

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

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**Date received:** 13/12/2007

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12 December 2007

The Director  
Standing Committee on Law and Justice  
Legislative Council  
Parliament House  
Macquarie Street  
Sydney NSW 2000

By email: [lawandjustice@parliament.nsw.gov.au](mailto:lawandjustice@parliament.nsw.gov.au)

Dear Director,

**The Youth Justice Coalition's Submission on the Inquiry into the prohibition on the publication of names of children involved in criminal proceedings**

The Youth Justice Coalition (YJC) thanks the NSW Legislative Council's Standing Committee on Law and Justice for the opportunity to provide its submission to the inquiry into the prohibition on the publication of names of juveniles involved in criminal proceedings.

Please find attached our submission to the Inquiry. We look forward to your comments. In the meantime, should you have any questions, please do not hesitate to contact Katrina Wong, Convenor of the Youth Justice Coalition on 9559 2899 or at [Katrina\\_Wong@clc.net.au](mailto:Katrina_Wong@clc.net.au)

Yours faithfully

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***RISING ABOVE naming and shaming  
- the impact of public  
naming on young offenders***

**Submission**

**to the**

**NSW Legislative Council's Standing Committee On Law  
and Justice**

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

**By**

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TIFF (Uncompressed) decompressor  
are needed to see this picture.

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**12 December 2007**

## **About the Youth Justice Coalition**

The Youth Justice Coalition (YJC) is a network of youth workers, children's lawyers, policy workers and academics working to promote the rights of children and young people in New South Wales.

The YJC aims to promote the rights of children and young people, to promote appropriate and effective initiatives in areas of law affecting children and young people, and to ensure that children's and young people's views, interests and rights are taken into account in law reform and policy debate.

## **How the Youth Justice Coalition was formed**

The YJC was formed in early 1987 under the auspices of NCOSS to work around the children's criminal, care and protection legislation introduced in that year. The YJC has been active since 1987 advocating for young people, particularly those involved in the criminal justice or welfare systems

## **Acknowledgements**

The Youth Justice Coalition wishes to thank Corrs Chambers Westgarth, in particular Monali Pandey for her extensive research and significant input in the preparation of this submission.

## **Rising ABOVE naming and shaming - the impact of public naming on young offenders**

### **The Youth Justice Coalition's submission to the Inquiry into the prohibition on the publication of names of children involved in criminal proceedings**

*"[T]here are a number of detrimental outcomes arising from any disclosure of the juveniles' identities. These include: a misuse of the concept of shaming, the potential for vigilante action, a false sense of community protection, and the possibility of interfering with any rehabilitative efforts... The movement to name juvenile offenders publicly is clearly gathering momentum and demonstrates that long-held protections for youthful offenders, and the international conventions that support them, are slowly being eroded, if not abandoned."*<sup>1</sup>

In this submission, references to 'young person', 'young offender', 'juvenile' and 'child' are references to a person in Australia under the age of 18 years.

The YJC is strongly opposed to any move towards amending current legislative provisions that allow the naming of young people involved in criminal proceedings. It is our position that any such move is counter productive, stigmatising and inconsistent with international standards and current approaches adopted in the juvenile justice system. The primary principles of rehabilitation, reintegration and diversion recognises that children and young people do not have the same developmental capacity and maturity as adults and as such different responses are required when dealing with young offenders. The naming of young people does not have the effect of 'shaming' them into not doing something – rather the labelling and stigmatisation of being an offender contributes to the alienation of a young person in their community and increases the likelihood of them coming back into the juvenile justice system.

Section 11 (4)(B) of the *Children's Criminal Proceedings Act 1987 (CCP Act)*, already allows for the naming of young offenders who have been convicted of serious children's indictable offences<sup>2</sup>. This measure is directed at achieving a balance between the recognition of children and young people as falling into a special category, and the countervailing public interest in protecting the community. The YJC believes that it is unwarranted and counter productive to extend the current position to allow the naming of all young offenders regardless of the seriousness of their offence.

### **International obligations and children's rights**

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<sup>1</sup> Chappell D; Lincoln R; "Abandoning Identity Protection for Juvenile Offenders"; March 2007 *Current Issues in Criminal Justice: Journal of the Institute of Criminology* Volume 18 Number 3: 481-487 at 486.

<sup>2</sup> A serious children's indictable offence is defined in section 3 of the *Children (Criminal Proceedings) Act 1987* and includes the offence of homicide, any offence punishable by more than 25 years and some sexual assault offences

Australia is a party to a number of international conventions and treaties that are designed to protect and enhance the rights of the child. Australia has responsibilities towards children that arise under the United Nations Convention on the Rights of the Child (**CROC**), which was ratified by Australia in 1990. It is a strong statement of Australia's commitment to children's rights and their participation in legal processes. Many of the CROC's provisions are relevant to dealing with young offenders and emphasises the principles of rehabilitation and reintegration into society when dealing with young offenders.

Article 40.1 of the CROC states that:

*“State Parties recognise the right of every child alleged as, accused as, or recognised as having infringed the penal law to be treated in a manner consistent with the **promotion of the child's sense of dignity and worth**, which reinforces the child's respect of the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of **promoting the child's reintegration and the child's assuming a constructive role in society**”.*

Article 40.3 goes further to emphasise that a young person has the right to their privacy being fully respected at all stages of criminal proceedings. The rationale for the preservation of confidentiality is the detrimental effect that identification has on the young person and his/her rehabilitation. Rule 8 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (**the Beijing rules**) recognises that the naming of young offenders will unduly label and further stigmatise young people. It stresses the importance of protecting young people from the adverse effects that may result from the publication in the mass media of information about their case:

*“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*

*“In principle, no information that may lead to the identification of a juvenile offender shall be published”<sup>3</sup>*

Any proposal to allow the publication of a young offender's name would be a contravention of these international obligations and would represent a significant departure from the well-established international principles protecting the rights of young people involved in the criminal justice system. This is particularly the case, given that these protections provided to young people have already been watered down with the 2001 amendments made to the *CCP Act*, referred to above.

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<sup>3</sup> Rule 8 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”), G.A. res. 40/33, annex, 40 U.N. GAOR Supp. (no. 53) at 207, U.N. Doc. A/40/53 (1985)

<sup>4</sup> A serious children's indictable offence is defined in section 3 of the *Children (Criminal Proceedings) Act 1987* and includes the offence of homicide, any offence punishable by more than 25 years and some sexual assault offences.

In accordance with the terms of reference highlighted by the Standing Committee on Law and Justice, the YJC makes the following submissions in relation to:

**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;**
- b) protect victims from the stigma associated with crimes; and**
- c) reduce the stigma for siblings of the offender and victim, allowing them to participate in community life.**

The YJC submits that the current policy objectives of the prohibition remain valid for a number of reasons:

First, children and young people have a different level of maturity and understanding as compared to their adult counterparts. This necessitates punishment of young offenders to be specifically tailored, not only to the individual case, but also to their level of understanding. 'Naming and shaming' does not have the effect of deterring young persons from further crime. The wide publication of a young offender's identity stigmatises that young offender and has the effect of labelling them and subsequently prevents any opportunity for meaningful rehabilitation and reintegration of young offenders back into the community.

Instead of adopting a punitive and retributionist approach to juvenile offenders, a more appropriate method of ensuring a young person's rehabilitation and the protection of a victim's anonymity, would be to keep the status quo in prohibiting the naming of juvenile offenders. Early intervention and rehabilitative programs that aim to assist in diverting young offenders from the juvenile justice system back into the community would be more effective in achieving the overarching goal of deterrence.

Secondly, legislative provisions that allow the naming young offenders involved in serious children's indictable offences already take into account the need to protect and inform the community when a serious offence is committed by a young person. It is our submission that an expansion of the current law so that it names all young offenders who are involved in less than serious children's indictable offences is unnecessary and would further weaken the protections highlighted in international covenants. To do so would be to reduce the scope for rehabilitation of young offenders and to increase the social prejudice that already exists towards youths generally. This could have a negative effect not only on the young offender, but also on the victim and other members of their family, who by association would also suffer detrimental consequences.

In addition, naming may well have a negative long term effect on the community as a whole if more young people are publicly shamed and respond by identifying more closely with criminal sub cultures as discussed below.

## **Different approaches when dealing with young offenders**

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It is a well recognised concept internationally and in Australia, that young people, because of their age and lack of emotional and developmental maturity, are entitled to special protections in dealing with the criminal justice system. The notion of developing maturity is as much a social concept as it is a legal concept and has been recognised by the legal system with the development of specialised institutions (such as the Children's Court) and processes for dealing with young offenders. Traditional approaches to dealing with offenders have been shown to be ineffective when dealing with young people and can even facilitate a further downward spiral into crime:

"...Should one legal process fail to address the underlying problems, contact with that process may increase the risk for some children that they will have further, and increasingly adverse, contact with other parts of the legal system."<sup>5</sup>

This has accordingly led to the development of a different approach to dealing with young offenders, involving the examination of the structural causes of juvenile crime with an emphasis of the fundamental principles of rehabilitation and reintegration. These principles currently underpin the juvenile justice system in NSW and are outlined in the Green Paper (1993). Discussion regarding the naming of young offenders must take into account these principles highlighted in the Green Paper<sup>6</sup>:

- Prevention, diversion and reintegration be the primary focus of juvenile justice policy; Victims of crime be given the opportunity to actively participate, where appropriate, in the juvenile justice system
- Children and adolescents should be treated differently and separately from adults according to their developmental needs;
- The community accept responsibility for the support of juveniles and provide positive opportunities to enable them to become valuable community members;
- Where possible, young offenders should be dealt with in their communities in order to reintegrate them and to sustain and enhance family and community ties.

Research on the psychological immaturity of children clearly shows a relationship between age and deviance and suggests that young people who have engaged in offending at a young age may not continue to do so. Reversion from deviant to mainstream identities is the norm with progressing age<sup>7</sup>. This reinforces the need to provide young people with further opportunities to assume productive roles in society without continually being reminded that they are "bad people". A move to name young offenders will thus unfairly disadvantage young offenders and their future prospects of meaningful rehabilitation.

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<sup>5</sup> Australian Law Reform Commission Report 84: Seen and Heard: priority for children in the legal process"; 1997 at 4.35

<sup>6</sup> Justice Advisory Council of New South Wales (1993). Future Directions for Juvenile Justice in New South Wales - 'Green Paper' Justice Advisory Council of New South Wales: Sydney

<sup>7</sup> Braithwaite J; Mugford S; "Conditions of Successful Reintegration Ceremonies: Dealing with Juvenile Offenders"; Spring 1994 *British Journal of Criminology* Vol 34 No 2; 139 -171 at 152



## **What is the purpose of naming and is it appropriate?**

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The concept of naming is based on the view that publicly identifying juveniles will yield a semblance of shame to offenders<sup>8</sup>, thus deterring them from further offending. Spiegelman CJ [in proceedings brought by John Fairfax Publishing Pty Ltd seeking to remove a name suppression order in relation to two juveniles and their co-offending adult siblings in October 2006] referred in particular to the role the additional element of public shaming might play in fulfilling the sentencing objectives of retribution and general deterrence<sup>9</sup>.

However, Thomas J in the Northern Territory case of *MCT v McKinney*<sup>11</sup> found that 'naming and shaming' was not an appropriate use of the discretion in that jurisdiction to publicise a juvenile offender's identity. Thomas J referred to the detrimental effects of publicising a young offender's name in circumstances where his future prospects of rehabilitation in a small town would have been threatened and stated at [21-22] that, in interpreting Northern Territory law, it was not appropriate to merely name a young offender for the purpose of 'naming and shaming' that young offender.

## **Does naming and shaming work?**

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In terms of whether naming achieves the objective of shaming a person into deterrent behaviour, research has shown that the underlying motives for enhancing our behaviour as human beings is to promote or maintain certain kinds of self-images:

“ [The]...motives for self-enhancement, self-verification, self-expansion, or self-assessment...[a]lthough differing in specifics...assume that human thought and action are affected by motives to maintain or promote certain kinds of self-images.”<sup>12</sup>

Leary refers to the notion of 'self-enhancement' being the motivator for a person improving their behaviour in order to achieve success on the basis that:

“people's well-being requires that they be valued and accepted by other people, people must be attuned to indications that other people do not value them as social interactants, group members, and relationship partners. When people detect cues that other people may reject them, they are alerted by an aversive loss of self-esteem. Thus, events that lower self-esteem- such as

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<sup>8</sup> Chappell D; Lincoln R; “*Abandoning Identity Protection for Juvenile Offenders*”; March 2007 *Current Issues in Criminal Justice: Journal of the Institute of Criminology* Volume 18 Number 3: 481-487 at 484

<sup>9</sup> Application by John Fairfax Publications Pty Ltd re MSK, MAK, MMK and MRK [2006] NSWCCA 386 at [para 9].

<sup>10</sup> Chappell D; Lincoln R; “*Abandoning Identity Protection for Juvenile Offenders*”; March 2007 *Current Issues in Criminal Justice: Journal of the Institute of Criminology* Volume 18 Number 3: 481-487 at 484

<sup>11</sup> [2006] NTCA 10 (Unreported, Northern Territory Court of Appeal, Martin CJ, Mildren J, Thomas J, 20 October 2006)

<sup>12</sup> Leary M.R; ‘Motivational and Emotional Aspects of the Self’; (2007) *Annual Review of Psychology* Vol 58: 317-44 at 318

failure, rejection, humiliating events, and immoral actions – do so because these events may result in the person being devalued or rejected”<sup>13</sup>

In light of this, it is likely that ‘naming and shaming’, instead of leading to deterrence, will entrench a young offender’s feelings of rejection by the community at large and invariably cause them to associate themselves with the only self-image that has been imposed on them: ‘delinquent’. This reflection of their own self worth as imposed by society leads to isolation in the community and increases the likelihood of being drawn back into the juvenile justice system. This is recognised in international covenants and principles of juvenile justice, which emphasise that the treatment of juveniles in the criminal system must be consistent with the promotion of the child’s sense of dignity and worth.

Views from youth services who work with young people in the juvenile justice system also support this view:

“I work with at risk young people aged between 15-21 years on a case management program (JPET).

Often clients who have offended define themselves as criminals - they feel they have black marks against their name and that is therefore who they are. We attempt to work with them, often fairly successfully to highlight that that was what they did, not who they are - they made bad choices, there was a context for that and now they can make different choices. You can sometimes witness the return of hope and the determination to take a new path in life.

I strongly feel that the naming and shaming of offenders, would serve to further entrench the view they often hold that there is no hope for them now - ie "I could never get a job", "no point in studying, as I could never get a job - as I'm a crim now" and lead to less success in being able to assist these young people on a new and constructive path.”

- *Youth Services Caseworker: JPET*

The concept of inflicting ‘shame’ (as opposed to reintegrative shaming) on an offender has also been seen to be ineffective in deterring a person from re-offending. Research has shown that shame as an emotion, is accompanied by feelings of worthlessness, defensiveness and anger, and that when ashamed, people focus on themselves rather than the people they have hurt<sup>14</sup>. Furthermore, contrary to the assumption that shame deters people from engaging in undesirable behaviours, people who are high in shame-proneness are actually more likely to commit immoral and illegal actions<sup>15</sup>.

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<sup>13</sup> As per note 9 at 319 and 328

<sup>14</sup> Leith & Baumeister 1998, Tangney 1992, Tangney et al. 1994 as quoted in Leary M.R; ‘Motivational and Emotional Aspects of the Self’; (2007) Annual Review of Psychology Vol 58: 317-44 at 331

<sup>15</sup> Tangney 1994, Tangney & Dearing 2002 as quoted in Leary M.R; ‘Motivational and Emotional Aspects of the Self’; (2007) Annual Review of Psychology Vol 58: 317-44 at 331

Instead of labelling and stigmatising young offenders through ‘naming and shaming’, the community should provide positive opportunities to enable them to become valuable community members. It is important to separate the young offender’s sense of identity from the crime they have committed and to identify and isolate the offence from the individual. The fundamental principles of rehabilitation and reintegration into the community cannot be achieved through ‘naming and shaming’.

## **Stigmatisation**

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It is our submission that prohibiting the publication of a young offender’s name remains successful in reducing the stigma associated with a young person’s involvement in a crime, and thus allows them to be reintegrated to the community with a view to full rehabilitation.

The naming of young offenders will contribute not only to further stigmatisation of the young person, but will also increase prejudice that already exists in society in relation to young people. Young people are already treated with suspicion by society and are subject to discriminatory treatment, including being harassed by police, transit officers, shopkeepers and security guards. These entrenched views of young people are further exacerbated by the way they are portrayed in the media.

Media portrayals of youth crime are often inappropriate and sensationalised and do not reflect an accurate picture of the realities of youth crime<sup>16</sup>. News items concerning young people are mostly limited to the sensational and emphasise the problematic nature of youth<sup>17</sup>. Media representations play a crucial role in the way young people are perceived by the wider community, particularly in relation to images of deviance. The possible impact of the media on young people, should their identities be disclosed, is far reaching and should not be underestimated. There is no better case demonstrating this than the Bulger murder case in the United Kingdom<sup>18</sup>. At the time of the offence, both offenders were 10 years old. Upon release from custody, both offenders were given new identities to protect their personal safety due to their names and whereabouts being made public by a British newspaper.

The publishing of identifying details has implications for a young person’s reintegration in the community - particularly in relation to future opportunities in the areas of employment and education. The identification of a young offender could lead to potential discrimination in relation to employment, due to employers unwilling to employ a named criminal. Naming of an offender can also serve to ostracise a young person from their peer group, thus increasing offending behaviour. Naming of young offenders also raises concerns on the impact of a young offender’s mental

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<sup>16</sup> Clancey G; “*Youth Crime in NSW- the real picture*”, (2005) *YAPRap*, Vol.15 No.11 Nov-Dec 2005, 14-17.

<sup>17</sup> Youth Affairs Council of Victoria, *In the Spotlight: Young People and the Media* (2003) at p 4. Accessed at [http://www.yacvic.org.au/includes/pdfs\\_wordfiles/inthespotlight.pdf](http://www.yacvic.org.au/includes/pdfs_wordfiles/inthespotlight.pdf) on 7 December 2007.

<sup>18</sup> More details and commentary on the Bulger murder case can be found at <http://www.guardian.co.uk/bulger/>.

<sup>19</sup> Chappell D; Lincoln R; “*Abandoning Identity Protection for Juvenile Offenders*”; March 2007 *Current Issues in Criminal Justice: Journal of the Institute of Criminology* Volume 18 Number 3: 481-487.

health, given the effect labelling and stigmatisation has on a young person. This would be further exacerbated for those young people who live in small rural and regional communities.

This was highlighted by the comments of a parent of a juvenile offender:

“I don’t condone what my son has done or anything, in any way, shape or form, but to name them like that, I think you’re just cutting their legs out from under them; they’ve got no option but to go on the streets, live on the streets and live by their wits. They can’t get jobs, decent jobs. And with him, we’re six years down the line now, and he still can’t get a job”<sup>20</sup>

Thomas J in the Northern Territory case of *MCT v McKinney*<sup>21</sup> further emphasised this by stating that:

“Publication of the appellant’s name or any identifying material, even with respect to the less serious offences, has the potential to be detrimental to his employment prospects and to adversely affect his rehabilitation. There is also a risk that such publication may have psychological consequences.” at [30]

Research has also shown that stigmatisation not only has negative outcomes to a young offender but also to the victim. Chappell and Lincoln refer to research that highlights the serious consequences to victims arising from the naming and shaming of sex offenders. These include the identification of the victim which may have the potential to re-victimise that person; punishment and ostracism from the community; and thirdly, even though the offender is shamed, the offender is not rehabilitated<sup>22</sup>.

The naming of young offenders can also exacerbate the impact of stigmatisation on different cultural communities. A youth worker from the post release options program at Barnardos, comments on the possible impact on Pacific Islander communities:

“From a cultural perspective, the naming of a young person can be extremely humiliating to the family and to their community. It would get overwhelming for family members if other members of their tight knit community, including church leaders, were to find out about their child being named in an armed robbery. It isolates the family and reduces the support available to the family and to the young person.”

<sup>20</sup> The Law Report, *Naming and Shaming Juvenile Offenders* accessed at <http://www.abc.net.au/rn/lawreport/stories/2006/1752189.htm> relating to discussion of the Northern Territory legislation.

<sup>21</sup> [2006] NTCA 10 (Unreported, Northern Territory Court of Appeal, Martin CJ, Mildren J, Thomas J, 20 October 2006)

<sup>22</sup> Ronken & Lincoln 2003 as quoted in Chappell D; Lincoln R; “*Abandoning Identity Protection for Juvenile Offenders*”; March 2007 *Current Issues in Criminal Justice: Journal of the Institute of Criminology* Volume 18 Number 3: 481-487 at 484

## **Naming and the impact on rehabilitation**

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The naming of young offenders has a significant impact on their future rehabilitation. The process of rehabilitation involves identifying the factors that influence juvenile offending and linking young offenders to appropriate services to address these issues to assist their integration into the community.

There is concern that the services (such as mental health, allied health, family counselling) who provide therapeutic intervention to young offenders will be significantly affected should young offenders be able to be publicly named. The lack of openness and anonymity afforded to a young offender can inhibit their participation in casework interventions and undo the positive work already undertaken with the young person.

“If a young person is able to be named, then this will have a negative impact on how they can engage with services and programs. Young people would feel like they were worth nothing – they wouldn’t be able to feel like they could get their lives back on track and start over again. They would return to the cycle of re-offending as they would think that this is all they know what to do”

- *Youth Worker, Post Release Options Program*

The naming of young offenders will also have an adverse impact in relation to finding appropriate supported accommodation for those young people at risk of homelessness. Currently, a major target of the NSW State Plan is to provide stable accommodation at pivotal points in the re-offending cycle, particular when exiting custody<sup>23</sup>. Should a young offender be able to be identified, this would increase the difficulty of finding supported accommodation and would also present barriers to accommodate young people in non SAAP services (such as the rental market) where they could be unfairly discriminated by virtue of being identified by their crime. Examples of how this has already happened can be seen with the case of John Lewthwaite, who was convicted of a murder of a child in 1974. His release on parole in 2006 and the media’s treatment of him resulted in widespread condemnation and vilification from the community.

Naming and shaming as a concept fails to acknowledge or address the issues that make young people vulnerable to involvement in the criminal justice system. Reintegration into communities is insufficient if offenders remain marginalised and socially excluded. As noted by Garner Clancey:

“Providing employment and job readiness schemes, for example, reduce unemployment, increase self worth and self efficacy, improve material well-being and reduce boredom – all potentially positive outcomes in preventing crime...Provision of crisis support, accommodation, alcohol and other drug

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<sup>23</sup> NSW Government, *The State Plan: Chapter 2 – Rights, Respect and Responsibilities* accessed at <http://www.nsw.gov.au/stateplan/>

services and recreational activities all contribute to the web of services, programs and initiatives which prevent crime.”<sup>24</sup>

It is important to note that many young people who come in contact with the juvenile justice system are the most vulnerable and marginalised in the community. Indigenous juveniles are overrepresented and factors such as family breakdown, low education, child abuse/neglect and use of drugs are common characteristics of young offenders.<sup>25</sup> With this in mind, the naming of young offenders will have the effect of further disadvantaging those young people already experiencing significant hardship in their lives. It may also have the effect of stigmatising those particular communities even further – for example, Aboriginal communities will be further associated offending behaviour.

Research also indicates that victims of crime prefer a reintegrative approach when dealing with young offenders, even in sexual assault cases<sup>26</sup>. In participating in restorative justice models such as conferencing, Braithwaite and Mugford found that victims commonly stated that they did not want the offender punished, but for them to learn from their mistake and to get their life back in order<sup>27</sup>. This further supports an approach focused on rehabilitation and reintegration when dealing with young offenders.

### **Naming and the impact on youth service providers**

It is submitted that the naming of young offenders will negatively impact on youth service providers.

The issue of safety and security was raised by the Youth Accommodation Association:

“Safety and security within an under resourced SAAP sector is an ongoing serious issue for organisations, staff, and residents. If young people are named and are known to be residing within SAAP services, what impact would this have on possible recourse coming from community members?

The location of SAAP services are often very well known to the community. Some services already put a lot of resources into safety (even in some cases, employing security guards)”

The negative labelling of a young person could also extend to the youth service associated with that young person:

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<sup>24</sup> Clancey G; “*Preventing crime*”, (2006) *YAPRap*, Vol.16 No.2 Feb 2006, 15-18 at 16-17

<sup>25</sup> NSW Bureau of Crime Statistics and Research, “*Screening juvenile offenders for further assessment and intervention*” Crime and Justice Bulletin, Number 109, August 2007 at p5.

<sup>26</sup> Strange 2002; Daly 2006 as quoted in Chappell D; Lincoln R; “*Abandoning Identity Protection for Juvenile Offenders*”; March 2007 *Current Issues in Criminal Justice: Journal of the Institute of Criminology* Volume 18 Number 3: 481-487.

<sup>27</sup> Braithwaite J; Mugford S; “*Conditions of Successful Reintegration Ceremonies: Dealing with Juvenile Offenders*”; Spring 1994 *British Journal of Criminology* Vol 34 No 2; 139-171 at 144.

“If the media is able to link a young person with a particular organisation, that will also impact on how that youth service is viewed in the public and in the community. It may also have a further ramification on funding relationships for those organisations, which can ultimately impact on what type of service we can offer to young people.”

-Youth Worker

The NSW State Plan commits the government to reducing re-offending by improving the effectiveness of the criminal justice system and putting in place strategies that impact on the underlying causes of crime<sup>28</sup>. The naming of young offenders will significantly undermine this objective, as it does not address the structural causes behind juvenile offending. Neither does naming contribute in rehabilitating and reintegrating the young offender, rather it serves to isolate them by leaving them open to stigmatisation, thus increasing their chances of re-offending.

### **Benefit to the community?**

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It is our submission that there is no benefit to the community in the naming of a young offender. There has been a recent spate of media attention advocating for a hard-line ‘law and order’ platform which has been adopted by many politicians to justify more penal measures towards juvenile justice. This law and order approach resulted in the changes brought to current legislation in 2001<sup>29</sup> which now allow, in limited circumstances, publication of the names of the young offenders, thereby weakening the protections outlined by international conventions.

A major concern with the review of naming provisions in the legislation, is that if we remove the prohibition to publish the names of young offenders as it stands, it becomes a general removal – potentially all young offenders will be able to be identified, regardless of the seriousness of the offence. This would undermine the principle of proportionality and recognised international conventions that promote the well being of the young person and ensure that any reaction to juvenile offenders are in proportion to the circumstances of both the offenders and the offence.<sup>30</sup>

It is submitted that the public interest of knowing the identity of young offenders is adequately dealt with by the existing provisions within the legislation. This is even more the case when looking at recent court statistics, which show that of the 8,874 matters finalised in the Children’s Court in 2006, only 1.1% of those were sent to a higher court<sup>31</sup>. It is arguably this 1.1% that the public are most concerned about as

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<sup>28</sup> NSW Government, *The State Plan: Chapter 2 – Rights, Respect and Responsibilities* accessed at <http://www.nsw.gov.au/stateplan/>

<sup>29</sup> Specifically, section 4B and 4C of the *Children (Criminal Proceedings) Act 1987*.

<sup>30</sup> Rule 5.1 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”), G.A. res. 40/33, annex, 40 U.N. GAOR Supp. (no. 53) at 207, U.N. Doc. A/40/53 (1985)

<sup>31</sup> Bureau of Crime Statistics and Research, “NSW Criminal Courts Statistics 2006” at page 62 accessed at:

they represent the more serious end of offences committed by young offenders. Given that the legislation allows the court the discretion to authorise the publication of a young offender when convicted of serious children's indictable offences, any consideration to expand naming provisions would be unnecessarily punitive.

As noted by Chappell and Lincoln, while it is a fundamental principle of the rule of law that justice should be administered in an open and transparent way, exceptions to this principle can occur when public policy demands it, as in the case of children<sup>32</sup>. There is a clear public interest in the rehabilitation for young people and in ensuring that this is not compromised through the publication or broadcasting of information about criminal proceedings which involve their participation.

For this, and for many other reasons outlined in this submission, rehabilitation has been and should continue to be the major focus of juvenile justice. The policy objectives behind the prohibition of publicising a young offender's name remain valid. The prohibition facilitates rehabilitation of juvenile offenders by reducing the social stigma and community prejudice associated with youth crime. It further enhances the rehabilitation of the victim, through the preservation of his or her anonymity and aids the victim and the siblings of both the offender and victim to interact within the community.

This prohibition is made more relevant when viewed in line with the NSW State Plan which lists creating sustainable links with the community as its objective<sup>33</sup> and the NSW Youth Action Plan which aims to develop a family work model for young people with complex needs in the juvenile justice system<sup>34</sup>. Allowing the identity of a young offender to be publicised will undermine the ability to achieve these goals for the young offender, the victim and their families, if they are exposed to stigmatisation and labelling.

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[http://www.lawlink.nsw.gov.au/lawlink/bocsar/ll\\_bocsar.nsf/vwFiles/CCS06.pdf/\\$file/CCS06.pdf](http://www.lawlink.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/CCS06.pdf/$file/CCS06.pdf) on 7 December 2007

<sup>32</sup> Chappell D; Lincoln R; "Abandoning Identity Protection for Juvenile Offenders"; March 2007 *Current Issues in Criminal Justice: Journal of the Institute of Criminology* Volume 18 Number 3: 481-487 at 483

<sup>33</sup> NSW Government, *The State Plan: Chapter 2 – Rights, Respect and Responsibilities* accessed at <http://www.nsw.gov.au/stateplan/>

<sup>34</sup> See specifically Action point 38 of the NSW Youth Action Plan accessed at [http://www.youth.nsw.gov.au/minister\\_and\\_policy/youth\\_action\\_plan/youth\\_policy\\_strategy\\_3/feeling\\_and\\_being\\_safe](http://www.youth.nsw.gov.au/minister_and_policy/youth_action_plan/youth_policy_strategy_3/feeling_and_being_safe)



<b>The extent to which section 11 of the Act achieves these objectives</b>
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It is difficult to provide a comparative analysis on the extent to which the prohibitions on the publication of names of children objectives are met, given that every state and territory (save for the Northern Territory) contains this protection.

It is interesting to note that in the Northern Territory where the decision to authorise publication of young offenders name is discretionary, the following was highlighted by Thomas J in *MCT v McKinney*<sup>35</sup> at [22]:

“In our opinion it is proper to take into account in a case ... the age and relative immaturity of the offender, the offender’s prospects of rehabilitation and the likely impact which publicly identifying him or her as the offender will have on his or her psychological well-being and rehabilitation prospects; **whether or not** (emphasis added) the offender represents a danger to the community such that the community’s interests require that his or her identity becomes known (see *R v MJM & Ors* (2000) 24 SR (WA) 253); and any other relevant factors.”

When considering the question of whether naming and shaming is likely to achieve a better result in terms of deterrence, it would be wise to bear in mind the adage “if it isn’t broken, don’t fix it.” To move to a model of publicly shaming young offenders would contradict and undermine the principles of restorative justice, which have been working successfully in NSW since their introduction in the *Young Offenders Act (YOA)* in 1997. Since their introduction, the levels of court related appearances of young offenders have significantly declined<sup>36</sup>.

Rather than focus on ‘shaming’, the principles of restorative justice (through conferencing) provides a format in which both recidivism is reduced and offenders are reintegrated into a wider net of community ties and support, whilst at the same time giving victims a ‘voice’<sup>37</sup>. This form of ‘reintegrative shaming’ involves separating the identity of the young offender from the crime, whilst allowing a young offender to take responsibility for their actions in an environment that is non stigmatising and supportive.

Adopting such an approach is consistent with the principles of rehabilitation and reintegration which are not achieved through the more punitive measures of publication or broadcasting of a young offender’s name.

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<sup>35</sup> 2006] NTCA 10 (Unreported, Northern Territory Court of Appeal, Martin CJ, Mildren J, Thomas J, 20 October 2006)

<sup>36</sup> Referred to in Glancey G; “*Youth Crime in NSW – the real picture*”, (2005) YAPRap, Vol.15 No.11 Nov-Dec 2005, 14-17.

<sup>37</sup> Braithwaite J; Mugford S; “*Conditions of Successful Reintegration Ceremonies: Dealing with Juvenile Offenders*”; Spring 1994 *British Journal of Criminology* Vol 34 No 2; 139-171 at 139

<sup>38</sup> Glancey G; “*Youth Crime in NSW – the real picture*”, (2005) YAPRap, Vol.15 No.11 Nov-Dec 2005, 14-17.

**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 been charged;**
- b. Children, other than the accused, who are reasonably likely to be involved in proceedings; and/or**
- c. Any other circumstance**

The YJC maintains that the prohibition and broadcasting of names under section 11 of the CCP Act should cover young people who have been arrested, but who have not been charged. To do otherwise would be to directly contradict the principles underlying our system of criminal justice: the rule of law and the presumption of innocence. These principles represent the minimum elements for a fair and just trial and must be seen in conjunction with relevant international instruments that safeguard the rights of children throughout all stages of the criminal process<sup>39</sup>. This is particularly the case for a young person who would be associated with a crime that they may have had no involvement in, and where a court has not deemed them to have been responsible for.

Similarly, those children who are reasonably likely to be involved in proceedings should also be afforded the protection of not having their identities publicised. This would particularly be the case for those young people who would be called to give evidence or provide statements in future matters - protection of their identity is needed in order to safeguard against recourse from the perpetrators and the community.

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<sup>39</sup> Rule 7.1 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), G.A. res. 40/33, annex, 40 U.N. GAOR Supp. (no. 53) at 207, U.N. Doc. A/40/53 (1985)

## **Conclusion**

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The principles underlying our juvenile justice system are based on the well-respected notion that young people, because of their age and lack of experience are entitled to special protections. Publicly naming young offenders is inconsistent with the principles of rehabilitation, reintegration and the international right to have their privacy fully respected at all stages of criminal proceedings.

The public naming of young offenders does not have any deterrent value and by stigmatising a young person, may jeopardise their chances of re-employment and reintegration back into their communities. It is important to realise that the vast majority of young people in the juvenile justice system have experienced significant disadvantage in their lives such as child neglect and abuse.

The NSW government has made a commitment through the NSW State Plan to reduce re-offending, particularly in relation to juvenile offenders. Implicit in achieving this is upholding the principles of rehabilitation and reintegration - allowing the naming of young offenders will not achieve this objective. What needs to occur is a focus on early intervention to address the many complex factors that influence juvenile offending – to this end, a commitment from the government to inject additional funding to facilitate this is necessary to ensure that young offenders are rehabilitated and reintegrated into the community.