

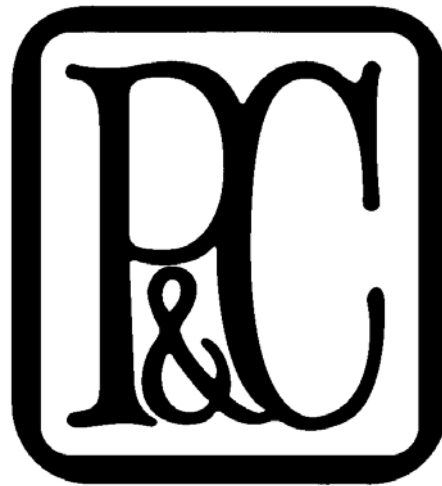
**INQUIRY INTO THE PROHIBITION ON THE
PUBLICATION OF NAMES OF CHILDREN INVOLVED IN
CRIMINAL PROCEEDINGS**

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SUBMISSION



STANDING COMMITTEE ON LAW AND JUSTICE LEGISLATIVE COUNCIL

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

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PREAMBLE¹

The Federation is committed to a free public education system which is open to all people, irrespective of culture, gender, academic ability and socio-economic class and empowers students to control their own lives and be contributing members of society.

This commitment is based on the belief that:

- All students have the capacity to learn;
- The Government has prime responsibility to provide an education system open to all, which is free and secular;
- Schools should be structured to meet the needs of individual students and should respect the knowledge those students bring to school and build on that knowledge to foster their understanding about the world.

Parents as parents in the education process, have a right and a responsibility to play an active role in the education of the children.

P&C Federation and its representatives share a responsibility of ensuring representative decision making for the benefit of all students.

INTRODUCTION

"Childhood is a difficult time... The realities of childhood put to shame the half-true notions in some children's books. These offer a gilded world unshadowed by the least suggestion of conflict or pain, a world manufactured by those who cannot – or don't care to – remember the truth of their own childhood. Their expunged vision has no relation to the way real children live."

*Maurice Sendack
Caldecott Medal Acceptance Speech (1963)*

The Federation of Parents and Citizens' Associations of New South Wales welcomes this opportunity to comment on the review of section 11 of the *Children (Criminal Proceedings) Act 1987*.

While acknowledging the need for appropriate justice, this must be balanced by effective rehabilitation, with particular measures to ensure special protection for the rights of children involved in criminal proceedings. It is the view of the Federation that in light of the current juvenile justice system, appropriate punitive measures are being taken to ensure a fair and open justice system.

Adding public naming of young offenders does not enhance the level of justice, it only increases the punishment. Public naming of minors unreasonably hinders the rehabilitation process and violates international standards of civil rights protection for children. Australia's The Federal Government's Human Rights & Equal Opportunity Commission warns against, "the shift to more punitive sentencing regimes for young offenders which governments seek to justify by reference to a juvenile crime wave, notwithstanding that there has been no significant increase in juvenile crime in Australia for the past decade."² While publicly naming young offenders might satisfy public inquisitiveness it fails to protect the rights of the child and must therefore continue to be opposed.

The Federation supports the inclusion of parents and guardians in the juvenile justice process and encourages further inclusion to make certain they are equipped to act as advocates and guardians of the rights of the child. Any measures to this effect will uphold the rehabilitative interests of children and be a benefit to society.

¹ Introduction, Federation of P&C Associations of NSW, P&C Handbook 2006-7

² Section 4. *Human Rights Brief No. 2*. Human Rights & Equal Opportunity Commission.
http://www.hreoc.gov.au/Human_Rights/briefs/brief_2.html.

RESPONSES TO TERMS OF REFERENCE

1. THE EXTENT TO WHICH THE POLICY OBJECTIVES OF THE PROHIBITION REMAIN VALID, INCLUDING TO:

- (a) reduce the community stigma associated with a child's involvement in a crime, thereby allowing the child to be reintegrated into the community with a view to full rehabilitation;

The Federation of Parents and Citizens' Associations of New South Wales supports the Australian Government in its acceptance of the United Nations Declaration of the Rights of the Child. In particular, Principle 2 states:

"The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration."³

The Federation believes that one of the fundamental applications of this principle is in protecting the identity of juvenile offenders. Rehabilitation must be the main focus of the justice system for children. According to this declaration, it must recognise the unique needs of children and must offer special protections in order to enable healthy development.

Since the *Children (Criminal Proceedings) Act 1987* was written, the circumstances surrounding juvenile crimes have changed dramatically. Information from the New South Wales Bureau of Crime Statistics and Research shows that, in fact, the number of violent crimes committed by youths has increased exponentially in some age groups over the past decade.⁴ The increasing culture of drug use has formed a catalyst for more frequent and more serious offences. The egregious nature of many of these crimes led to the amendment of this act not to prohibit, "the publication or broadcasting of the name of a person who has been convicted of a serious children's indictable offence, if the publication or broadcasting is authorised by a court."⁵ This stipulation should be more than adequate to placate the need to release a name under exceptional circumstances.

Under the existing law the court retains responsibility for protecting children's identity. This puts protection of the child first and consideration of circumstances second. The Northern Territory is the only jurisdiction in Australia to currently have this reversed. According to their policy, only in exceptional circumstances is the identity of the child protected. This allows the media to publish recklessly and by the time matters reach the courtroom, guilt has already been assigned by the general public. Once labelled, children are stuck with that image for life. Having that sort of added pressure is a clear violation of the UN mandate to protect healthy mental and social development of children.

The Federation of Parents and Citizens Associations of New South Wales is very concerned when this fundamental right is treated as though it can be traded for some "greater good." Claims that repealing this act will act as a deterrent to child offenders crosses a line that cannot be crossed. If protecting the social, mental, physical and emotional development is viewed as malleable, what is to prevent classrooms from practicing corporal punishment? Using harmful punitive measures as a deterrent is not acceptable, whether it is physically or emotionally damaging.

This ethical imperative assumes it would be a successful deterrent, however abolishing this act would not be successful in deterring crime for several reasons. Firstly, most children are not aware of the current law regarding the publication and broadcasting of their name. Because they are not aware of their protections under the law, it is not a significant factor that children are considering when contemplating a crime. Secondly, many children assume they do

³ *Declaration of the Rights of the Child*, Proclaimed by General Assembly resolution 1386(XIV) of 20 November 1959

⁴ Pages 58-74, *New South Wales Criminal Courts Statistics*. New South Wales Bureau of Crime Statistics and Research. [http://www.bocsar.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/CCS06.pdf/\\$file/CCS06.pdf](http://www.bocsar.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/CCS06.pdf/$file/CCS06.pdf)

⁵ 11 (4) (c). *Children (Criminal Proceedings) Act 1987* No 55

not have this protection and changing the policy would not change their perception of the consequences for committing a crime.

Thirdly, children who are aware of the policy may be seeking public attention and publicly naming them will have the opposite effect. Contrary to NSW Premier Morris Iemma's belief that naming and shaming children who are "dabbling in pranks"⁶ will prevent reoffending, the purpose behind many "pranks" performed by children is to seek attention. Children who tag a train or perform other acts of graffiti are anything but discreet. Young offenders are likely to be sentenced time in detention and publication would likely elevate their status amongst peers in detention. Publicly naming young offenders amplifies the image they are attempting to create for themselves and does great damage toward solidifying their sense of identity deriving from seeking negative attention.

Perhaps the most important point to be considered is that this review needs to go beyond "establish[ing] if there was a link between naming offenders and their chances of reoffending."⁷ It needs to assess the ability of those affected to get back to a healthy lifestyle. Because the protection of privacy is considered fundamental to ensure a nurturing social and cultural environment for children, the *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* mandates:

"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."⁸

These principles are based on criminological research, and were drawn from the direct correlation between naming young offenders, the stigmatization that occurs and the negative effect of that on their development and well being. In order to stay true to the resolutions put forth by the United Nations, New South Wales must form policy that is consistent with the ideals and protections upheld by the Federal Government.

(b) protect victims from the stigma associated with crimes; and

This section is broader in its scope because the victims can be from any age range. However, special protection should continue to be offered under this Act to prevent the embarrassment, fear and shame associated with being a victim of any crime.

Also, releasing the identity of the victim can lead to the public identifying of the young offender. In this case both the needs of the victim and the young offender are not being protected. The Federation defends continuing this protection. Any extraneous concerns that would merit looking at releasing the identity of the offenders would not be enhanced by releasing the victim's identity. Therefore, under no circumstances should the victim of a juvenile crime be identified.

(c) reduce the stigma for siblings of the offender and victim, allowing them to participate in community life.

The Federation of Parents and Citizens' Associations of NSW believes it is imperative to protect siblings of young offenders and their victims because releasing the identity of the offender can often lead to assuming "guilt by association." This was showcased poignantly in the Northern Territory when a 13 year old boy was arrested for shoplifting. A picture of the young boy and his sister was published on the front page of their local newspaper. Three years after that photo was published, she still encounters people who ask, "Oh, aren't you that girl that got caught shoplifting that was in the paper?"⁹

⁶ "Iemma Defends 'Name and Shame' Review." 5 October, 2007.

⁷ "Iemma Defends 'Name and Shame' Review." 5 October, 2007.

⁸ *United Nations Standard Minimum Rules for the Administration of Juvenile Justice*.

⁹ "Naming and Shaming Juvenile Offenders." *The Law Report*. 3 October 2006.

Often the siblings of the offenders will be underage as well and require as much protection as the offender themselves. Publication of names in mass media only feeds the incorrect information and fuels the stigmatization that haunts offenders, victims and their siblings years after the offence. These innocent parties are falsely vilified and subject to the vigilante justice dealt by community members. Their identity must be protected to ensure that their social involvement is not dictated by their sibling's offence.

2. THE EXTENT TO WHICH SECTION 11 OF THE ACT IS ACHIEVING THESE OBJECTIVES.

The Federation of Parents and Citizens' Associations of NSW backs the current interpretation and implementation of section 11 of the *Children (Criminal Proceedings) Act 1987*. The existing policy is in line with the views of the Northern Territory court condemning the practice of publicly naming child offenders. The current protection espouses:

"the fact now almost universally acknowledged by international conventions, State legislatures and experts in child psychiatry, psychology and criminology, that the publication of a child offender's identity often serves no legitimate criminal justice objective, is usually psychologically harmful to the adolescents involved and acts negatively towards their rehabilitation."¹⁰

Regardless of whether children are aware of their rights or not, the responsibility falls to the government to protect them. The protection afforded under the current act allows young offenders their only hope at a fresh start, breaking the negative attention cycle and the scapegoat assumption.

The greatest strength of this act is that, in keeping with the *United Nations Declaration of the Rights of the Child*, the rights of the child are the primary concern. The focus on the child can be lost or clouded when they are the offender. The needs of all parties involved must be respected and upheld, but this safeguard is necessary to ensure that children are given due protection in all circumstances.

The important balance that must be maintained is between the rights of the child, the victim and the community. The courts must be the arbiter and guardian of these rights. If the inherent protection of the privacy of the child is taken away, the door is opened to all parties to publish, sensationalise and exploit their identity. The fact that a child has committed an offence only strengthens their need to have their rights protected because they are facing punishment from a system they are not fully incorporated into yet. Defending their rights must be built in to the law so that it is not dependent on the child or their parent/guardian who may or may not be educated about their rights.

In its current form, the Act allows for naming in "a serious children's indictable offence."¹¹ The flexibility allowed in this clause should be more than enough to meet the demands of extraneous circumstances. However, due to the tendency toward broadening the scope of this exception the Federation of Parents and Citizens' Associations of NSW calls for stricter regulations regarding the application of this clause. The intent of this law must be to protect the development of the child and this clause must never be used to look for a way to inflict harmful punishment on a young offender.

The Federation of Parents and Citizen's Associations of NSW recognises the increase in juvenile offences and therefore the need to take action to curb this trend. However, this trend does not justify taking measures either to violate the *United Nation Declaration of the Rights of the Child* or to set New South Wales apart from most Australian jurisdictions in this regard. Rather, this trend indicates the increasing need to address the problems rather than just punish an offence.

Therefore, the Federation calls on the government of New South Wales to implement appropriate support programs to assist young people and families who are experiencing difficulties. The root of the juvenile

¹⁰ *MCT v. McKinny & Ors*. Court of Appeals of the Northern Territory. 20 October 2006.

¹¹ 11 (4) (c). *Children (Criminal Proceedings) Act 1987* No 55

offences most often lies with societal neglect and only by addressing the cause of current trends can these problems be alleviated.

The Federation also calls on the government of New South Wales to provide sustainable and recurring funding for existing and new programs to meet these needs. Until preventative measures are being provided and are accessible, the government has not begun to embrace the "view to full rehabilitation."¹²

3. WHETHER THE PROHIBITION ON THE PUBLICATION AND BROADCASTING OF NAMES UNDER SECTION 11 OF THE ACT SHOULD COVER:

- (a) Children who have been arrested, but who have not yet been charged;
- (b) Children, other than the accused, who are reasonably likely to be involved in proceedings; and/or

Whether a case has been decided or not, the unique protection of children's identities to avoid stigmatisation needs to be extended to all involved. The Federation of Parents and Citizen's Associations of New South Wales supports the application of the Act to all children involved in criminal proceedings at all stages in the justice process.

These clauses are essential to the Act because they establish consistency. If identities can be revealed before charges are brought it only fosters the spread of misinformation, leading many to jump to wrong conclusions. Arrest does not inherently imply guilt or incrimination, however it is likely to be perceived as such. In either case, whether a child has been arrested or charged or not does not increase or lessen their need for protection. The effect of branding occurs from the time the name is released regardless of whether the charges are dropped later.

For those children other than the accused, publicly naming them leads to easy inferences about the identity of the accused through known connections. Once the person who is left out is identified, the protection of the whole Act is nullified.

- (a) Any other circumstance.

If the law is extended to include children who have been arrested, but not yet charged and other children reasonably likely to have been involved, then it should be sufficiently ensuring a consistent application of the prohibition. It is important that all loopholes are addressed to ensure that identities do not become public information before the prohibition is put in place. Extending the Act as proposed above will preserve anonymity in the public eye and will clarify the distinction between public and private information about the identity of minors involved in an offence.

4. ANY OTHER RELEVANT MATTER INVOLVING THE PROHIBITION ON THE PUBLICATION AND BROADCASTING OF NAMES, INCLUDING CONSIDERATION OF PROHIBITIONS IN THE *YOUNG OFFENDERS ACT 1997* AND THE *CRIMES ACT 1900*.

The fundamental importance of the Act is affirmed by the provisions of the *Young Offenders Act 1997* and the *Crimes Act 1900*. Any changes to allow for greater publication and broadcasting of the names of young offenders would be inconsistent with the reasoning and the policy behind all of these acts of Parliament. The fact that it is reiterated so many times within current New South Wales policy serves to reinforce the understood importance of this protection. In this instance the law is internally coherent and it is self-affirming. It also is in keeping with internationally prescribed standards of protection for the rights of children.

¹² *Terms of Reference 1 (a).*

One inconsistency that should be reviewed is in Section 65 of the *Young Offenders Act 1997*:

“(3) Subsection (1)¹³ does not prohibit:

(b) the publication or broadcasting of the name of a child or any information about such a child who is over the age of 16 years at the time of publication or broadcasting with the consent of the child.”

The discrepancy is that there would be an exception for children aged 16 years or older at the time of publication. This age limit is not in keeping with current laws and definitions of “child” and “adult”. If the age of adulthood is to be set at 18, then it should be kept as 18 across the board. The reason for delineating between adult and child is clear, children need special sheltering and are not meant to be held to the same standard of responsibility due to the lack of social and cognitive development. In this case, where parents or guardians are still the responsible adult, consent should at least be discussed with them to ensure someone is able to advocate for the rights of the child while discussions take place.

The Federation supports the introduction of legislation to protect the rights of the parent in terms of information and involvement with respect to the education and development of their children. In particular, Federation believes that, “Parent participation is the most effective method of ensuring individual needs of students are addressed.”¹⁴ Therefore, Federation calls on Parliament to change clause (b)¹⁵ of the *Young Offenders Act 1997* to read:

“(b) the publication or broadcasting of the name of a child or any information about such a child who is over the age of 16 years at the time of publication or broadcasting with the consent of the child and their parent and or guardian.”

This provision will allow for consent, but it continues the umbrella of protection afforded for all children under the age of 18. It would keep this Act uniform with related legislation and it will reinforce the rights of the child.

CONCLUSION

In conclusion, the Federation of Parents and Citizens' Associations of New South Wales supports the existing policy regarding the publication and broadcasting of the names of children offenders. In its current form, the Act is consistent with State and International law and the rights it protects are delicate and require the extraordinary measures to ensure they are upheld.

In order to follow through with application of this protection, the Federation supports:

- Upholding the existing law;
- Extending the prohibition on the publication or broadcasting of names to include children who have been arrested, but not charged and children who are likely to have been involved;
- Implementing and funding programs to address issues of societal neglect; and
- Changing the *Young Offenders Act 1997* to ensure that parents and or guardians are involved in any consent that would remove this special protection.

The Federation would like to thank the Standing Committee on Law and Justice for the opportunity to participate in this review. We look forward to hearing the results and welcome any further discussion this may evoke.

¹³ “(1) The name of any child dealt with under this Act, or any information tending to identify any such child, must not be published or broadcast, whether before or after the matter involving the child is finally dealt with under this act.” Section 65. *Young Offenders Act 1997*.

¹⁴Page 56, Premise 1F. Section 1. *2006-2007 Operational Guide and Policy Manual for P&C Associations*.

¹⁵ Subsection (3). Section 65. *Young Offenders Act 1997*.