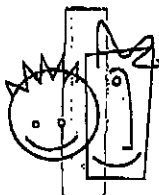


**INQUIRY INTO THE PROHIBITION ON THE  
PUBLICATION OF NAMES OF CHILDREN INVOLVED IN  
CRIMINAL PROCEEDINGS**

**Organisation:** NSW Commission for Children and Young People  
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**Position:** Commissioner  
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**Date received:** 14/12/2007

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nsw commission for  
children & young people

The Hon Christine Robertson MLC  
Chair  
Standing Committee on Law and Justice  
Parliament House  
Macquarie St  
Sydney NSW 2000  
Fax: (02) 9230 3416

RECEIVED

14 DEC 2007

Dear Ms Robertson

I am writing regarding the Law and Justice Committee's *Inquiry into the Prohibition on the Publication of Names of Children Involved in Criminal Proceedings*.

I do not support lifting the prohibition on the public naming of children involved in criminal proceedings as there is no evidence that it will benefit children, victims or the community. I consider that publicly naming and shaming children is inconsistent with the rehabilitative purpose of the NSW juvenile justice system.

It is my view that the current laws adequately balance the interests of open justice against the stigmatisation of children and rehabilitation of child offenders, and therefore are achieving their policy objectives.

I have attached a submission to the Committee and am happy to expand on this at a public hearing, should you wish. If you require any further information, please contact Ms Sharyn Jamieson, Policy Manager, at [sharyn.jamieson@kids.nsw.gov.au](mailto:sharyn.jamieson@kids.nsw.gov.au) or on 9286 7205.

Thank you for the opportunity to comment.

Yours sincerely

Gillian Calvert  
Commissioner  
12 December 2007

**■ SUBMISSION TO THE NSW LEGISLATIVE COUNCIL STANDING  
COMMITTEE ON LAW AND JUSTICE**

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

**DECEMBER 2007**

**1. THE NSW COMMISSION FOR CHILDREN AND YOUNG PEOPLE**

- 1.1. The NSW Commission for Children and Young People ('the Commission') promotes the safety, welfare and well-being of children and young people in NSW.
- 1.2. The Commission was established by the *Commission for Children and Young People Act 1998* (NSW) ('the Act'). Section 10 of the Commission's Act lays down three statutory principles which govern the work of the Commission:
  - a) the safety, welfare and well-being of children are the paramount considerations;
  - b) the views of children are to be given serious consideration and taken into account; and
  - c) a co-operative relationship between children and their families and community is important to the safety, welfare and well-being of children.
- 1.3. Section 12 of the Commission's Act requires the Commission to give priority to the interests and needs of vulnerable children. Children are defined in the Act as all people under the age of 18 years.
- 1.4. Section 11(d) of the Act provides that one of the principal functions of the Commission is to make recommendations to government and non-government agencies on legislation, policies, practices and services affecting children.

**2. INTRODUCTION**

- 2.1 The Commission is pleased to make a submission to the Law and Justice Committee *Inquiry into the Prohibition on the Publication of Names of Children Involved in Criminal Proceedings*.
- 2.2 It is the Commission's view that the prohibition and exceptions in section 11 of the *Children (Criminal Proceedings) Act 1987* adequately balance the interests of open justice against the stigmatisation of children and

rehabilitation of child offenders, and therefore are achieving their policy objectives.

- 2.3 The Commission does not support lifting the prohibition on the public naming of children involved in criminal proceedings as there is no evidence that it will benefit children, victims or the community. We consider that publicly naming and shaming children is inconsistent with the rehabilitative purpose of the NSW juvenile justice system.
- 2.4 However, the Commission suggests that by extending the prohibition in section 11 to include children who have been arrested, but not yet charged the prohibition could be strengthened to better protect vulnerable children.
- 2.5 In addition, the Commission considers that section 65 of the *Young Offenders Act 1997*, which prohibits the publication of children's names who are dealt with under that Act, adequately protects children and should remain as it is. The consistency between the provisions in both Acts makes the prohibition easier to understand and demonstrates the commitment of the NSW Government to protecting the identity of vulnerable children who are involved in the criminal justice system.

### **3. SUPPORT IN LAW FOR THE PROHIBITION ON PUBLIC NAMING**

- 3.1 An entitlement to legal safeguards and special care is an internationally recognised principle for children involved in the criminal justice system. Specifically, the prohibition on the naming of children involved in criminal proceedings is consistent with international conventions which Australia has signed.
- 3.2 In articles 37 and 40, the Convention on the Rights of the Child requires states to protect the privacy of children and their families from interference or attacks.
- 3.3 The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) require that a child's right to privacy be respected at all stages of proceedings. The Rules explicitly state in article 8 that no information that may lead to the identification of a child shall be published, noting that this is in order to avoid harm being caused by undue publicity or by the process of labelling.

### **4. CURRENT LAWS ARE ADEQUATE**

- 4.1 The Commission recognises that one of the central principles of the criminal justice system is that justice must be done and seen to be done. However, we believe that children do not escape accountability for their

offending by not being publicly named as they are still dealt with before a court of law, through youth justice conferencing or by police.

- 4.2 By appearing before the Children's Court, a child is formally judged. The Children's Court is closed, however the child can still be viewed outside the court. While in the courtroom they may have their family witnessing the proceedings and the victim or other witnesses may be present giving evidence.
- 4.3 In the case of youth justice conferencing under the *Young Offenders Act 1997* children are required to face their victims directly. Youth justice conferencing allows a victim to meet their offender, discuss the impact of the crime on them and contribute to developing an outcome plan for the offender. If the aim of naming an offender is to shame them, there does not appear to be any reason to publicly name children involved in youth justice conferencing as they have already been shamed by their family and the victim through their participation in the conference. It has been found that sanctions imposed by those known to an offender have more effect on reducing criminal behaviour than sanctions imposed by an unknown authority.<sup>1</sup>
- 4.4 A child who is given a formal caution under the *Young Offenders Act 1997* is required to meet with a police officer or specialist youth officer at a police station and they may be accompanied by a family member or other support person. This process of receiving a caution is a process of shaming for a child who must discuss what occurred with the officer and may be required to give a written apology to the victim.
- 4.5 The Commission considers that the current exceptions to the prohibition in section 11 of the *Children (Criminal Proceedings) Act 1987* are adequate to serve the interests of open justice. The Commission recognises that where a child commits a serious offence the interests of justice may outweigh the need to protect the child and therefore it is appropriate that the child's name be published.
- 4.6 In addition to the specific exceptions, there are a number of broad exceptions to allow the publication of a child's name. For example, section 11(4)(b)(i) gives the Children's Court the power to allow the publication of the name of a child under 16 years if it is in the interests of justice to do so. The Court can also allow publication under section 11(4B) in the case of a serious children's indictable offence such as murder or aggravated sexual assault. In such circumstances the Commission considers that it is appropriate for judges, who are able to hear all the evidence in each

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<sup>1</sup> Braithwaite, J (1989) *Crime, Shame and Reintegration*, Cambridge University Press, Cambridge, p. 69.

individual case to determine whether it is in the interests of justice to publicly name a child who has offended.

- 4.7 The Commission believes that naming a child's siblings can lead to identification of the child offender and so publicly naming siblings of child offenders should remain prohibited. This issue was central to the NSW Court of Appeal case brought by Fairfax Publications in 2006 requesting the publication of names in relation to the sexual assault case involving four brothers, two of whom were under age. The victim was 14 years old at the time of the assault.

The Court of Appeal dismissed the Fairfax application advising that the Court at the time of sentencing had the power to allow publication as it was a "serious children's indictable offence" but that the appropriate time had passed. The Commission believes that the court, at the time of sentencing is the most appropriate place for this decision.<sup>2</sup>

## 5. PUBLIC NAMING AND VICTIMS

- 5.1 There is no evidence that publicly naming children who offend assists victims in their recovery.
- 5.2 Rather, the Commission considers that the prohibition on naming children who offend may assist victims to maintain their privacy, therefore reducing their trauma and allowing them to recover without being concerned about unwanted attention.
- 5.3 The Commission strongly believes that the prohibition on the public naming of children who are witnesses or victims should remain as it is. The vulnerability of children who are witnesses or victims in the criminal justice system clearly outweighs any benefits of public naming. Such children may be wrongly labeled as offenders because of their involvement in proceedings and may be vulnerable to media harassment.
- 5.4 In addition, the current systems in NSW for dealing with children who offend are successful in assisting victims. Research shows that many victims are pleased with the outcomes of youth justice conferencing, which requires children who offend to be more directly accountable to victims than offenders dealt with through the court system are.<sup>3</sup> Through their

<sup>2</sup> For further discussion of this case, see Duncan Chappell and Robyn Lincoln, *Abandoning Identity Protection for Juvenile Offenders*, Current Issues in Criminal Justice, Volume 18 Number 3 March 2007

<sup>3</sup> BOCSAR (2000) *An Evaluation of the NSW Youth Justice Conferencing Scheme*, NSW Bureau of Crime Statistics and Research, Sydney

participation in the process of deciding how the offender should be dealt with, victims are able to recover a sense of power that they might have lost as a result of their victimisation.

- 5.5 Regarding the rights of families of victims, the Commission supports the recent amendments to Section 11 of the *Children (Criminal Proceedings) Act 1987* assented to in August 2007. These amendments provide a further exception that the prohibition 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.

## 6. NEGATIVE EFFECTS OF PUBLIC NAMING ON YOUNG PEOPLE

- 6.1 Research suggests that shaming through public naming, which has the effect of stigmatising an offender, is only successful in reducing crime where it is accompanied by attempts to reintegrate the offender into the community.<sup>4</sup> The Commission believes that the deterrent effects of shaming must be weighed against the possible negative effects of shaming on children, who are entitled to special protection in the law because of their different levels of understanding to adults.
- 6.2 In order to be reintegrated into their community, an offender has to have family and community support. A child's involvement in the criminal justice system can affect their education, employment and family relationships, disconnecting the child from the supports they need to be rehabilitated and reintegrated. In NSW a significant number of children involved in criminal proceedings have mental health issues or do not attend school, either of which can make them particularly vulnerable to being excluded from their communities, rather than reintegrated.
- 6.3 Recent research into young people serving community orders with the NSW Department of Juvenile Justice found "a vulnerable and disadvantaged group of young people, as indicated by their disadvantaged social and family background, low intellectual functioning and poor educational achievement, high frequency of physical and mental health problems and engagement in risk behaviours." 31% reported low, moderate or severe levels of physical abuse, 46% emotional abuse; 14% sexual abuse, 50% emotional neglect; and 37% physical neglect. 40% reported severe symptoms on the Adolescent Psychopathology Scale consistent with a clinical disorder. Conduct Disorder (19%) and Substance Abuse Disorder (26%) were the two most prevalent disorders.<sup>5</sup> Many are

<sup>4</sup> Braithwaite, *op cit.*

<sup>5</sup> Kenny, D.T., Nelson, P., Butler, T., Lennings, C., Allerton, M., and Champion, U. (2006). *NSW Young*

disabled, and their rights are therefore worthy of full consideration under the UN Convention on the Rights of People with Disabilities. Public naming would be expected to heighten distress, risk-taking and potentially self-injurious behaviour for such a vulnerable group of young people.

- 6.4 Shaming children by publicly naming them can lead to further social exclusion as these children often do not have support to assist them deal with the impact of shaming. As a result, these children may turn to other groups of offenders for support and to gain a sense of belonging. For such children it is more rewarding to associate with other offenders who accept them than it is to associate with those who have labeled and rejected them.<sup>6</sup>
- 6.5 In addition, where children are labeled as criminals they are likely to take on that label, getting involved in more serious offending to prove they fit the label. For example, research in the UK into the attitudes of young people about Anti-Social Behaviour Orders shows that the imposition and publicising of an Order is seen as a badge of honour, rather than shameful, for many young people.<sup>7</sup>
- 6.6 Once a child is labeled as an offender, or has started committing further offences, reintegrating them back into their communities becomes more difficult. In small communities in particular, the child will be easily recognised and stigmatised perhaps for many years after they have offended. In such cases publicly naming has a negative impact on a child's chances at rehabilitation and reintegration. Recent research by Andrew McGrath on labeling theory found that feeling stigmatised during a children's court hearing was a significant predictor of recidivism. He also looked at factors that were associated with feeling stigmatised and found that the measures of sentence severity seemed to play an important role. That is, the young people who felt they had been dealt with more severely were more likely to feel stigmatised, and in turn, more likely to re-offend.<sup>8</sup>
- 6.7 A child's involvement in criminal proceedings also often impacts on their entire family and public naming may label families, including younger

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*People on Community Orders Health Survey 2003-2006: Key Findings Report.* The University of Sydney

<sup>6</sup> Braithwaite, *op. cit.* p. 67

<sup>7</sup> Policy Research Bureau and NACRO (2006) *Anti-Social Behaviour Orders*, Youth Justice Board for England and Wales, London

<sup>8</sup> Andrew McGrath, *The Court Process And Recidivism, A study of the NSW Children's Court* Submitted in fulfilment of the requirements of the degree of Doctor of Philosophy School of Psychology, University of Sydney, March, 2007, Chapter 10, p198



siblings, negatively impacting on family relationships at a time when children need their families most.

## 7. MEDIA AND PUBLIC NAMING OF CHILDREN

- 7.1 Anecdotal evidence, particularly from the UK, suggests that public naming of child offenders may place a child at risk of vigilantes and harassment from media. In addition to child offenders, children who are victims or witnesses may face similar media harassment, from which they deserve to be protected given their vulnerability.
- 7.2 For example, public naming could lead to incidents similar to those that occurred in England where vigilantes threatened the young killers of Jamie Bolger when they were released from prison in 2001. Photographs of the children featured in the media and the British Government had to give them new identities to protect them.<sup>9</sup>
- 7.3 In the Northern Territory where there is no prohibition on the naming of children who offend, being publicly named has had a significant personal impact on some children and their families. In 2003 the *Northern Territory News* featured a photograph and article on the front page about a 15 year old offender who was charged with aggravated assault. Years on, the child was still recognised in the streets, his family was harassed and he was unable to gain employment. There are also examples of that newspaper featuring photographs of offenders with their siblings who have then also become the targets of harassment.<sup>10</sup>
- 7.4 The Commission is concerned that there have been a number of instances in NSW in recent years where children allegedly involved in criminal acts have been publicly identified, despite the prohibition against publication. For example, following incidents at Redfern in February 2004 and Cronulla beach in December 2005. The Commission considers that extending the prohibition on the publication of children's names to those who are arrested but not yet charged, will better protect such children but also provide consistency, making the laws in this area easier to understand.
- 7.5 It is also suggested that strategies be developed to better educate the media about the prohibition and exceptions in section 11 of the *Children (Criminal Proceedings) Act 1987*.

<sup>9</sup> Monk, S. (2001) 'Violent young criminals may be identified', *Courier Mail*, 5 July 2001

<sup>10</sup> ABC Radio, The Law Report, 3/10/2006, Transcript:  
<http://www.abc.net.au/rn/lawreport/stories/2006/1752189.htm>

## **8. CONCLUSION**

- 8.1 The Commission welcomes the review of the prohibition on the publication of the names of children who are involved in criminal proceedings as an opportunity to strengthen these laws to better protect vulnerable children.
- 8.2 The Commission does not consider there is any evidence to support the public naming of children involved in criminal proceedings. Rather, the evidence that exists demonstrates the possible negative effects of publicly naming children, for children, their families and the community.