Submission No 4

INQUIRY INTO IDENTITY PROTECTIONS FOR PROCEEDINGS INVOLVING CHILDREN

Organisation: Office of the Director of Public Prosecutions NSW

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ODPP
New South Wales

Director's Chambers

28 November 2025

Honourable Robert Borsak MLC
Chair – Portfolio Committee No. 5
Justice and Communities

By email

Dear Chair,

Thank you for the opportunity to provide a submission to the Portfolio Committee – Justice and Communities on the Inquiry into identity protection for proceedings involving children. We note that the terms of reference require the Committee to inquire into the existing identity protections, and reporting mechanisms and sanctions, for matters proceeding before Children's Court or proceedings conducted pursuant to the *Children (Criminal Proceedings) Act 1987*.

The Office of the Director of Public Prosecutions ('ODPP') prosecutes serious criminal offences committed in NSW. This includes the prosecution of children for all child sexual offences, all serious children's indictable offences,[1] and other serious offences where the Children's Court forms the view that the matter is unable to be disposed of summarily.[2] The ODPP also conducts appellate proceedings concerning offences committed by children.

Depending on the nature of the charge or charges, proceedings against children may be heard in the Children's Court, the District Court or the Supreme Court. An analysis of our statistics over the past five years indicates that the ODPP registers approximately 420 matters which originate in the Children's Court each year. Our submission is informed by our operational experience in prosecuting these matters.

Existing identity protection for young persons appearing the Children's Court or proceedings conducted pursuant to the Children (Criminal Proceedings) Act 1987

The principal legislative provisions that currently operate to protect the identity of an accused person who is a child in relation to criminal proceedings are found in Part 2 Division 3A of the *Children (Criminal Proceedings) Act 1987*. The principal operative provision is s 15A, which provides a general prohibition on the publication of a child's name, or information that identifies or is likely to lead to the identification of the child, in a way that connects the child with criminal proceedings. This applies to accused persons who are children, as well as witnesses, victims and their siblings and people who are otherwise mentioned or involved in the proceedings. Section 15A is subject to a number of statutory exceptions. A breach of s 15A is a criminal offence, punishable by a maximum penalty of a fine of $55,000 (corporation)

[1] As defined in *Children (Criminal Proceedings) Act 1987*, s 3.
[2] *Children (Criminal Proceedings) Act 1987*, s 31.

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and/or imprisonment for 12 months, or a fine of $5,500 and/or imprisonment for 12 months in any other case.

In addition to s 15A, section 10 of the *Children (Criminal Proceedings) Act 1987* provides for the exclusion of the general public from criminal proceedings involving children, subject to the discretion of the Court. Section 10(1)(b) provides that, unless the court directs otherwise, representatives of the media are permitted to remain in court for the purpose of reporting on the proceedings.

Other provisions which may be relevant to the terms of reference are:

(i) Section 578A of the *Crimes Act 1900*, which prohibits the publication of any matter identifying or tending to identify the complainant in prescribed sexual offences. This may indirectly prohibit the publication of the identity of the accused (for example where there is a familial relationship between the accused and the complainant). The maximum penalty under s 578A is a fine of $55,000 (corporation), or a fine of $5,500 and/or imprisonment for 12 months in any other case.

(ii) Section 18 of the *Child Protection (Offenders Prohibition Orders) 2004*, which prohibits the publication of the identity, or information that may identify a young person that is subject to a child protection prohibition order or contact prohibition order made under that Act. The maximum penalty under s 18 is a fine of $11,000 and/or imprisonment 2 years.

(iii) Section 65 of the *Young Offenders Act 1997*, which prohibits the publication and broadcasting of names of children dealt with under that Act. The maximum penalty under s 65 is a fine of $55,000 (corporation) and/or imprisonment for 12 months, or a fine of $5,500 and/or imprisonment for 12 months in any other case.

The ODPP considers that the current protections and penalties are adequate and are generally operating as intended.

We do however note the following. In 2022, the NSW Law Reform Commission, in a report examining the judicial system and principles of open justice, made a recommendation concerning use of uniform terminology in the prohibition on publishing the identity of a child involved in criminal proceedings (Recommendation 9.1).[3] The Committee may wish to consider this recommendation as part of its inquiry.

Reporting mechanisms and sanctions for breaches of identity protections, including any examples where these provisions have been engaged

The ODPP is generally not involved in the reporting of, or proceedings relating to, breaches of the above provisions. The ODPP is not aware of any examples where enforcement action has been taken.

Thank you for considering our submission. For any further information or to discuss these submissions please contact Anne Whitehead

Yours faithfully

Sally Dowling SC
Director of Public Prosecutions

[3] New South Wales Law Reform Commission, *Open Justice: Court and tribunal information: access, disclosure and publication*, Report 149, (2022) pp 251-276.