

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

Organisation: Law Society of NSW
Name: Mr Hugh Macken
Position: Senior Vice-President
Telephone: 02 9926 0333
Date received: 17/12/2007



**The Law Society
of New South Wales**

170 Phillip Street, Sydney NSW 2000
Australia; DX 362 Sydney
Tel (02) 9926 0333 Fax (02) 9231 5809
ACN 000 000 699 ABN 98 696 304 966
www.lawsociety.com.au

Our Ref: RBGMM1274226

Direct Line: 9926 0200

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

Dear Ms Robertson, *Christine,*

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

Thank you for the opportunity to provide comment to the Inquiry into the prohibition on the publication of names of children involved in criminal proceedings.

The Law Society's Criminal Law Committee (Committee) has had the opportunity to review the submissions made by the Youth Justice Coalition and Shopfront Youth Legal Centre and fully endorses the contents of those submissions.

The Inquiry's terms of reference seek comments on the extent to which the policy objectives of protecting young people from the stigma of being associated with a crime, for both victim and the offender, and allowing reintegration into the community with a view to full rehabilitation remain valid. The Committee is of the view that the policy objectives remain valid. The Committee strongly supports the retention of the current legislative provisions and the extension of the protection afforded by section 11 of the *Children (Criminal Proceedings) Act 1987*.

Under section 11 the name of a person involved in any criminal proceedings that occurred when the person was a child (under the age of 18) must not be published or broadcast. The prohibition applies even if the person is no longer a child or is deceased at the time of publication or broadcast.

It is important to note that a Court has the discretion to name juvenile offenders convicted of a serious children's indictable offence. The prosecution can apply to the sentencing



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an order authorising the publication or broadcast of the person's name if the conviction is for a serious children's indictable offence (s 11(4B) *Children (Criminal Proceedings) Act 1987*). The Court must be satisfied that it is in the interests of justice to do so, and that the prejudice arising from the publication or broadcast does not outweigh those interests. Expanding the current provision to offences other than serious children's indictable offences is unnecessary and would have a detrimental impact on a young person's prospect of rehabilitation and reintegration into the community.

In accordance with NSW legislation and international obligations, emphasis should be placed on rehabilitation and privacy for young people involved in the juvenile justice system. In NSW the principle of rehabilitation is reflected in the *Children (Criminal Proceedings) Act 1987*. A court exercising criminal jurisdiction in respect to children must have regard to the principle that children who commit offences bear responsibility for their actions, but because of their state of dependency and immaturity, require guidance and assistance (section 6(b) *Children (Criminal Proceedings) Act 1987*). A further principle that the court must have regard to is that it is desirable, wherever possible, to allow the education or employment of a child to proceed without interruption (section 6(c) *Children (Criminal Proceedings) Act 1987*).

Prohibiting the publication of a young offender's name is also consistent with Australia's international obligations. Article 40(2)(b)(vii) of the 1990 *United Nations Convention on the Rights of the Child*, to which Australia is a party, states that a child's privacy should be fully protected at all stages of the criminal process.

Publication of a young offender's name can jeopardise their prospects of rehabilitation and act as a further obstacle to employment and integration into the community and is contrary to the public interest.

The Committee is of the view that identifying a young offender is ineffective in deterring a young person from re-offending. The Committee concurs with the arguments against 'naming and shaming' young offenders detailed in the Youth Justice Coalition and Shopfront Youth Legal Centre's submissions at pp 8-10 and pp 4-6 respectively.

The terms of reference also seek comments on 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; and
- (b) children other than the accused, who are reasonably likely to be involved in proceedings.

The Committee supports the extension of the protection of s11 to children who have been arrested but not yet charged. However, the Committee suggests that this protection be expanded to include children who are suspects, since matters can be investigated and criminal proceedings commenced without an arrest occurring. The Committee also supports the further extension of s11 to include children, other than the accused, who are reasonably likely to be involved in proceedings.

The Committee looks forward to the release of the Standing Committee on Law and Justice's report on this important matter.

Yours sincerely,



Hugh Macken