

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

**Name:** Mr Peter Breen

**Date received:** 18/12/2007

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14 December 2007

Ms Christine Robertson  
Committee Chairman  
Standing Committee on Law and Justice  
Legislative Council  
Parliament House  
SYDNEY NSW 2000

Dear Christine

Thank you for your letter dated 13 November 2007 and the opportunity to make a submission to the inquiry into the prohibition of the names of children involved in criminal proceedings.

You kindly forwarded with your letter copies of the terms of reference and section 11 of the Children (Criminal Proceedings) Act 1987. However, I note that section 11 was amended by the Children (Criminal Proceedings) Amendment (Publication of Names) Act 2007 to provide for the publication and broadcasting of names of children who were adults in 2001 and whose names were previously published.

My position is that privacy laws are inadequate in Australia, and while I support freedom of speech and the important safeguards of a free press, the pendulum appears to have swung in favour of the principle 'publish and be damned' to the detriment of all citizens, including children. Ironically for the press, the courts recognise the deficiencies in our privacy laws, which make defamation laws in Australia much more restrictive of free speech than other common law countries.

Publishers appear to have no clear or uniform understanding of the operation of laws to protect the publication of the names and images of children. For example, on 17 May 2007, the *Daily Telegraph* published an article titled 'Why we can't tell you the full story' which was a story about a new appeal granted to a woman who murdered four children. To publish the woman's name, the newspaper said, would be a breach of section 11 of the Children (Criminal Proceedings) Act 1987. Other newspapers

found no difficulty in telling their readers that the name of the woman was Kathleen Folbigg who was convicted in 2003 of killing her four children.

To provide another example, on 19 July 2006, the *Daily Telegraph* published a front page story in bold headlines 'THROW THE BOOK AT HIM' accusing me of breaching section 11 of the Children (Criminal Proceedings) Act 1987 for using the names of the juveniles convicted of crimes against Janine Balding in 1988 contrary to the provisions of the 2001 amendments to the Act. And yet the *Daily Telegraph* had published the names on at least seven occasions since 2001.

A story on the front page of today's *The Australian* gives wide publicity to the identity of the ten-year-old child who was gang raped at the Aboriginal community of Aurukun on Cape York. A photograph of the child and her father gives lip service to the need to protect their identities with blacked-out sections of their eyes and nose. But blind Freddy would be able to recognise the pair from the sections of their faces not blacked out and the photograph illustrates better than any words the contempt for the privacy of children shown by the print media in Australia.

The ban on publishing the names and photographs of juveniles is for their own protection when, hopefully, they become adults and leave their criminal ways behind them. It also protects surviving family members of a deceased child. In my opinion, the ban should be extended to include children who are accused of civil wrongs, such as the child 'Timothy' who was identified by the *Daily Telegraph* on 19 May 2007 as a bully in civil proceedings for compensation of his victim.

On this occasion the newspaper may have been acting within the letter of section 11 of the Children (Criminal Proceedings) Act 1987 because the legislation applies to criminal and not civil proceedings. But it seems to me the spirit of the law has been breached, and the *Daily Telegraph* appears to have little regard for the consequences to the child and his family of such appalling negative publicity. It is not difficult to imagine the bad behaviour the publicity might cause.

For the record, it is morally wrong to publish the photograph of a child who is accused of bullying at a time when he was too young to form the criminal intent to commit a crime. As an adult on the straight and narrow, Timothy will be mortified to find his childhood photograph on the front page of the newspaper, even if during a weak moment, his parents or guardians gave their consent.

Please call me if you need further information. Copies of the newspaper articles referred to in this submission are attached for ease of reference.

Yours sincerely



PETER BREEN

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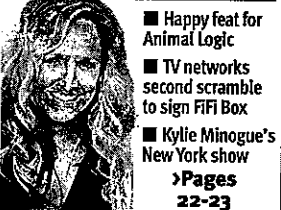
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Daily Telegraph Sunday Telegraph

# Children's killer can now appeal

By LISA DAVIES Court Reporter

A WOMAN has been granted a rare second chance to face a jury after a court yesterday declared her case was still alive.

A legal provision brought in since her trial now prevents *The Daily Telegraph* from detailing her name and her crime.

All this newspaper can say is that the 38-year-old was convicted in 2003 of killing four children in the Hunter Valley.

She had previously exhausted all avenues of appeal.

A Supreme Court jury found her guilty of murdering three children, aged 8 months, 10 months and 19 months.

She was also convicted of the manslaughter of another child, aged just 19 days.

Originally sentenced to a maximum 40 years jail, the woman has since had it reduced to a minimum 25 years — an extra five years to be spent on parole upon her release.

In a surprise move last year, the Court of Criminal Appeal was asked to decide whether the case could be reopened amid revelations a juror may have carried out internet research during the trial.

In an apparent juror "irregularity", the court heard the case went before a Sheriff's Office investigation before being forwarded to the Supreme Court.

An email had been sent to a member

## Why we can't tell you the full story

THERE is a reason why *The Daily Telegraph* can not publish the identity of this woman — the law.

The NSW Government enacted legislation in 2004 preventing the publication of anything which could lead to the identification of children connected to criminal proceedings in this state.

The ban under section 11 of the Children (Criminal Proceedings) Act 1987 extends to victims, their siblings,

and witnesses. It even includes those victims who are deceased.

The law is also retrospective — meaning it even stretches to include old cases already familiar to the public.

The media cannot identify the victims of abhorrent and notorious crimes such as the abduction and murder of a nine-year-old Sydney schoolgirl in the 1980s — and would even have been prevented from publicising the Lindy Chamberlain case if it had been in NSW.

of her legal team advising of this development on the day she lost the appeal, the court heard.

"The allegation was that a member of the jury may have researched the appellant's personal and family history on the internet during the course of the trial," Justice Peter McClellan said yesterday.

The woman's barrister Bret Walker SC said this was contrary to the trial judge's "warnings and admonitions" and meant his client had been denied a fair trial by an impartial jury.

Juries in any criminal proceedings are firmly warned not to carry out any investigations of their own and only to judge the case on the evidence pre-

sented to the court. Justice McClellan, along with Justices Carolyn Simpson and Virginia Bell, ruled the CCA did have jurisdiction to reopen the appeal and ordered the issues be fully fleshed out at a substantive hearing.

The woman, who was on bail throughout her trial, remains in custody and did not face court yesterday.

Outside the court her lawyer Peter Krisenthal said he would deliver his client the news in person and predicted she would be "very happy" with the development.

The matter was adjourned to May 31 to decide issues for argument and set a hearing date.



Era of openness... Michael Coutts-Trotter meets Sydney Secondary College students yesterday. Picture: KRISTI MILLER

## Education chief's personal touch

By BRUCE McDUGALL

NEW education chief Michael Coutts-Trotter has become the public schools' champion by inviting every teacher in the state to discuss their concerns personally with him.

Mr Coutts-Trotter, appointed to the \$387,000-a-year director-general job just four weeks ago, is working on his replies to 80,000 emails he sent to teachers in 2240 schools across NSW.

The extraordinary move has so impressed one teacher that he has asked the director-general to lunch with him in the city. Students, too, are having their letters answered in personal terms by Mr Coutts-Trotter who intercepted one bureaucratic response — to a request for more resources — and put his own touch to it.

His appointment last month was plagued by controversy because the position was not advertised.

But by yesterday as he turned student for a day at Sydney Secondary College's Blackwattle Bay campus in Glebe, he was rapidly winning over the critics.

College principal Doreen Wilson said schools were looking forward to a new era for the Government education system. "Everything has been so guarded in the past... this [personal involvement] has never happened before," she said.

Mr Coutts-Trotter, who is visiting five schools a week on a whirlwind tour of duty, said feedback so far showed teachers wanted to know who was leading them and what priorities he was setting.

"They want someone to take an interest, whose name is known in the staff rooms, who will promote public education and be an advocate."

Assiduously taking notes wherever he went yesterday, the DG read passages from a play in an English Extension class and mixed with student leaders during a coffee break.

He promised more information, previously kept secret by schools, would be released. "We are looking at what more we can do, rather than media organisations [and individuals] seeking it under Freedom of Information."

Prime Minister John Howard's office yesterday confirmed private schools as well as public schools would be required to release more data under the next Commonwealth-State funding agreement from 2009.

## Police join video check

POLICE are investigating the leaking of a CCTV video of an allegedly drunken Hawkesbury councillor to a Sydney radio program.

The footage of Deputy Mayor Sonia Phillips apparently stumbling during a late-night Christmas party was given to 2GB morning host Ray Hadley, who described its contents to his listeners.

Hadley has been engaged in a long-running feud with Ms Phillips, dating back to when she was mayor in 2004, when she reportedly spread incorrect rumours about the broadcaster and one of his children.

Council acting general manager Ray Fabril is understood to have told councillors on Tuesday night that police had been called in to investigate the leaked footage.

## Consumer happiness is limited

WE'VE never felt better about the economy, but we're not giving the Government credit for it.

The monthly Westpac/Melbourne Institute consumer sentiment survey released yesterday jumped 7.5 per cent in May to its highest level since the survey began in January 1975.

Westpac attributes the sharp rise to a positive reaction to the Budget, low unemployment and the likelihood that interest rates are going to remain unchanged for the rest of the year.

This is despite polls showing no post-Budget jump in popularity for the Howard Government.

The latest Newspoll survey, taken last weekend after the Budget, showed Labor's two-party preferred support — based on flows at the last election — rose from 57 per cent to 59 per cent with the Coalition down two to 41 per cent.

However, the Westpac survey shows Treasurer Peter Costello's Budget lifted the spirits of the Government's backers.

It found sentiment among Coalition voters soared 10.1 per cent, with Labor supporters happy with a rise of 4.9 per cent.

Mr Costello said his job was to keep people at work, pay off debt and make sure the budget was balanced.

## Democrats back AWAs

AUSTRALIAN Democrats are siding with the Government against Labor's bid to eliminate individual work contracts.

Party leader Lyn Allison yesterday said they would not join Labor's campaign against Australian Workplace Agreements.

"We disagree with Labor in terms of wiping out altogether individual agreements like AWAs," Senator Allison said.

"It makes no sense to ban these contracts as they are one of a suite of options central to a modern flexible economy."

The four Democrats would vote with the Coalition in the Senate to keep the AWAs, meaning Kevin Rudd — who he elected PM — would have to wait for the arrival of a new Senate in July 2008 before being able to push reforms through.

# THE Daily Telegraph

\$1 Inc. GST CF

Wednesday, July 19, 2006



## IDOL ROMANCE

Paulini's perils  
with league star **P3**



## INSIDE THE NEIGHBOURS HIT FACTORY

se / en days LIFTOUT INSIDE

## Disgraced MP under inquiry for naming killer

# THROW THE BOOK AT HIM

By JANET FIFE-YEOMANS

**DISGRACED** newly-independent MP Peter Breen is under investigation and risking criminal charges over his sick book, in which he said he loved two of Janine Balding's killers.

Mr Breen was dramatically forced to quit the ALP yesterday after *The Daily Telegraph* revealed the shocking contents of his book and Premier Morris iemma asked the Attorney-General's office to step in.

He also refused a request from the ALP to apologise to Ms Balding's family.

The Crown-Solicitor's office is now in-

vestigating whether Mr Breen broke the law by naming two of Ms Balding's attackers, who were juveniles at the time of her murder in 1988.

In his book on the case, Mr Breen names one of the convicted murderers, B, and also W, who was convicted of abducting and raping Ms Balding.

Publishing the identity of juveniles — even when they are adults — carries a maximum penalty of 12 months' jail and a \$5500 fine.

Mr Breen had earlier told *The Daily Telegraph* he had advice from the

Continued Page 2



Pens are as mighty as a missile ... Israeli girls write messages on artillery shells bound for southern Lebanon yesterday.

Picture: AFP

## Middle East Crisis

# What hope for peace in a hell like this

By LUKE McILVEEN

WITH their hair in pigtails and bracelets on their wrists, they could be ordinary girls doodling away with marker pens.

But instead they are scrawling inflammatory messages on deadly missiles to be fired over the border into Lebanon.

These Israeli girls have grown up in a region accustomed to violence — and there seems little hope that the next generation will embrace peace.

As more bombs rained across the Middle East yesterday, the list of casualties grew to more than 200.

Four more buses carrying 100 Australians were trying to reach the Syrian border last night, while a charter ship capable of holding 600 was expected to begin ferrying Australians to Cyprus today.

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**DEADLY WAVE** TSUNAMI WARNING WAS NOT PASSED ON P14,15



# THE

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# Police claim abuse cover-up

## Child Safety workers 'gagged by ministers'

Tony Koch

QUEENSLAND government ministers ordered Department of Child Safety workers not to tell police about hundreds of cases of suspected child abuse and neglect on Cape York following a row over the gang rape of a 10-year-old girl at the Aboriginal community of Aurukun.

The explosive claim is contained in a record of interview by investigators with a senior child protection specialist police officer, which was obtained by *The Australian* yesterday.

An investigative review team — led by the state's Crime and Misconduct Commission — was tasked with determining why the department took the 10-year-old girl from a safe foster home in Cairns and returned her to the Aurukun community, where she was subsequently gang-raped in May last year, and then failed to promptly alert police of the crime.

The review team heard that hundreds of reports of children being sexually abused and neglected in Cape York communities last year were kept from police by Child Safety officers, who had been directed not to pass the reports to police or even talk to them.

According to the team's 400-page report, Detective Sergeant David Har-



### INSIDE

- ☒ The Aurukun nine — the gang who raped the 10-year-old girl
- ☒ The day "a little girl had the light turned off on her life"
- ☒ World aghast at "appalling" Aurukun case
- ☒ Inside Aurukun — a community that struggles with the ugly side of indigenous life

Full reports  
Editorial

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a Territory-style intervention. Sergeant Harold also revealed he and other police had insisted that social workers at Aurukun fly the 10-year-old girl to Cairns on June 8 and June 9 last year after she told medical examiners that she had been raped by many men and had contracted gonorrhoea.

However, two Child Safety officers did not agree, saying arrangements had been made for the child to spend the weekend with family members on an outstation.

The girl did not go to the outstation and on that weekend was raped again in Aurukun by a 15-year-old youth

## Indigenous issues up for COAG

Matthew Franklin  
Sarah Elks

KEVIN Rudd will consider placing indigenous affairs on the agenda for next week's Council of Australian Governments meeting as the nation's Labor administrations struggle to determine the appropriate response to violence and social dysfunction in Aboriginal communities.

Speaking in Bali, the Prime Minister reiterated that the commonwealth would not extend the Northern Territory intervention to Queensland until it had at least assessed the effectiveness of the action.

But he agreed to consider Queensland Premier Anna Bligh's call for a proper COAG discussion.

Mr Rudd said while he was outraged by the Aurukun gang-rape case, and how it was initially handled by the Queensland authorities, the state Government had responded appropriately by ordering an appeal of the non-custodial sentences given to the nine offenders and a broader review of sex abuse cases on Cape York.

"The first responsibility we have in relation to this appalling and horrific

## Barrier Reef's future clouded

Greg Roberts

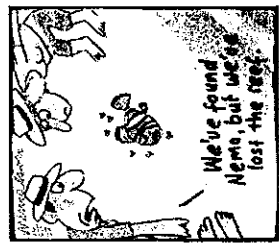
IT is probably too late to save the Great Barrier Reef and other coral reefs from global warming.

Even if governments implement far-reaching measures to cut greenhouse gas emissions, they will not prevent the annihilation of coral reefs around the world.

These are the conclusions of analysis by leading marine scientists to be published today in the prestigious journal *Science*.

"There is a terrible future in front of us for the reefs," said Canada-based United Nations University professor Peter Sale, one of 17 authors from seven nations of the *Science* paper.

On Wednesday, Kevin Rudd



# The Saturday Daily Telegraph

May 19, 2007

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**SAINTS  
WIN AT  
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SPORT



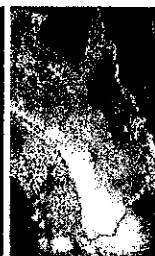
## CHUCK IT IN, EDDIE

Why Nine chief  
called it quits >p4-5



## LIFE OF ERICA

From Gunnedah to  
the high life Inside edition



## HEAVEN HELPS US

Where the  
rain fell >p3

## Forgotten victim of landmark court battle



The accused bully ... Timothy, aged seven, when the bullying happened

# OUR SON IS NOT A \$1 MILL BULLY

### EXCLUSIVE

By NEIL KEENE

THE family of a boy accused of being the chief offender in a landmark bullying case has questioned the sense of the victim's \$1 million payout.

The parents of Timothy told *The Saturday Daily Telegraph* yesterday their son had been portrayed as an evil bully who tormented

Benjamin Cox, despite the fact he was aged only seven when the events took place.

Timothy, solely blamed for the bullying, had himself been tormented by other students and suffered learning disabilities.

"The first thing we really knew about it was when the principal called up three years later and told us they (Mr Cox's family) were going for victims of crime compensation," Timothy's mother Cheryl said.

"Then, when Timothy was in Year 10, we had

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