Submission No 7

INQUIRY INTO IDENTITY PROTECTIONS FOR PROCEEDINGS INVOLVING CHILDREN

Organisation: Legal Aid New South Wales

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Director Committees
Parliament of New South Wales

By email: portfoliocommittee5@parliament.nsw.gov.au

Dear Ms Thompson

RE: Inquiry into identity protections for proceedings involving children

Thank you for the opportunity to provide a submission to the NSW Legislative Council's Portfolio Committee No. 5 – Justice and Communities on the Inquiry into identity protections for proceedings involving children.

Legal Aid NSW notes the existing identity protections provided to young people involved in criminal proceedings under section 15A of the *Children (Criminal Proceedings) Act 1987* (NSW) ('**the CCPA**') and sections 65 and 66 of the *Young Offenders Act 1997* (NSW) ('**the YOA**'). Whilst acknowledging the protections provided by those sections of the Acts, it is our position that there are some improvements which could be made to the provisions to provide a more appropriate regime which adequately addresses the various issues which arise in these contexts.

The majority of identity disclosure issues our staff observe arise out of indirect or secondary identity information being broadcast or published, typically by media outlets and often involving the use of social media. The most common examples of these disclosures involve social media posts which include information capable of being used by community members to engage in 'jigsaw identification' – where the identity of the child is 'put together'. This is especially concerning in a social media context where often the identity of the child and/or their family is disclosed in comments or shared online elsewhere. Typically, these will be in the comments of posts made by popular media outlets and may include videos or photos which identify the young person's home or other specific information pertaining to the child.

Whilst acknowledging that there are significant complexities in protecting the identity of children involved in legal proceedings, there are a number of changes to the legislative regime which may assist in strengthening the protection of children in these contexts. A major issue is the use of the word "names" in the legislation. Both sections 15A of the CCPA and 65 of the YOA prohibit the use of the names of a child involved in

proceedings, but then later go on to expand the definition of name to include a reference to any information, picture or other material that identifies or likely to lead to the identification of the child. We would suggest a broader term such as 'identity information', or alternatively elevating the definition so it is clearer. In the experience of our staff, media outlets often misunderstand their obligations and, whilst not publishing the actual name of a child, they will publish or broadcast other information which is likely to lead to their identity. Much of this may be avoided if the intention of the legislation is clarified.

Furthermore, greater protection would be afforded if the protections were extended not only to children involved in proceedings but also any investigations. It is not uncommon for these incidents of identity disclosure to occur whilst authorities are still carrying out enquiries in relation to incidents and, as such, no protection is afforded to the child until proceedings commence. This is often too late as the child has already faced the impact of their identity being disclosed – and may continue to be affected irrespective of how authorities proceed. In these cases, protections not being extended to children implicated in investigations often undermines the intentions of the legislative regime, thereby making it much less effective.

Anecdotally, we have received multiple reports of identity disclosures from NSW Police themselves. Staff have reported instances of photographs and screenshots from CCTV footage which included children who were of interest to police being posted on NSW Police social media pages, sometimes including details of alleged offences. These posts have in turn attracted comments from members of the community which have identified the children by name and/or made disparaging comments about the child and their families.

Similarly, there were allegations raised by the media[1] and in NSW Budget Estimates[2] with respect to the leak of confidential material related to proceedings an Aboriginal child to 2GB by prosecuting authorities. Other examples include circumstances where the person responsible for the disclosure of the child's identity has been a complainant, a prosecution witness or a relative of the complainant or prosecution witness.

These examples are all recent and serve to illustrate that there may be some utility in bestowing the power to enforce these protections upon another agency (for example, the Office of the Children's Guardian). This is due to the potential conflicts of interest and responsibilities which may arise in this context. A different agency being responsible may ensure greater compliance with and appropriate enforcement of the legislative

[1] Ellie Dudley, 'Did NSW DPP Sally Dowling know of leak? Staff won't say', *The Australian* (Sydney, 26 March 2025).
[2] NSW. *Budget Estimates*. Portfolio Committee No. 5 – Justice and Communities. 28 February 2025 https://www.parliament.nsw.gov.au/lcdocs/transcripts/3451/Transcript%20-%20CORRECTED%20-%20PC5%20-%20Budget%20Estimates%202024-2025%20%E2%80%93%2028%20February%202025.pdf.

protections available for children involved in proceedings. It may also lend itself to improved engagement with both the broader community as well as companies responsible for the dissemination of information on the Internet (e.g. social media platforms) to better understand the protections afforded to children involved in proceedings and increase the prospects of compliance.

The disclosures we are aware of have had significant implications for the child and/or their family. The disclosures can result in significant shame, embarrassment and hurt for the child and their family. Further, they can impact on the capacity for the child to safely attend and engage in school and employment, both strong protective factors which improve the safety and wellbeing of the child and the community. Similarly, disclosures of identity can negatively impact on the child's prospects for rehabilitation and further entrench stigma against the child. For these reasons it is important to ensure there are robust and adequate protections for the identities of children involved in proceedings.

It is also acknowledged that in some circumstances, a child may wish to consent to the disclosure of their involvement with proceedings. Similarly, there may be other circumstances where the disclosure is appropriate and sought after (for example, where a child has died and a family seek to disclose the child's identity). For those reasons, we support the current exceptions provided for by sections 15D and 15E of the CCPA. We do, however, acknowledge that the recommendations of the NSW Law Reform Commission[3] with respect to these provisions and suggest that incorporating those recommendations (namely Recommendations 9.5[4] and 9.7[5]) would strengthen the statutory regime.

Thank you again for the opportunity to provide this submission.

[3] NSW Law Reform Commission, *Open Justice: court and tribunal information – access, disclosure and publication (Report 149)* (May 2022).
[4] Ibid, p. 265-266.
[5] Ibid, p. 268.