corporation.

- The *Young Offenders Act 1997*, s 65, prohibits the publication of the names of children (aged 18 and under) dealt with under the Act (whether by warning, caution or conference). The maximum penalty is a \$5500 fine and/or 12 months' imprisonment for an individual, or a \$55,000 fine for a corporation. A young person over 16 may consent to have their name published.
- The *Crimes Act 1900*, s 562ZJ, prohibits naming a child aged 16 and under included in an Apprehended Violence Order (AVO) application, and a child who is a witness in or mentioned in AVO proceedings, with a maximum penalty of a \$22,000 fine and/or 2 years' imprisonment for an individual and a \$220,000 fine for a corporation. The prohibition no longer applies after the AVO is granted or refused, and can be waived by the court. (This provision will become s 45 of the *Crimes (Domestic and Personal Violence) Act 2007* on the commencement of that Act.)

#### Other jurisdictions

Similar prohibitions to section 11 (ie in relation to criminal proceedings) exist in other States and Territories, including:

- Queensland – the *Juvenile Justice Act*, s 301, prohibits a person from publishing identifying information about a child dealt with under the Act, with a maximum penalty of 100 penalty units or 2 years' imprisonment for an individual, or 1000 penalty units for a corporation (disclosure to law enforcement agencies and for research purposes is permitted – Part 9 of the Act). A court may lift the prohibition at sentencing, if it is in the public interest to do so and the young person has committed a “particularly heinous” offence (s234).
- Victoria – the *Children, Youth and Families Act 2005*, s 534, prohibits the publication of Children's Court proceedings that (among other things) might lead to the identification of the child. The maximum penalty is 100 penalty units or 2 years' imprisonment for individuals and 500 penalty units for a corporation. This does not include the publication of accounts of proceedings of the Court approved by the President of the Court.
- South Australia – the *Young Offenders Act 1993*, s 13, prohibits any reporting of proceedings in the Youth Court in relation to minor crime that would identify the offender (or any other person involved, without their consent). The maximum penalty is a \$10,000 fine. However, a person wishing to make a documentary or conduct research may apply to the Youth Court for permission, with the written consent of the youth and their guardian.
- Western Australia – the *Young Offenders Act 1994*, s 40, prohibits the publication or broadcast of any information likely to identify a young person dealt with by a juvenile justice team (who deal with minor offences for which the offender has admitted responsibility). A court may prohibit publication of any matter likely to

allow the identification of a victim of an offence (not just children) – *Criminal Procedure Act, s 171*.

#### Matters for consideration

The NSW Government is committed to maintaining a balance between the best interests of children and young people and the public interest in information about the criminal justice system. To this end, the Government looks forward to the Committee's views and the points of view put forward by submissions to the inquiry, and is prepared to consider any issues that may improve the operation of the provision.

The Government is aware of the following issues that the Committee may wish to consider:

- What should the scope of the section be? Currently, the section is broad in its application. However as raised in the terms of reference, there have been suggestions that it should be broadened further to cover children who have been arrested, but not yet charged or children become who are reasonably likely to become involved in proceedings.
- Should the section be better aligned with other similar provisions? As noted above, protective provisions operate under the *Children (Criminal Proceedings) Act*, *Young Offenders Act*, *Children (Care and Protection) Act*, and the *Crimes Act*. At present there are some differences, in particular different penalties apply. The Committee may wish to consider these issues.
- Should there be more scope for the prohibition to be lifted by the Court? Currently the Court may only order that the offender be named if the offence is a "serious children's indictable offence", or if the offender or their family consent. However, there may be some other situations where disclosure would be in the interests of justice and public safety. This might include situations such as the naming of a juvenile convicted of food contamination during the course of their employment or a volunteer firefighter found guilty of arson. As a safeguard, provision could be made for the court to limit such publication to certain persons or bodies (for example, in the latter of the previous examples, the court could allow the child's name to be disclosed to the Rural Fire Service).

#### Conclusion

The protection of young people involved in criminal proceedings from the damage that can be wrought by publicity has long been recognised as an exception to the principle that information regarding court proceedings should be completely open to the public. However, there is a balance to be achieved in this area. It is timely that the Committee consider s 11 of the *Children (Criminal Proceedings) Act* and the policy balance it embodies. The Government looks forward to receiving the results of this work.