REPORT OF PROCEEDINGS BEFORE

STANDING COMMITTEE ON LAW AND JUSTICE

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

At Sydney on Monday 18 February 2008

The Committee met at 9.30 a.m.

PRESENT

The Hon. C. M. Robertson (Chair)

The Hon. J. G. Ajaka
The Hon. D. J. Clarke
The Hon. G. J. Donnelly
Ms S. P. Hale

PENELOPE MARY MUSGRAVE, Director, Criminal Law Review Division, New South Wales Attorney General's Department, Goodsell Building, 8-12 Chifley Square, Sydney, and

MEGAN JANE WILSON, Executive Director, Conduct, Policy and Government Relations, Department of Juvenile Justice, Level 24, 477 Pitt Street, Sydney, affirmed and examined:

PETER JAMES MUIR, Deputy Director General (Operations), Department of Juvenile Justice, Level 24, 477 Pitt Street, Sydney, sworn and examined:

CHAIR: Good morning everyone, and welcome to the public hearing of the Standing Committee on Law and Justice inquiry into the prohibition on the publication of the names of children involved in criminal proceedings. Today we will be hearing evidence from representatives of the New South Wales Attorney General's Department, Department of Juvenile Justice, the Office of the Chief Magistrate, the Legal Aid Commission, the Public Defender's Office and the Director of Public Prosecutions. We will also be hearing from representatives of the New South Wales Commission for Children and Young People, the Federation of Parents and Citizens Associations of New South Wales and the Homicide Survivors Support After Murder Group.

Before we commence I would like to make some comments about aspects of the hearing. The Committee has previously resolved to authorise the media to broadcast sound and video excerpts of its public proceedings. Copies of the guidelines governing broadcast of the proceedings are available from the table by the door. In accordance with the guidelines, members of the Committee and witnesses may be filmed or recorded. However, people in the public gallery should not be the primary focus of any filming or photographs. In reporting the proceedings of this Committee the media must take responsibility for what they publish or what interpretation is placed on anything that is said before the Committee.

As to the delivery of messages and documents tendered by the Committee, witnesses, members and their staff are advised that any messages should be delivered through the attendants or the Committee clerks. I also advise that under the standing orders of the Legislative Council any documents presented to the Committee that have not yet been tabled in Parliament may not, except with the permission of the Committee, be disclosed or published by any member of such Committee or by any other person. Committee hearings are not intended to provide a forum for people to make adverse reflections upon others. The protection afforded to Committee witnesses under parliamentary privilege should not be abused during these hearings. I therefore request that witnesses avoid the mention of other individuals unless it is absolutely necessary to address the terms of reference. Could everyone please turn off their mobile phones for the duration of the hearing, including mobile phones on silent as they still interfere with Hansard's recording of the proceedings?

I welcome our first witnesses. Thank you for coming in. I realise it is an incredible impost on your working lives to deal with these committees, but the entire Committee perceives this as a very important policy issue. We have heard a great deal about this issue in Parliament so I am very pleased that you have taken the time to come today. Is each of you conversant with the terms of reference of this inquiry?

Ms MUSGRAVE: Yes.

Ms WILSON: Yes.

Mr MUIR: Yes.

CHAIR: Thank you. If at any stage you believe certain evidence you wish to give or documents you wish to tender should be heard or seen only by the Committee please indicate that fact and the Committee will consider your request. However, you must recognise that the Committee may then decide to make that information public at a later time. I will start by asking a few questions and then each Committee member will ask questions of you. This Committee does not necessarily time questions; we try to share the time equitably among Committee members. Do any or all of you wish to make an opening statement?

Mr MUIR: No.

Ms MUSGRAVE: No.

Ms WILSON: No.

CHAIR: Thank you. The terms of reference of the inquiry mentions several policy objectives for section 11 of the Children (Criminal Proceedings) Act 1987. How were these policy objectives arrived at and where are they presented?

Ms MUSGRAVE: The policy objectives that are in the terms of reference were drafted by the Legislation, Policy and Criminal Law Review Division of the New South Wales Attorney General's Department in consultation with the Attorney's office. They were incorporated into the terms of reference simply to give a flavour of some of the policy considerations behind the development and revision of section 11 of the Act. They were not intended to be an exhaustive list and are not expanded in either legislation or in any public document.

CHAIR: I ask that question because we did quite an extensive search to find background policy to the bill. So that is very good to hear. Relaxing the prohibition on naming children involved in criminal proceedings may breach international instruments to which Australia is a party. What are the consequences of New South Wales not conforming to an international agreement entered into by the Commonwealth?

Ms MUSGRAVE: It is arguable that relaxing the prohibition on naming children could be contrary to the provisions of the United Nations Convention on the Rights of the Child as interpreted by the standard minimum rules for the administration of juvenile justice. They are referred to as the Beijing rules. Specifically, rule eight states that no information that may lead to the identification of a juvenile offender should be published. Those Beijing rules are recommendatory and they are not binding per se. Although they are not binding the rules do, however, articulate internationally accepted minimum standards and they are used as an important reference point in the development of policies of reform and harmonisation. The treaties do not have a direct effect on domestic Australian law. A treaty must be implemented by legislation before it becomes legally binding. Therefore, the fact that Australia is a party to international

instruments does not prevent the Parliament of New South Wales from enacting legislation that might conflict with those instruments. As Australia has ratified but not implemented the relevant instruments, New South Wales is free to pass laws that arguably may not conform with these international instruments.

Having said that, however, Australia as a whole is bound by these treaties and international law. Australia can be held responsible for breaches of these covenants by the Parliament of New South Wales because New South Wales is a territorial unit of Australia. Failure by a country to comply may, for example, attract criticism from the United Nations Human Rights Committee. I have available to me some authorities on those international points of law that can be provided separately to the Committee should that be required.

CHAIR: We should deal with that point now. That information would be very useful. Would you mind taking that question on notice?

Ms MUSGRAVE: Certainly.

CHAIR: In relation to questions on notice, the Committee has resolved that answers be provided in 21 days. Time extensions will be granted if required. Can you please explain the significance and impact of the 2004 and 2007 changes to the Children (Criminal Proceedings) Act 1987?

Ms MUSGRAVE: The legislation was amended in 2004 to specifically extend to children who are deceased and to the siblings of child victims. The aim of the amendment was to minimise the trauma to the family of the deceased. The impetus for the amendment was the case of SLD. That case involved the murder of a three-year-old child by SLD, who was himself a child and then aged 13 years and 10 months at the time of the murder. On 14 June 2002 a media organisation made a Supreme Court application for orders permitting the publication of the name of the deceased child. They argued that section 11 did not preclude such publication or broadcast when the child to whom the proceeding related was deceased. The Crown argued to the contrary in that matter and asserted that the Act provided protection to deceased child victims under sections 11 1(a) and 1(b).

For the purposes of the application, the victim's grandfather had sworn an affidavit that detailed the effect publication would have upon his family. In the affidavit he described the impact the death had had upon the family, their need to move to another community to help the victim's young siblings, who were still receiving counselling and could no longer stand the attention they were receiving, that their surname was relatively unique and was therefore a readily recognisable link to the family and, finally, that the publication of the victim's name would undoubtedly set back the recovery of her siblings. Ultimately the court determined that it was not necessary to rule on that issue. The Director of Public Prosecutions requested that the legislation be amended to specifically indicate that the protection offered by the section extended to victims who were children and deceased. In a direct response to the representations a decision was made to revise section 11 so that the legislative intent was clear. A second reading speech for the bill indicated that the amendment was designed to cover situations where the victim of the offence was a deceased child and extend that protection to include the siblings of child victims, including deceased child victims.

The next set of amendments in 2007 aims to allow family members, other than the defendant, of deceased children to waive the right to non-publication and clarified that the intention of the section was not to include matters that had not been protected historically. I will take you to the first amendment, which was the naming of deceased children. That first proposed amendment related to the 2004 amendment that I have just spoken about. Those amendments prevented the naming of deceased children and the 2004 prohibition extended to all deceased children, regardless of whether a parent or guardian consented to that child's name being published. This issue was referred to the Victims Advisory Board for comment. The board included representatives of victims of crime. The board supported an amendment to the Act to allow a family member of the deceased child to waive the right to non-publication.

The amendment provided that the senior next of kin, normally the parents of a deceased child except one who had been charged with an offence regarding the child, may waive the prohibition on publication. If the parents of the child are dead, cannot be found or for some other reason cannot exercise their parental responsibilities regarding the child, the child's guardian may waive the prohibition on publication. The amendment was designed to give a sense of empowerment to the victim's family, who can make a decision about whether they wish the names of their child to be released to the media. It is important, however, to allow for differences of opinion as to whether it is appropriate for those details to be released. For instance, there may be cultural or other differences between the parents. Where the senior next of kin are unable to agree whether the prohibition on publication should be waived the prohibition will remain in place. Legislative guidance concerning where there is a dispute between the parties can be found in other legislation, such as the Human Tissues Act 1983, which deals with the question of organ donation from a deceased child.

The second part of the amendments under the 2007 amendment relate to the retrospective application. It arose from a high-profile case that concerned an offender who was a juvenile at the time or when convicted of a murder but is now an adult, that is, Bronson Blessington. That offender recently argued in the Court of Criminal Appeal that he should be entitled to seek a re-determination of his life sentence. However, the Court of Criminal Appeal refused his application.

In July 2006, prior to the Court of Criminal Appeal judgment, a book was published about the murder, and the offender was named openly throughout that book. Section 11 (1) prohibits the publication of the name of any juvenile. But when it was initially enacted in 1987 the section was ambiguous and it was interpreted as protecting children only up to the point when they became adults, after which point they could be named. This meant that the offender in question, and others, could be publicly named upon reaching adulthood. The offender in question was publicly named for some time and was well known.

In 2001 the Attorney introduced an amendment to section 11 clarifying that the protection continued even when the child became an adult. As there were no transitional provisions attached to this amendment, it was ambiguous as to whether the amendments were intended to have any retrospective effect. The amendment meant, however, that the name of the offender could not lawfully be published despite it having been in the public domain for about nine years. The Crown Solicitor considered the issue as to whether section 11 had been violated through the recent publishing of the name of the offender in the specific situation I referred to.

On 21 September 2006 the Crown Solicitor advised that section 11, and in particular the prohibition upon naming a juvenile, applies to all proceedings, whether heard before or after the amendments made in 2001. He also advised that in his opinion section 11 permits selective consent by the juvenile. The operation of the section as it stood before the 2007 amendments could have had the unintended effect of prohibiting the publication of the names of children such as Ebony Simpson and Samantha Knight.

While there are sound policy reasons behind the protective provisions of section 11, the result that the names of historical child victims and offenders which have already been extensively published would arguably have been subject to suppression is nonsensical. The amendment to the section makes it clear that there is no breach for subsequently publishing the names of children who are the subject of criminal proceedings where those names have already been published lawfully prior to the 2001 amendment.

The amendment with respect to retrospective naming does not seem to have caused any undue difficulties; it simply clarified what was historically an ambiguous area. The amendments concerning the naming of deceased children have certainly had an impact; a number of recent cases have utilised this new provision. For example, the death of the child Dean Shillingsworth has been reported widely, with his name and his picture being disseminated. However, Anne Coffey gave the *Daily Telegraph* permission to print Dean Shillingsworth's name and photographs in a full three-page article that was published in October 2007. As Dean's guardian, Ms Coffey was entitled to give permission to the *Daily Telegraph* to publish the child's details under section 4D of the Act.

The Hon. DAVID CLARKE: Ms Musgrave, it has been indicated that relaxing the prohibition on naming children in criminal proceedings may breach the Convention on the Rights of the Child. Are there any other covenants, conventions or treaties that may be breached apart from that convention?

Ms MUSGRAVE: If I could take that question on notice. We will be supplying the authorities in relation to that international question and I could include any other covenants in that material.

The Hon. DAVID CLARKE: You are also going to present us with the legal advice you have at the moment on whether we would be breaching the Convention on the Rights of the Child?

Ms MUSGRAVE: The material referred to are authorities for the legal international principles about the obligations of Australia and New South Wales. They are reported decisions on those issues, and that is what I am able to provide. The Attorney General's Department does not have specific advice on that issue.

The Hon. DAVID CLARKE: Do they lean on one way or the other, or are they split down the middle?

Ms MUSGRAVE: It is probably best if I take that question on notice. It really goes to the levels of obligation between the State and Australia, who is a party to the international covenant, and how they act on each other.

The Hon. DAVID CLARKE: Who determines whether we are in breach or not?

Ms MUSGRAVE: There is legal authority on what might be a breach. It is probably best if I take the question on notice, because there are different levels of breach and, as I indicated, it could expose Australia to the criticism of the United Nations.

The Hon. DAVID CLARKE: When you say the criticism of the United Nations, are you talking about the Human Rights Committee, or are you talking about the Security Council of the General Assembly?

Ms MUSGRAVE: I have a specific reference, if I could take you back to that. It would be the United Nations Human Rights Committee.

The Hon. DAVID CLARKE: If it is found that we are in breach of the Convention on the Rights of the Child, if we did bring in legislation on this issue, as far as you are aware one consequence is that we could be criticised by the Human Rights Committee of the United Nations?

Ms MUSGRAVE: It is a possibility.

The Hon. DAVID CLARKE: Do you have a list of who the members of the Human Rights Committee of the United Nations at the moment?

Ms MUSGRAVE: I do not have that with me, but again I can take that question on notice.

The Hon. DAVID CLARKE: Could you take that on notice and give us that information?

Ms MUSGRAVE: Yes.

The Hon. DAVID CLARKE: Juveniles are treated differently from adults in our criminal justice system, in part in recognition of the fact that they have not yet developed many of the abilities they will develop in adulthood. What are some of those abilities and how are they relevant to offending and reoffending?

Mr MUIR: The treatment of juveniles in the criminal justice system differs from that of adults, significantly. Emotional and behavioural characteristics of young people warrant a different approach to those in the 10 to 17-year age group. Ongoing national and international research has found that brain formation and maturity is not reached until the ages of approximately 21 to 25. The frontal lobe, which controls impulse behaviour, does not fully mature until at least 17 years of age. Some of this research is still being carried out in New South Wales. Recently our department was addressed by Professor Ian Hickey of the Brain and Mind Institute, who certainly confirmed his own understanding that this research is accurate. This research has extended into a debate on the culpability of juveniles and whether their brains are as capable of impulse control, decision making and reasoning as the adult brain.

Brain researchers are more often answering the question with a resounding no. Harvard Medical School notes that teams have difficulty assessing future consequences of their behaviour due to the lack of experiences and challenges in mentally processing those experiences. Recent findings are leading experts to conclude that capabilities relevant to criminal responsibility are still developing at the ages of 16 and 17. This is certainly not to say that such brain development issues provide an excuse for a young person's violent or criminal behaviour. However, they are an important factor for courts to consider when wielding punishment, and they are important in the debate as to their vulnerability and therefore the protections extended to them by the current legislation.

The Hon. DAVID CLARKE: Is the suggestion from that that juveniles between the ages of 16 and 17 may not have the same capacity in certain situations compared with those, for instance, over the age of 21?

Mr MUIR: The research is certainly saying that the development is ongoing, up to as late as 25. Obviously different levels of experience and maturation happen for different young people. The research is telling us that certainly frontal lobe development is not complete usually at least until 17, but quite often the full brain maturation has not completed in some young adults until the age of 25.

The Hon. DAVID CLARKE: Has your department considered the relevance of that fact in relation to other legislation that may come your way—for instance, the age of consent?

Mr MUIR: They are not things with which our department has any statutory responsibility.

The Hon. DAVID CLARKE: Has your department considered this question, of there not being full development of the frontal lobe, in regard to any other issues?

Mr MUIR: Our programming certainly takes into account, in our intervention with juvenile offenders, the sorts of things that the research is telling us, which is that when we are looking to provide interventions to juvenile offenders that address their offending behaviour, one of the factors we have to take into account is what is called their learning style. We are looking at how we communicate with juvenile offenders. That would work relevant to age, culture, and things like that.

We take this research into account basically in our programming and the way we communicate with young people. Obviously, the way we would communicate with a 12 or 13-year-old offender would be very different to how we would communicate with an 18-year-old. One of the challenges of working with juvenile offenders is the very broad range of maturity in our client group. Whereas adult offenders are—I would not say they are more homogenous, but certainly in that regard they are more homogenous. Juveniles have a very broad range in their ability to assimilate and process information.

The Hon. DAVID CLARKE: Can you supply the Committee with the research you do have?

Mr MUIR: Yes, we would be happy to.

The Hon. DAVID CLARKE: Does the research show any difference between male and female as far as maturity levels are concerned?

Mr MUIR: I would have to take that on notice. We will look at that and answer your question.

The Hon. JOHN AJAKA: Can naming juvenile offenders lead to a reduction in deviant behaviour as some form of deterring such behaviour and repeat behaviour?

Mr MUIR: I would probably like to answer that question more from my experience. I have worked with offending adolescents for around 30 years. I think the answer to that is that, in short, integrating a young person back into their community is really what rehabilitation is all about.

Deterrence would largely only have effect with offenders who already have a connection to the community. Therefore, by definition, they are already the offenders most likely not to reoffend. The ones that have the least connection to a community, the most serious offenders, would probably not be affected in terms of a deterrence. But I will move through a few more things.

When we are looking at working with young people in this regard we are looking at three things in our departmental service: a restorative justice process, through our youth justice conferencing; addressing the factors that increase their risk of reoffending; and strengthening the capacity of the community to meet the identified support needs of those young people. We do that either by partnerships with community agencies or by funding other services directly to meet those needs. If I can get back to your question. You are asking whether or not there would be a deterrence?

The Hon. JOHN AJAKA: From my personal experience, the general consensus in the young community is that if they commit an offence, they are under 18 years of age, they will not be named, and therefore they can remain behind the cloak, so to speak, and that seems to possibly keep the stigma away from the community as a whole. If the young community as a whole knew that if they committed any offence they will be named and it will be out in the open, does that create some form of deterrence, which the community is demanding that some action be taken?

Mr MUIR: I get back to my former question to the honourable member. The short answer is that young people do not think that far ahead. The vast majority of juvenile offending is what we call opportunistic, and very little offending is preplanned. The vast bulk of young people who offend only ever do so once. Some self-report studies of juvenile offending indicated that very high numbers of adolescents will break the law at some time during their adolescence.

The bulk of those will do so only once or twice and never do it again. A smaller group who will come to the notice of police can be effectively dealt with through the provisions of the Young Offenders Act. That then leads us to a very small group, and I think the figure is only about 15 per cent, of all juvenile offenders who come before the attention of the court. The reality is that the bulk of serious repeat crime is committed by a very small group and it is a very small group at the sharp end that we would consider the most serious repeat offenders who really do pose the greatest danger to the community. So the danger is having a one-size-fits-all approach because there are many

young people for whom (a) this would not act as a deterrent because they simply do not think about it and (b) their prospects are such that they are not going to reoffend anyway. So the vast bulk of young people who have some sort of commitment to the mainstream values, laws and mores of our community, once they are caught the act of being caught is a sufficient deterrent to them. For those who go on, my view would be that the act of naming would no more be a deterrent to that group.

The Hon. JOHN AJAKA: You do not consider, for example, that if over a period of time there was the naming of children and the media that would follow that the young community as a whole seeing this may then feel that if they commit an offence they will be named next and that it would be some form of a deterrent for them?

Mr MUIR: Again, I can only say that I do not think young people think in those terms and because of the nature of adolescence very few stop to think about it. Again, they are mainly in groups. The vast bulk of juvenile offenders are in groups when they offend and, as I said, it is both opportunistic and peer driven. Again, taking apart the different groups, the vast bulk sit at the lower end.

The Hon. JOHN AJAKA: Following on your point about the groups, is there any nexus with or adverse effect from the labelling of any specific group that has an ongoing creation of a problem rather than solving the problem?

Mr MUIR: There are a couple of answers to that. The labelling theory has been something that has been around since probably the 1980s I can first recall reading about it. It holds that young people officially labelled as criminals tend to adopt a criminal identity from which they find it very difficult to subsequently escape. Research suggests that contrary to the assumption that stigmatising 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. Evidence has shown that a policy of naming and shaming can be counterproductive. Unresolved shaming without subsequent reintegration results in the rejection of expected community standards and, thereby, increases the likelihood of reoffending. Furthermore, there is little evidence that the type of shame brought about by being publicly named will have a deterrent effect. There is a danger that some young people, and these are the young people more at the difficult end of offending, may actually revel in the notoriety of being named.

Probably the only one other thing I would add to this is that some of this will have a differential effect around New South Wales. For example, in the Sydney metropolitan area where press space is at a premium, individual juvenile offenders are unlikely to see the impact of naming as much. Whereas young people in smaller rural communities and, I would argue, up to populations as large as Wollongong and Newcastle that have their own electronic and print media, certainly I think would be much more exposed to the consequences of this than the young people in Sydney. The smaller the community comes the greater the impact for young people.

The Hon. DAVID CLARKE: Are these suggestions part of a study?

Mr MUIR: No, this is my own view at the end in terms of the impact of rural. The study on labelling is quite clear that where some young people are labelled as

criminals they can actually assume that label and act out according to the label. As I said, some may even revel in the notoriety that comes with that.

The Hon. DAVID CLARKE: Could you make that study available to the Committee?

Mr MUIR: I certainly can.

The Hon. JOHN AJAKA: Is there an adverse effect within the young community when we move labelling to, for example, ethnic descriptors and start talking about crimes committed by those of Middle Eastern or Asian appearance and we move on to naming certain police squads such as the Middle East Crime Squad? How does that bear on the labelling within the community of any young offenders, continuing on what you were saying about notoriety and so on?

Mr MUIR: I do not have enough direct experience to comment on whether that labelling extends to groups. I really could not give you an answer on that, other than that young people, as I previously said, generally exist within groups. It is the nature of adolescence to exist within groups. That is their prime reference and as young people transition through adolescence very often those groups are a greater reference point for their behaviour and their values than even parental values and views during that period of adolescence.

The Hon. JOHN AJAKA: Just on your experience, are we creating a stigma within the community in relation to, for example, the Middle Eastern appearance? Are we creating a stigma amongst the youth in that regard? Ms Wilson or Ms Musgrave might also like to consider that question.

Mr MUIR: I really could not answer that with any degree of competence.

The Hon. JOHN AJAKA: Can you take it on notice and have it looked at by the three of you?

Ms WILSON: Yes, we can. The only other thing that I would add is that the stereotyping of groups is always a potential problem.

The Hon. JOHN AJAKA: And that stereotyping is a matter of concern in relation to with continual ethnic descriptors, such as Middle Eastern appearance or the Middle Eastern Crime Squad? I would be grateful if you would take that on notice.

The Hon. DAVID CLARKE: Are the comments you just made your personal view, Ms Wilson, or are they based on a study?

Ms WILSON: It is a personal view as well as a study of various media reports and the way in which particular communities, et cetera, are at times portrayed.

The Hon. DAVID CLARKE: Could you supply copies of those reports to this Committee?

Ms WILSON: No doubt. Over what period of time?

Ms SYLVIA HALE: Mr Muir, you said that the majority of young people tend to break the law only once or twice. Were you referring to adolescents as a whole? Do you say it is very typical adolescent behaviour to break the law but only a minute proportion are ever brought before the justice system?

Mr MUIR: "Adolescence" by definition is a time of challenging boundaries and authority and young people are creating their own sense of self and identity. I would be struggling and I might get a question on notice about this, but I recall seeing some time ago self report studies that show that the percentage of adolescents in general who break the law vary markedly from 50 per cent to 90 per cent. There are some studies which say that at least a significant proportion of all adolescents test societal boundaries but the vast majority do not go on to become repeat offenders. My point was that the group that becomes repeat offenders are a very small group of all adolescents.

Ms SYLVIA HALE: Do they go on to become repeated offenders because they are caught? Does the very act of being caught further encourage their behaviour or does being caught tend to have a rehabilitative effect?

Mr MUIR: With the vast majority of adolescents across certainly New South Wales, being caught and then going through the different processes that are available under the Young Offenders Act is a very powerful thing because the majority of adolescents have some connection to the mainstream values of our society. There is a very small group, however, who do go on to become repeat offenders. We have done a fair bit of work and there has been a lot of work done internationally on what constitutes that group. Our own two studies that have been done in New South Wales show, for example, that around 90 per cent had left school before year 9 and about 80 per cent had been excluded from school in the six months prior to coming into contact with the juvenile justice system. There are reasonably significant levels of intellectual disability amongst that group. Around 10 per cent of young people who are both in custody and in our community-based system have some level of intellectual disability.

We found that around 88 per cent of detainees had symptoms that were consistent with a clinical disorder and about 30 per cent of those had a severe clinical disorder. We found a very high proportion of young people using drugs. Around 90 per cent had been using cannabis and alcohol. I testified to a committee here last week in another matter. The evidence is clear that cannabis and alcohol are still the drugs of choice for the majority of adolescent offenders. That is not to say that other things like opiates are not used, but certainly cannabis and alcohol are still the majority. A large proportion of serious offenders have had very disrupted families with 28 per cent of males in custody and 39 per cent of females in custody having a history of care and protection with the Department of Community Services. The proportion of young people not living at home was 34 per cent for young men and 46 per cent for young women and there were 42 per cent of detainees having a history of parental imprisonment. So very high proportions have had either one or both parents in prison at some time.

There are a range of factors which are really predictive of who goes on to become a repeat offender and who does not. Those factors include things like education, as I have mentioned, criminal lifestyles and associates. I have already talked about the influence of peers. So if someone is with a largely offending group of peers, that is a very strong predictor of further offending. Also, alcohol and other drug issues,

accommodation problems, relationship problems, family dysfunction, mental health and intellectual disability, distorted irrational thinking patterns and pro-criminal attitudes. A lot of the more repeat offenders actually think it is okay. When you talk to them some of them actually do not see the real impact of their offending on real human beings. It is very abstract for them. For example, some when they steal a car think it is it is just a rich person who is insured. Our youth justice conferencing process, which brings offenders face to face with victims, very often that process is the first time an offender comes face-to-face with the consequences on the people they have hurt and have to face the people they have hurt. That is a very powerful process where young people then had to consider the real impact of their crimes.

The other one is a lack of structured leisure and recreational pursuits. So boredom is another one of those factors. Conversely, there are things that we call protective factors, which mitigate against further reoffending. They include the individual disposition and competencies of the person, their family environment and their external support systems. Again, young people that are well plugged into family, community and education are far less likely to go on reoffending than those that are disconnected from those things.

Probably the biggest predictor of future re-offending is past offences and education. The Bureau of Crime Statistics will publish a study shortly which looks at that in the very young age group.

CHAIR: To your mind, after listening to all the information that you have given us about repeat offenders, what effect would naming the offenders have on the work that your department does to rehabilitate these people?

Mr MUIR: Our view is that an open naming of juvenile offenders would impede that work.

CHAIR: How?

Mr MUIR: Your aim is to actually reconnect young people with their community. A government department such as ours is only involved in supervising offenders for the length of an order. The court gives us a mandate for a given period. From day one of our involvement with an offender our aim is to re-engage them with their community.

We are about to start a new program in western Sydney and Newcastle called the Intensive Supervision Program where we will be working intensively with families over a 24-hour seven-day period. The program, which is based on a program of multi-systemic therapy, is certainly the best-evaluated juvenile offending program in the world at the moment. The very basis of the program is for us to empower the family to deal with the young offender and make sure that there are sufficient linkages between the family and other community supports so when we, as a government agency, are no longer there the family and the community have the wherewithal to deal with the young person's behaviour. As a State agency we cannot be there 24 hours a day seven days a week; it has to be the family and the community that hold the key. If, for example, the young person—I made the reference before to rural communities—is known as an offender there is a chance that employers may not be as willing to give that young person employment. It may make the processes of engagement, education and training all that

much more difficult. Certainly it would affect the availability of positive peers. I know as a parent I would not necessarily want my children hanging around with criminal peers. If one of those offending factors is young people associating with criminal peers we have to find ways of engaging them with non-criminal peers and we do that through things like involvement with sporting groups, social clubs, church groups, and the like. Certainly a young person being branded as an offender from the beginning would impede that process.

Ms SYLVIA HALE: There are a number of arguments for naming and John Ajaka has mentioned the deterrence aspect. If you can reasonably and confidently predict the factors that are likely to give rise to juvenile offending, and you also know that juveniles act impulsively, it would seem to me in that context that deterrence is an irrelevant consideration? Is that taking it too far? I must say with deterrence I have never known anyone who sets out to commit a crime with the expectation that they are going to be caught. I have always been dubious about deterrence as an element?

Mr MUIR: Part of the nature of adolescence is that of invincibility. Many adolescents have a feeling of invincibility that they will not get caught and that, to be colloquial, is the nature of the beast. The young people for whom it would be a deterrent are the young people where I would argue the existing deterrents work. They are the vast bulk of young people who, as I have said, have a good connection to their society, community and family. Getting caught is a very significant deterrent.

Ms SYLVIA HALE: It is a sense of shame, is it?

Mr MUIR: Where we talk about shame, the sense of shame is only felt in reference to something. If someone does not have a connection to the community there will not be a sense of shame. I heard a very powerful example given by Mr Brendon Thomas, Assistant Director General, Attorney General's Department, about a man in the circle sentencing program who had literally been through court hundreds of times and who came to the circle where his own community told him what they thought about his offending behaviour. To paraphrase Mr Thomas, "I knew the police didn't like me. I knew you as the court didn't like me but this is the first time that it has registered that my own community does not approve of my behaviour." I cannot tell you where this man ended up because that was an example given by Mr Thomas some time ago but I know at the time it had a very significant impact on his behaviour. Similarly we find in our youth justice conferencing, and I alluded to it before, that shame is actually best felt in terms of a personal and private process. That is where it has its most impact. It is when individuals come face-to-face with the people they have hurt. Another example we used recently in one of our detention centres as part of our behaviour management regime, where we had a number of detainees with a very strong family connection and whose behaviour was totally unacceptable, we actually brought the families in to say to those young people that what they were doing was bringing shame on their families and was not acceptable. As part of the whole behaviour management strategy that was a very powerful part of our armoury for those young people to know that what they were doing was bringing shame to their families. It is important to note that the shame was in reference to their family.

Similarly in conferencing, with the lack of adolescents to think abstractly—they have to be concrete—when they come face-to-face with a victim of crime is when the impact hits them most. Very often that is the first time it registers that it is a real person

they have hurt and the consequences of what they have done hits them most powerfully. In our experience that is when shame is at its greatest.

Ms SYLVIA HALE: How widely is youth justice conferencing and circle sentencing practiced within juvenile justice? Is it a usual procedure in relation to most offenders?

Mr MUIR: I am not really competent to give you information on circle sentencing. That is something that works for adults, not juveniles. Within youth justice conferencing we undertake roundabout 1,400 conferences a year. To give you a reference point—I am taking these figures from memory—I think there are about 12,000 appearances before Children's courts each year and we conduct about 1,400 conferences. In reference to the whole pool of offenders, in terms of those dealt with under the Young Offenders Act, police warnings and cautions measure in the tens of thousands. In terms of the hierarchy of sentences available, the vast majority of juvenile offenders are actually dealt with by the police without ever coming to a court or a youth justice conference. The next biggest group are those who appear at court and then the smaller group of conferences. We certainly think there is room to do more of that.

Ms SYLVIA HALE: Is there any research available on the effects of naming offenders on siblings and the child's family?

Mr MUIR: We are not aware of any.

Ms SYLVIA HALE: I would assume they would suffer from the child offender's name being publicly known. There is no research on the impacts of that?

Mr MUIR: There is no clear research.

The Hon. GREG DONNELLY: My questions are from the questions on notice. Are we aware of any studies comparing crime recidivism rates between groups of juveniles who are named as offenders versus those who are not? That question is related to a couple of questions down. Can you tell us about other jurisdictions where the naming of children involved in criminal proceedings is used and how effective that approach is? We are looking at international experience and analysis of that to give us some insight into its value or otherwise.

Mr MUIR: We have not completed any analysis of re-offending rates and we are not aware of any research that has been done in that regard. In terms of international jurisdictions I can provide some general information. My colleague from the Attorney General's Department will provide a little more after I have given my answer. There are several international jurisdictions that name offenders but generally only in very limited and specific circumstances. The conditions under which offenders are named can include the seriousness of the offence, where the offender is at large or where it can be demonstrated that it is likely to aid the prevention of further offending. Some jurisdictions have a presumption in favour of naming; most have a presumption against naming. However, the individual circumstances of the matter are generally taken into account in determining whether a juvenile should be named or not. There are a small number of states within the United States of America that allow full identification of juvenile offenders regardless of the particular circumstances of the individual matter. Anecdotal evidence from many of those jurisdictions demonstrates that by their identity

being made public offenders can be stigmatised in their community, to the detriment of the offender and their family. Again we could not point to too much concrete evidence on that. In some cases there have been reports of vigilante attacks on young people as a result of them being named. As mentioned earlier, there is a danger that some people will revel in the notoriety by the naming. The only other one that I can give a concrete answer on is, I travelled to China last year as a member of a delegation from the Human Rights and Equal Opportunities Commission as part of a technical exchange on juvenile justice and I can confirm that China does not name juvenile offenders. They are afforded anonymity under the Chinese system. I know Mr Musgrave can give more concrete information on other jurisdictions.

Ms MUSGRAVE: I have material available in relation to Canada, New Zealand, the United Kingdom and the United States. Of those Canada, New Zealand and the United Kingdom have got a presumption against naming the child. The United States, as Mr Muir has noted, has a variation across the states. Would it assist the Committee if the material were reduced to writing and provided rather than going through the various jurisdictions?

The Hon. GREG DONNELLY: Yes, that would be helpful. Just to clarify, when we talk about juveniles are we talking less than 18 or 16 and less? From a definition point of view, does the terminology pretty consistently apply?

Ms MUSGRAVE: We have taken up to the age of 18 in terms of responding today as that is the application of Children (Criminal Proceedings) Act, section 11.

The Hon. GREG DONNELLY: Do jurisdictions overseas have a general—

Ms MUSGRAVE: Those details can be provided to you. Generally speaking my understanding it is up to the age of 18 years but that will be confirmed in a written response.

The Hon. GREG DONNELLY: On the issue of youth justice conferencing, has the department done any work in looking at its effectiveness in terms of reducing recidivism?

Mr MUIR: Youth justice conferencing has been reviewed by the Bureau of Crime Statistics and Research and the evaluation is publicly available.

I am cognisant of the time, so I will not take up too much of your time with it. The very short answer is that it found two things: first, as an absolute measurement of reoffending, that they reoffended at a lower rate than those who went to court, that is controlling for the same type of offences; and those who did reoffend took between 15 per cent to 28 per cent longer to commit an offence than those who were dealt with by the court. This lengthening of the interval between the reoffending has been found to be a promising gauge for the possibility of offending ceasing. The other notable thing—and there is some notable research and comments both in relation to victims in this and other research—is that not only are there very positive impacts for offenders, there are equally positive impacts for victims. If that is of interest, we could provide that.

The Hon. GREG DONNELLY: Yes, if you could. One more question; it is a rather abstract question, so I apologise for it, but it is really to gather a point of view.

You have obviously been dealing in the area for a long period of time dealing with young people and youth offending. Do you think that there are changes in the attitudes of young people about questions of right and wrong, questions of what should be done and should not be done with behaviour? Is that something that is changing over time? As I said, you have been involved in the area for 30 years, did you discern young people's attitudes are changing or have changed?

Mr MUIR: Attitudes is a very difficult one to gauge is probably the best way I can answer that. Are we seeing increasing complexity in this group at the high end? Yes. I can only say that this is a personal view. The nature of adolescents remains largely the same but there are some very significant challenges I think that are different now and they revolve around things like the use of drugs and the potency of some of those drugs. Certainly things like the cannabis that is available today is very different to when I started in the field. I think its impact on young people is very different. We see much higher levels of mental illness amongst the offending. If I could point to one area where I think there has been a demonstrable change in the sorts of things that we face, it would be that one. I know when I started in the field that to get a psychiatric diagnosis on somebody under the age of 18 years was impossible. We now have very high levels of diagnosable mental health problems amongst the group with which we deal. If there is probably one area that I could point to, it would be that one.

CHAIR: Our time has expired and we could sit here asking you questions all day. There are some questions on notice you have received that the Committee would very much appreciate you sending your answers back to us by 11 March. The Committee has reserved another half day in case when it receives your answers and completes examining things it might require more information from specific answers and we may need to ask you to come back. Thank you very much for your time.

(The witnesses withdrew)

NICHOLAS RICHARD COWDERY, AM, QC, Director of Public Prosecutions, New South Wales, affirmed and examined:

CHAIR: Mr Cowdery, I appreciate that with the nature of our Committee you appear before us fairly often; welcome, it is good to see you again. I do not believe I need to advise you of the rules of broadcasting and mobile telephones.

Mr COWDERY: No.

CHAIR: Would you like to make an opening statement?

Mr COWDERY: No thank you. There is a written submission that has been provided to the Committee and I endorse that.

CHAIR: The previous witnesses answered one of our questions that related to the significance and impact of the 2004 and 2007 changes to the Children (Criminal Proceedings) Act 1987, so we have the precise detail about what those changes indicated, but we would like very much to hear from you about the possible significance and impact of those changes?

Mr COWDERY: Because there is some technical information included in the answer to that question, I did actually have a written answer prepared, if it would be convenient to hand it up in that way and then I can just address the impact issues, which are included at the end of that.

CHAIR: Yes, that is excellent. Thank you for that.

Mr COWDERY: The 2004 amendment extended the class of persons whose identity is not to be broadcast or published to two categories: deceased child victims and child siblings of child victims. The impact of that provision was said at the time in the second reading speech, and I think has been in fact, to give parents and family members and those closely connected with the deceased victims and with child siblings of child victims a greater degree of protection from unwanted publicity. I think the provisions are effective in doing that and I think that that is a laudable object. Identification of individuals is one thing; identification of those closely associated with those individuals is another thing. I think that has to be given attention as well.

So far as the 2007 amendments are concerned, they were to alleviate the impact of the 2004 amendment to a large extent, and that is to provide a way whereby, notwithstanding the 2004 amendments, there could still be publication of the identification of children. It provides a mechanism that I think gives to parents or the senior available next of kin a more active role in decision making about whether or not publicity will attract to members of their family. One of the impacts, of course, is that if the media wants to take advantage of that amendment, it will have to carry out a lot more inquiries. It will need, first of all, to identify the senior available next of kin and then question that person to see whether or not the section can be complied with. So, it puts an additional onus on the media if it wants to report the identification of the persons involved. I do not think that is necessarily a bad thing; it may delay publication from time to time and the media may complain about that, but I think requiring more care to be taken before publicity is given to names and other identifying features of

children is probably a good thing in the public interest. The down side to that, of course, is that the senior available next of kin may not want to be hounded by the media. So, there is a disadvantage perhaps in some circumstances. But like most provisions, it is a question of striking a balance between the individual interests of all of those who may be caught up in the process and the public interest.

The Hon. GREG DONNELLY: Can you give an example where the prosecuting authority has made a submission to the court to publish a child's name and explain the reasons why?

Mr COWDERY: Yes. One case that certainly was very prominent in the community was the case of the Skaf brothers who were charged with sexual assault offences—what was described in the media as a series of gang rapes. Those offences took place in 2000 and 2001. There were a lot of proceedings through the criminal courts that did not end ultimately until 2005. At the sentencing of one of the matters the presiding judge named the juveniles involved except one who had an IQ level of mild mental retardation: the judge refrained from naming that one and stayed with the initials of that person. The Crown had made a submission to the court for the names to be published and there were a number of reasons in that case. One was that the conduct of these people, although they were juveniles, was what is referred to in the cases as grave adult behaviour. That has become a term of art to describe antisocial behaviour that might be expected of an adult and is not specific to the conduct of children. It was grave adult behaviour because it was extremely offensive behaviour with a high level of criminality. It was submitted that the interests of retribution and deterrence required or made it desirable that the names of those involved be publicised in this particular case. That was the first.

There was another reason and that was that there were some co-offenders who had not yet been identified and the police investigations, although they were continuing, had not been able to bring them to book. It was thought that if the names of the ones who had been caught were publicised, people closely associated with them might hear of things or remember things that might associate them with others who had taken part in these gang rapes. So it was a possible way of assisting the investigation.

Another reason was that these people had been described as Lebanese rapists and the like. The Lebanese community objected very strongly to that sort of description being applied because it carried over to people of Lebanese ethnic origin and background generally, and quite undeservedly. So, requests were made in different ways by members of the Lebanese community to name these people so the focus would be on them as individuals rather than on the community at large. That was a rather special circumstance in relation to this particular case. So, those were the reasons why the Crown submitted they should be named, and the trial judge ultimately did name them except for one who had a mental problem.

The Hon. GREG DONNELLY: Could you also explain to the Committee which government agencies are responsible for enforcing the provisions of section 11 and how is the enforcement carried out?

Mr COWDERY: There is no government agency and there are no government agencies specifically tasked with the responsibility of enforcing the provision. It falls into the category of a general restriction on conduct, notice of which should be brought

to the authorities by any appropriate means. In practice, breaches of the section come to my office's attention by a number of means. One is by the prosecutors involved in particular matters seeing or hearing the name of children in the matters in which they are involved. Another is that defence representatives hear or see of the same thing and refer the matters to us. The police might see or hear of that happening and refer it. The courts may see or hear of the publication and refer the matter—judges and magistrates do from time to time—and sometimes members of the families and people associated with those who have been named or identified refer the matter to us.

When these matters are referred to us we do not carry out investigations, as you probably know. So, we refer the matter to the police and request that they investigate formally the alleged breach of the section. The police then prepare a brief of evidence and send it to us and we make a decision as to what we do next. Assuming there has been a breach of the section, there are two courses that we take. One is to prosecute, and there have been some prosecutions. The other, which is more common, is to send a letter of warning to the media outlet involved, identifying a breach of the section, putting them on notice that future breaches may not be looked at in the same way, and asking that they make known to their staff the existence of the prohibition, the seriousness of it and the possible consequences if there are future breaches. We ask them always to acknowledge the letter and reply to us in terms of the action they are taking to bring the matter to the attention of their staff. That has worked very sensibly, I think, since about 1990 and is ongoing.

My impression, and I sign the letters, or I have since 1994, is that we would do that on average about twice a year. We always have the cooperation of the media outlet to whom we have sent them. We only do that in circumstances where there has been minimal, if any, harm caused by the publication. That is where it is more a technical breach of the section rather than an offence causing real damage to people. If it were in the latter category, then we would prosecute. As I said, enforcement is not in any particular agency or agencies' responsibility; it is a matter of gathering the information as it happens and then acting on it appropriately.

The Hon. DAVID CLARKE: How many people or organisations have been charged and/or convicted for breaching the provisions of the Act in relation to naming juveniles?

Mr COWDERY: There are three sets of prosecutions I have been able to identify when the questions were provided. That is since 1994. The first was a prosecution of John Mangos and 2KY Broadcasting. In 1995 both those identities were convicted of a number of breaches of section 11. The situation there was Mr Mangos ran a talkback program on 2KY over a period of about two hours and during that time a juvenile was named a number of times. The defence in that case sought a review in the Supreme Court alleging that the multiplicity of charges that had been put on was unfair, but in his judgment the Chief Justice determined that because this program went over a period of about two hours and there were a number of separate namings throughout that period, while it may not be appropriate to charge an offence for every single naming it was appropriate to charge offences at different points of time because people would tune in and turn off and some who heard an earlier reference would not hear a later one, and so on. So, the mischief would be repeated a number of times. There were fines imposed on Mr Mangos and 2KY. I do not presently know how much, but they were fined.

The second one was a prosecution of Channel 7 in 2005 the matter came for hearing in February 2006 but it was dismissed by a Local Court magistrate because the prosecution had failed to prove part of the technical brief that Channel 7 was the organisation that broadcast the matter. Some of these can be very technical prosecutions. For some reason one of the steps in the proof that Channel 7 was the organisation that broadcast it was not established. It is regrettable, but sometimes these things happen.

The third one was the case of Alan Jones, Harbour Radio Pty Ltd and Nationwide News Pty Ltd, which is fairly recent. It was held ultimately in relation to Mr Jones that whilst he had an honest belief that he was not breaking the prohibition on publication of the name of a juvenile, his belief was not reasonable. The situation there was the name had been published in the *Daily Telegraph* that morning. Mr Jones had read it there and had repeated the name in his radio program. Nevertheless, the court held that in the circumstances of that case it was a breach of section 11. In the Local Court, he was fined and put on a good behaviour bond. In the District Court the appeal was dismissed but I do not think the proceedings have been finalised as yet. So, they are the three matters we have been able to identify.

The Hon. DAVID CLARKE: What was the position with the *Daily Telegraph* in that third matter you raised?

Mr COWDERY: It was not prosecuted. I cannot presently tell you the reason for that but if I can take that on notice I can have a look at the file and see what happened in that.

The Hon. DAVID CLARKE: Thank you. Do you think there is a need to improve the proceedings currently in place for enforcing the provisions of section 11?

Mr COWDERY: I think that self-enforcement really is the answer: The proper education and reinforcement amongst the media outlets is the way to go. The alternative would probably be too cumbersome to work efficiently. You would have to have somebody monitoring all publications in the media—print, radio, television—all over the State to see whether or not there was a technical breach. Then there would have to be an investigation of the circumstances in every case. I do not think it would be practical really. I think with better education and periodic reinforcement with all media outlets, because staff come and go into these organisations and they have to be retrained, the present system is probably adequate.

The Hon. DAVID CLARKE: Since you became the director, has there been a decline in the publication of juvenile names in the media? Have you found that your practice of writing to these outlets and informing them of the position has been successful? Has there been a decline over this time?

Mr COWDERY: No. Over the 13-plus years I have been in the position I do not think it is right to say there has been a decline. I think there have been peaks that occurred for reasons that do not seem to have any logical basis. They come in flurries over the years. There might be in one year, say, five or six cases where there has been publication of the names of juveniles or their photographs walking with their parents, or something like that, or television footage of that. Then we might go for a year with

nothing and then there will be a couple more and then another peak, and so on. When I said about two a year, that is an average over the whole period. They tend to come in peaks and troughs.

The Hon. DAVID CLARKE: The fact that there has been no real decline, is that an indication that media outlets are not taking the law seriously, or is it just that there are too few instances to form a particular view on this?

Mr COWDERY: In our communications with the media outlets they appear to be taking it seriously and they do reinforce with their staff the need to observe the provision. I think the sample is probably a bit small to draw any conclusions of the type you suggest. My impression is that media outlets do their best to comply with the law but, as I said, staff come and go. A new reporter of a particular organisation may not have that particular prohibition at the forefront of his or her mind when doing a story, and accidents happen

The Hon. JOHN AJAKA: I want to go outside the questions on notice. If we group in various categories of what occurs from the initial interview with the police right up to sentencing, during the period of the interview is there a prohibition on naming of a child?

Mr COWDERY: No.

The Hon. JOHN AJAKA: So, really, a police officer could interview a child and that child's name could be released to the media at that stage?

Mr COWDERY: Yes, and, indeed, during the course of an investigation, not just in an interview.

The Hon. JOHN AJAKA: That was my next question—during the investigation there is no prohibition at that stage?

Mr COWDERY: No.

The Hon. JOHN AJAKA: If the child is arrested but not charged there is still no prohibition?

Mr COWDERY: That is correct. When you say there is no prohibition, one needs to keep in mind the general provisions about contempt of court and the prejudice to any later proceedings.

The Hon. JOHN AJAKA: I understand that, but comparing it specifically to section 11, it is only at the time that the child is charged that the prohibition from section 11 onwards commences, is that correct?

Mr COWDERY: Yes, when the proceedings have commenced. That might be with a court attendance notice from the police; it might be with a charge following arrest; and it might be an ex officio indictment when that is filed in court.

The Hon. JOHN AJAKA: Then, of course, we have the court hearing and the judgement, and the prohibition continues right up until sentencing. Do you think it is an

inconsistency that when a young person is being interviewed and an investigation is going on he can be named but if he is charged he can no longer be named? Do you find that inconsistent?

Mr COWDERY: Yes, I do. Strictly speaking, it is not in the area of the DPP's functions but as an individual, yes, I do find it inconsistent and I think the protection should be extended forward.

The Hon. JOHN AJAKA: For example, there could be a situation—I am not aware of any—where a young person has been with the police, has been interviewed, has been named once or twice, the investigation may go for a month and he has been named over and again, and all of a sudden he is charged and the prohibition starts, but the horse has already bolted.

Mr COWDERY: Yes, I agree with you. There is an example of that in a slightly different context. When the young boy was found in a suitcase in the dam in Sydney west he was named until such time as his mother was charged with an offence, and then the naming had to stop. I find that anomalous.

The Hon. JOHN AJAKA: As an extension of that, the prohibition applies to any child under the age of 18.

Mr COWDERY: Yes.

The Hon. JOHN AJAKA: Do you feel that there should be a different category for children aged 1 to 15 as opposed to children aged 16 to 18?

Mr COWDERY: No, I do not. I think that once the community has decided the age of adult responsibility is 18 it becomes very difficult and impracticable to divide up further the age brackets below 18. I am not psychologist but I understand that adolescent minds continue developing until an adult stage is reached, and that can be at different ages for different people.

The Hon. JOHN AJAKA: We heard earlier that some reports state that that occurs basically up to 21 or 25.

Mr COWDERY: Yes, but on other hand maybe a person at 15 or 16 has matured more quickly and developed those adult thinking processes. Once the community has set that level there should not be further tinkering below that level. I think all the rules should apply below 18.

The Hon. JOHN AJAKA: They should be the same.

Mr COWDERY: Yes.

The Hon. JOHN AJAKA: Having regard to maturity do you have any view about 18 or 21?

Mr COWDERY: I think for the same reason I would say that if you target 18 that is the time. As a practical matter I think it then becomes too difficult for people to identify and describe those shades of differences that might occur for individuals, both

before 18 and after 18. Having said that, the law makes provision for people between the age of 18 and 21 to be treated differently once convicted of criminal offences, and that is where they serve their time, whether it is an in an adult institution or a juvenile institution. But I think that is more of a pragmatic approach to things, and I think that is quite acceptable.

The Hon. JOHN AJAKA: You mentioned earlier one of the reasons that names were mentioned in the rape matters involving the Skaf brothers. There was an outcry—that is the word that was used—of submissions from various Lebanese groups and that was one of the matters taken into consideration. We heard earlier that the labelling of groups and communities could have an adverse effect on those communities. Do you have an opinion as to the labelling of offenders with Middle Eastern appearance—ethnic descriptors—or the title Middle East Crime Squad? What effect can this have on the young community, in particular, the Lebanese community or the Middle Eastern community?

Mr COWDERY: I have some sympathy with the police who are looking for some way of describing what it is that they are doing, and describing it in a way that will not offend, prejudice or stigmatise individuals, or groups of individuals. The way they choose their descriptors is something that I am not involved in, but they need to choose descriptions that ordinary members of the public will be able to recognise and respond to. I think that is where the problem comes in. When you talk about the Middle East that geographical area embraces a huge diversity of people, physical types, histories, philosophies, backgrounds, religions and everything.

So it is a pretty rough term. But, on the other hand, when it is used in the New South Wales community amongst the lay members of the public, it probably means a person of a particular appearance. For decades people from Lebanon and from a smaller number of countries in the Middle East have been coming to New South Wales, have settled here, and are more visible. I think it is a real dilemma and it is a matter of continuing to try to find relevant descriptors that will be useful to police carrying out their investigations.

The Hon. JOHN AJAKA: Are you aware that New South Wales is the only State that utilises ethic descriptors such as Middle Eastern appearance, whereas other States abandoned them long ago?

Mr COWDERY: No, I did not know that.

Ms SYLVIA HALE: I have been speaking to a former police officer who investigated numerous matters involving children as victims and offenders. I refer to his comment and would like to know whether it bears out your experience:

> I always felt comfortable with the legislative restrictions on naming children involved in criminal proceedings. While there are certain investigative processes that the police use to maintain links with both victims and offenders, any investigation relies on timely and accurate information. To ensure this is maintained I would use the cloak of confidentiality of the child as a method of building rapport and trust. I can recall several cases where corroboration of an allegation would not have been given if the child witness was not protected from public disclosure. There was always a positive flow-on effect to families and

> victims and the accused of the confidentiality afforded their children as they entered the harsh legal system.

Would that be your experience?

Mr COWDERY: I do not disagree with that. Of course, we take these matters after the investigation is concluded, but we see the results of the investigation and the way in which it has been carried out. Yes, in general terms I would agree that there is benefit in following those processes.

Ms SYLVIA HALE: Referring to what Mr Ajaka raised earlier, paragraph 8 of your submission states:

> The section does not apply until criminal proceedings are before the court. To ensure the principles referred to above and the policy of the legislation are maintained, it may be appropriate to consider extending the prohibition to children who have been arrested but not yet charged.

From your earlier comments do you believe that should be taken back even further to when children are simply being questioned rather than before they reach the stage of being arrested?

Mr COWDERY: Yes, I would take it back earlier to the point where an investigation is under way. So it does not even have to be the interview of the child. Where the investigation involves a child there should be a prohibition. I think in that paragraph of the submission we were addressing a particular term of reference or a suggestion that had been made. But in my view it would be preferable to take it back even further.

Ms SYLVIA HALE: What are the practicalities of that? Would it be feasible to take it back to an earlier stage of the process?

Mr COWDERY: I think so. At that stage in most cases the police are principally involved, or other agencies such as the Department of Community Services, or other agencies involved in child protection. I would have thought it would have been reasonably easy to control the extent to which there was publication of the identities of people.

Ms SYLVIA HALE: Ms Gail Hambly's submission No. 13 on behalf of the Australian Broadcasting Corporation, Commercial Radio Australia, Fairfax Media, FreeTV Australia, News Limited and SBS refers to the case of the child Shellay Ward, aged seven, who died on 3 November but her parents were not charged until Saturday 17 November. The submission states:

> Under s11, once the charges were laid and the proceedings therefore commenced, no further mention could be made of her name nr the names of her parents.

The submission goes on to state:

> This has the effect of again of denying the public essential details about the case.

Do you believe there is any public interest in the public knowing the details of that case, or even similar cases?

Mr COWDERY: I think it is important to draw a distinction between what is in the public interest and what is of public interest. No doubt details of that kind are of public interest but I dispute that their publication is in the public interest. I do not agree that it denies to the public essential details, essential information relating to particular events. It is possible to describe what has happened, to report on it and to comment on it without identifying the individual. It is only the identification of the individual by name or by other information that the prohibition extends to. So they can still publish their stories. It might involve a bit more work but they can still publish their stories in a way that brings essential information to the attention of the public, which is part of their role, but leaving out the detail of the identification—or so it seems to me.

CHAIR: The Media Council asked this question because I guess it is concerned about the term "senior member." I cannot remember the term, but a senior member was not available because the parents were charged. That amendment to the legislation has been presented in such a way to enable a senior member of the family to be present. Despite what you just said, would there be any point, or should the legislation be changed to enable a child's name to be identified, even without parental permission? Should the legislation be amended to enable someone else to give permission?

Mr COWDERY: If practical experience shows that the "senior available next of kin" is too difficult to identify, or it is too difficult to seek to obtain his or her permission, perhaps some other categories of persons could be brought in.

For example, perhaps it could be somebody having some official position in the community and not next of kin. I do not know. But I think any amendment to that should be based on practical experience, and the onus would be on those trying to establish that it was too difficult to carry it out. It gives power to the family—to people closely associated with the children. I think it is a very useful social development.

CHAIR: Thank you.

The Hon. JOHN AJAKA: If I understand correctly, one of the reasons that has been argued for not naming children is also the protection of their siblings—in particular younger siblings. But, for example, an older brother aged over 18 years of age is charged and named or if a young person's father or mother is charged with an offence they are named. There seems to be a fairly substantial inconsistency from my point of view. One of the reasons we do not name a young person is that it may have an adverse effect on their sibling, but the same rules do not apply to siblings aged over 18 years or a parent.

Mr COWDERY: That is true but I think one has to be pragmatic about these things. You have to draw the line somewhere, and it is a question of balancing what is seen to be right and also what is possible. To bring in a prohibition of the kind that is implicit in your question might be to unreasonably fetter the right of the public to know what is happening. The collateral damage—it is an awful expression—to the child may be a price that it is reasonable to pay in those particular circumstances. But where there are just children involved it is more easily achievable, I think.

The Hon. JOHN AJAKA: But it waters down the argument that one of the reasons is to protect younger siblings when in fact in the majority of cases that is not happening any way. It cannot be put in the same category as some of the other reasons that have been put forward.

Mr COWDERY: That may well be so but one has to consider all reasons, of course.

The Hon. JOHN AJAKA: Thank you. That is very valid.

CHAIR: Mr Cowdery, thank you for spending your time with the Committee again. Excuse my value judgment, but as usual your contribution has been very valuable.

Mr COWDERY: Thank you very much.

(The witness withdrew)

HELEN LORRAINE SYME, Deputy Chief Magistrate, Chief Magistrate's Office, Level 5, Downing Centre, 143 Liverpool Street, Sydney, affirmed and examined:

CHAIR: There are rules and regulations about Committee proceedings that relate to issues such as broadcasting and turning off mobile telephones. I will accept that you are comfortable with them without reading through them.

Ms SYME: Yes.

CHAIR: In what capacity are you appearing before the Committee? Are you appearing as an individual or as a representative of an organisation?

Ms SYME: I am representing the Local Courts and the Children's Court. The Senior Children's Magistrate, Scott Mitchell, is on leave at the moment. He prepared the submissions, and I am appearing in his stead.

CHAIR: Thank you. Are you conversant with the terms of reference of this inquiry?

Ms SYME: Yes, I am.

CHAIR: If you consider at any stage that certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee, please indicate that fact and the Committee will consider your request. If you take any questions on notice the Committee would appreciate receiving your answers by 11 March. Of course we will offer an extension if you should so require one. Thank you very much for your time, your submissions and the work that has gone into them. I will ask the first question and then other Committee members will ask questions. Do you wish to make an opening statement?

Ms SYME: No, thank you. Everything I needed to say is covered in the submissions of the Senior Children's Magistrate.

CHAIR: Can you please explain the significance and impact of the 2004 and 2007 changes to the Children (Criminal Proceedings) Act 1987?

Ms SYME: Only with difficulty, I must say. The changes in 2004 and 2007 I have had a look at. They appear to be, firstly, to protect the identity of children siblings of victims. I do not know the reason why those amendments were brought in. I can only speculate that it is in relation to, most importantly, siblings who have been victims of sex offences. The impact insofar as the Children's Court and the Local Court is concerned is, for reasons that will probably become clear, insignificant.

CHAIR: Thank you.

The Hon. DAVID CLARKE: What factors do magistrates and judges take into account when sentencing juveniles? What factor would the naming of the juvenile offender contribute to? Would naming a juvenile offender result in a compensatory reduction of other elements of the sentence?

Ms SYME: Thank you for giving me notice of these issues. There are three questions there, and I will try to answer them one at a time. The first factors that magistrates and judges take into account in sentencing juveniles start with section 3 of the Crimes (Sentencing Procedure) Act and section 22A of the Crimes (Sentencing Procedure) Act, which I am sure you are aware of but which I have with me. Section 3 of the Crimes (Sentencing Procedure) Act includes to ensure that the offender is adequately punished for the offence, to prevent crime by deterrence, to protect the community from the offender, to promote rehabilitation of the offender, to make the offender accountable for his or her actions, and to denounce the conduct of the offender to recognise the harm done to the victim and community. The courts take those matters into account in varying degrees depending on the nature and seriousness of the offence.

Section 22A of the Crimes (Sentencing Procedure) Act sets out a list of aggravating and mitigating circumstances that, depending on the circumstances of each offence and the circumstances of each offender, the court will take into account in varying ways. Of course the final section is section 6 of the children sentencing Act, which refers to the various things, which I am sure you are aware of, that the court has to take into account when sentencing juveniles in particular. But all of those criteria the court takes into account. There is no general way that I can say one criterion is more important than another criterion in a vacuum in a general sense. I know it sounds like a lawyer's answer, but it depends on the circumstances of each particular case of each particular defendant as to what feature might be more important than some other feature.

With respect to the naming of the offender, that is not something that the Local Courts and the Children's Court take into account in any sense at all. There are two reasons for that. Firstly, it is not a factor that is referred to in any of those sections that I have referred to so far and it is not something that frequently occurs in the Children's Court or the Local Court. The naming of children in criminal proceedings is something that is more relative under section 11 in relation to serious indictable children's offences. Those offences by and large are dealt with in the Supreme Court or District Court. They are certainly not dealt with in the Local Court and they are not dealt with in the Children's Court. They are offences of more seriousness that eventually section 11 comes into.

With respect to whether the naming of a juvenile offender would result in a compensatory reduction of other elements of the sentence, again it is an interesting question and a difficult one to answer because it is difficult to know what the consequence of naming would be at the time of sentence. My understanding is the argument in support of continuing this sort of prohibition is to stop future detriment to a particular child. It is very difficult to speculate in the sentencing process what the future detriment there may be to a child at the point of sentencing. The only issue that I can think of is if the naming of a child before sentence has resulted in some retribution by the community in some other form. That is something that, in theory, the court could certainly take into account. There are cases that confirm if there is some community punishment involved then the courts can take those matters into account. But I think that is a different issue.

I do not believe that the naming of a juvenile, because of all the complicated and complex factors that go up to sentencing a juvenile, would result in a compensatory

reduction in any form of sentence. At best or at worst it may result in some different way of supervision being provided for that juvenile. The other issue in relation to the naming of a juvenile and how it may affect sentencing may be in relation to how it may affect the availability or suitability of any supervision that may be appropriate. It may also affect the ability or responsibility of parents to involve themselves in a part of the supervision process. The Children's Court in the sentencing process, especially for the minor offenders that we deal with, relies quite heavily on the relationship between the court and other officers of the court and parents and guardians as either a support person or a person who is going to assist in that regard.

The Hon. DAVID CLARKE: What is the courts' view on the relationship between impulsivity and the deterrent effect of a sentence for juveniles?

Ms SYME: Turning first to impulsivity, it is my view that many crimes are committed on impulse or under the disinhibiting influence of substances, or both. Younger offenders, by reason of their lack of maturity, tend to commit offences impulsively either because of that lack of maturity, which is the lack of their ability to foresee the consequences of what they are doing for themselves personally or for the wider community, or the disinhibiting effects of substances.

Younger offenders are, almost by definition, risk takers—either again because of the effects of their immaturity or because of hormonal changes that are happening in their lives at that time. Therefore, for all those reasons, juvenile offenders and impulsivity tend to go together. Risk taking tends to equal impulsive behaviour.

In understanding the correlation between juvenile offending and impulsivity, it would seem to me that the issue of general deterrence is a less important criterion for sentencing. If we are dealing, as we frequently deal, with offences relating to impulsivity, I think as a general conclusion you can say that if the offence is committed as an offence of impulse, the issue of general and specific deterrence is something that is going to be less uppermost in your mind in how to deal with it.

The effect of deterrence in general has been the subject of a number of studies. There are a couple of relevant studies by BOCSCAR that I am aware of, which I have here it if you are interested. They are not particularly in relation to impulsivity and juvenile offenders, but they look at the offending rate of juveniles who are either charged or dealt with by way of cautions. It is a long study, and I will try not to summarise it. In general it says that young offenders who have committed offences and are dealt with by way of caution or conferencing are slightly less likely to reoffend within a five-year period than offenders who are charged in court. This is nothing to do with naming and shaming, but it is to do with the issue of general deterrence and whether going to court at all produces a deterrent effect. Studies show, apparently not.

The other study I have referred to is a discussion in the deterrent value of fines, which BOCSAR has done. Again it comes up with the conclusion that general deterrence is not a big issue in any sentencing area. There is no study, that I am aware of, that deals with the issue of general deterrence and juvenile offending. That would be my personal view after having spent some time sentencing juveniles.

The Hon. DAVID CLARKE: Could you provide the Committee with copies of the two studies you have referred to?

Ms SYME: I can do that now.

CHAIR: Recognizing that it is difficult for you to give such an opinion, I would like to ask you what was your impression of the recent episode in Victoria in which a named young person obtained hero status following the naming.

Ms SYME: I have to say, I did not take a lot of notice of it because it is not on the channel I normally watch. I do not know whether he has been charged with an offence. It did seem to give him hero status in a Paris Hilton kind of way. My only other level of expertise, really, is being a mother of teenagers. They were not too impressed. That might be because they are my teenagers, but it did not cut a lot of comment in my household, either as being a fabulous young person or a not fabulous young person.

I must say, I felt a bit of sympathy for the young boy, because clearly what we saw then was his luck of maturity, his lack of ability to foresee what was coming down on him like a train, as far as I could see. Anybody else of any maturity could see it was not going to end up well for him. I was more interested in how and why the parents got involved. Again, I did not hear what they had to say, but on the promos it looked a bit sad; it looked like they were making as much mileage out of it as anybody else. I am not a psychologist, and I do not live in that street, but it would be interesting to know why they felt the need to do that. Maybe it was some kind of community reparation. But with regard to the boy involved, it just shows his lack of maturity and his lack of understanding of how that sort of notoriety is probably not going to be a good thing when he is 22.

The Hon. JOHN AJAKA: Mr Cowdery has confirmed that at the time of the investigation—even at the time a young person is interviewed, even when a young person is arrested but not charged—there is no prohibition on naming a child, that the prohibition under section 11 and related legislation comes into effect from the time child is charged. What are your views as to whether the prohibition should be brought in at an earlier stage, based on the fact that it seems to be a little inconsistent—or do you consider it to be inconsistent?

Ms SYME: I was fortunate to be in the back of the room when Mr Cowdery gave his evidence. I do not disagree with anything he says. You would have to conclude that at the time of the police becoming interested in a particular child relating to a particular offence—and a news organisation becomes interested—I only know this because next week I am going to the Wood commission regarding the Shellay Ward incident, who was certainly named. The boy in the suitcase was certainly named before anyone was charged, under circumstances where, if that prohibition had been in, they would not have been named. For the children involved, I think it is arguable as to whether that has an effect on them or on their siblings. But, as a matter of respect for a deceased person, and probably more so with indigenous communities, that is something that you could take into account. But, again, I do not disagree with anything Mr Cowdery said.

The Hon. JOHN AJAKA: Would you recommend that the prohibition apply prior to the charging stage?

Ms SYME: With respect to children, the issue that the Children's Court and Local Court are most concerned with prior to charging is under the youth conferencing program. Youth conferencing can occur prior to charging. It is most desirable that it occurs prior to charging. The study you now have, the BOCSAR report, indicates that if conferencing or cautioning occurs for a juvenile prior to charging, that is perhaps slightly more effective for a juvenile than actually going to court.

It is for that reason that I would support any change to the law that stops a child being named prior to charging, especially if it encourages youth conferencing to occur prior to charging. The process with youth conferencing is that once a police officer believes a young person has committed an offence they can go and see the young person, perhaps interview the parents and, if the young person admits the offence, a conference or caution, depending on the type of offence, can be administered or a conference can be set up.

The Hon. JOHN AJAKA: So there is a possibility that allowing the naming of the young offender during the conferencing stage may have an adverse impact on its deterrent value?

Ms SYME: That is exactly right. An example of that could have been—and I apologise, I did not know we were going here so I do not know whether it did actually occur. At around the time of the Macquarie Fields riots, for want of a better word, one of the young people involved was referred to conferencing with the RSL. Apparently it was very successful indeed, for a whole range of reasons. I do not remember whether he was a young person under the age of 18, but I do remember that he was named. Had it been that other people under 18 could have had the benefit of going to a conference, they could have had the benefit of that kind of outcome—and I believe it was a very positive outcome indeed.

By naming people prior to that conference it may have dissuaded either the RSL or the young person from either admitting the offence, and thereby being subject to the conference process, or being part of the process at all. Again, I agree with Mr Cowdery that there has to be a difference between public curiosity and public interest, and that what the public is interested in—naming of names—does not detract from the ability to report, that it does not detract from the ability of a news organisation to say, "17-year-old youth does such and such".

The Hon. JOHN AJAKA: You mentioned earlier that there seems to be a smaller percentage of reoffending when young offenders go through the caution stage not charged, and go through the various conferencing procedures, than those that are charged.

Ms SYME: That is what the BOCSAR report says. I would not be so bold to suggest that it is because they do not go to court that the recidivism rate is lower.

The Hon. JOHN AJAKA: Is it because there is no prohibition on naming during the caution stage and during the conferencing stage, whereas there is a prohibition on naming during the charging stage, that in some way we perhaps overprotect young offenders and that is why they are not deterred from reoffending?

Ms SYME: Personally, I would doubt it. That is not something that is addressed in the report. The report refers to a range of possible reasons why reoffending rate is lower. With respect to young offenders, I could not speculate as to why it is that the offending rate is lower, other than what is in the report. It is certainly not my area of expertise; I am not a statistician. But my personal view would be that I do not think that that is an explanation at all.

Ms SYLVIA HALE: What persuades a child to go into youth conferencing? Is there a possibility that they will be charged unless they participate? Is there some sort of coercion in that form, or is it family pressure?

Ms SYME: Both, I would imagine. Youth conferencing, when it was first designed, was intended to be a police diversion scheme. It was intended that a very large percentage of juveniles who were only up to the police stage of questioning would be diverted to caution or conference with their parents. As it has turned out, over 50 per cent of young people are charged, put before the court, and then diverted from the court to conferencing because it is children's magistrates' views that they should have been conferenced or cautioned in the first place.

The issue in relation to conferencing and charging is that we would like to encourage police to caution and conference more frequently rather than simply charging. Whether it is the threat of charging or parental influence is something that I am not sure of. I would imagine it is both. Certainly if a police officer picks up someone who has committed an offence and takes him home by the collar and says to mum and dad "This has gone on", if mum and dad are in a position to be that supportive, then I am quite sure conferencing will happen and that it will be successful.

If that is not the case, then maybe not, and maybe the young person needs to get some other sort of community advice and some legal advice before a conference is successful. But police do have—but, for a whole range of valid reasons, are not using—a three-week window between apprehending someone on a particular charge and deciding to charge them. There is quite a lot of time lag in minor offences. We are talking about minor offences, not the sort of offences that are serious children offences. In minor offences there is quite a time lag, which can be up to three weeks, between investigating, charging, admission to offences, and deciding to lay a charge.

Sometimes children will not admit an offence straightaway. There are many reasons for that, and the police cannot go to conference or caution until there has been an admission—and there are good reasons for that.

Ms SYLVIA HALE: Are children aware that unless they admit the offence they cannot be cautioned?

Ms SYME: They should be made aware of that because when children are apprehended they are required to be interviewed in the presence of a parent, guardian or legal representative. A parent or guardian might know but police, youth officers—I forget what they are called, police officers who are youth officers—should be in each local area commend charged with the responsibility of telling parents and children of the availability of youth conferencing.

Ms SYLVIA HALE: Earlier you heard Mr Cowdery's suggestion that section 11 should be extended prior to the period where a child is charged. You or Mr Henson, at the end of the submission, also suggests the need for changes. The submission talks about procedural difficulties and states:

> A strict interpretation of the legislation may inhibit a request being sent to the Department of Juvenile Justice for a background report or a defence lawyer seeking to obtain a psychiatric report about a client.

It also talks about the problems that are posed by having social work or legal students sitting in a court where a young person may be named. Would you like to expand on why you think there needs to be change in this area?

Ms SYME: It is a minor amendment and one that is probably ignored rather than respected at the moment. For example, in the Children's Court at Parramatta, it is a very big courthouse. You go through into a waiting area and there are a number of courts. Outside the number of courts there are the names of the defendants. That is probably publication. There are a number of pedants with a law degree who have pointed out to us that that probably is publication. However, the difficulty is how is a young person to know which court they are supposed to go into unless their names are outside the court. It is not on the street; it is inside the court building. That is a particular issue.

Ms SYLVIA HALE: Has there ever been any abuse of that by making people's names public?

Ms SYME: Not as far as I am aware, no. But we are aware of it and because we are aware of it we are a court and we should be seen to be obeying the law. It is practicality and reality versus a strict interpretation. At the moment, I guess, we are not strictly interpreting because without putting someone's name out there we would not have any people come into court. It is very difficult. The same with calling names, calling a defendant into court, "Will John Smith please come into court?" That is probably publication that he has been charged. The same exists in relation to care proceedings because in a particular court the name of a child has to be somewhere in relation to care proceedings. News organisations know that they are not to publish the names and they do not. I have not seen much abuse of that.

Ms SYLVIA HALE: In terms of the defence obtaining a psychiatric report, does the naming consist of asking a psychiatrist to do a report?

Ms SYME: Asking the psychiatrist to do a report on Johnny Smith.

Ms SYLVIA HALE: The psychiatrist would need to be told that the child had been charged with an offence?

Ms SYME: The psychiatrist would need to know that Johnny Smith has been charged with this particular offence—"Do your psychiatric report with some use as to his involvement in this particular offence and here is a copy of the facts." So the psychiatrist has got the police version of what happened because Johnny Smith may well not tell the psychiatrist what the other side is saying.

Ms SYLVIA HALE: In practical terms, they still obtain these reports. So it is a question of the law being seen to be adhered to?

Ms SYME: That is right. That is an important issue for obvious reasons that the law is adhered to. To adhere to it at the moment would be impossible.

The Hon. GREG DONNELLY: My questions relate to questions on notice that you may have before you dealing with the issue of public interest, the interests of justice and the overlap or intersection of the two. Would you be able to deal with those issues?

Ms SYME: Yes. I have brought the definitions with me. They are very similar interests. I am trying to confine my answers to this particular inquiry rather than to a wider sense. But I am going to have to give examples of a wider sense because I had some difficulty coming up with examples relating to the naming of children in particular. "Public interest" is the general welfare of the public that warrants recognition and protection and something in which the public as a whole has an interest that justifies government regulation. An example of this is something like the Arnott's biscuit case where it was found to be in the public interest for the public to be told that someone was putting something bad in Arnott's biscuits. That was clearly in the public interest because it is an issue of safety.

"In the interests of justice" is something that is both wider and narrower, depending on how it is viewed. The interests of justice take into account—and this is the widest sense—all that is relevant to an offence and an offender and disregards everything that is irrelevant to an offence and an offender. The definition that I have obtained from Blacks is the interests of justice in a particular criminal case are to ensure that a person who is accused of a crime is convicted if guilty, that is, taking into account all the matters that are relevant, and is acquitted if innocent after he or she has had a fair trial, that is, disregarding all the matters that are irrelevant. That puts some bones on that definition. The interests of justice can also include a wider element of public interest. Again, I cannot think of anything in relation to the naming of juveniles. But there was a case in Western Australia, the Mickelburg case, which was the stealing of a large quantity of gold. Ultimately in the Mickelburg case the court said that the public interest had some input into the interests of justice because it is in the public interest in general to ensure that there is confidence in the administration of justice. So the Mickelburg case was an example of where the public interest in the administration of justice was taken into account as a wider issue of the interests of justice. Does that make sense?

The Hon. GREG DONNELLY: Yes. I will ask one more question which is not covered in the questions provided to you. Obviously, section 11 relates to the media, as we understand it, big media companies, electronic newspapers and so on. With the advent of the Internet and in some sense the almost atomisation of news being able to be generated by an individual or a small group of people and broadcasting it at large through the Internet through different means, has that started to create any issues of people being named, claims being made or people being accused and has that started to manifest some issues for the criminal justice system?

Ms SYME: Not to my knowledge, but I would have to say my experience in dealing with matters under section 11 is somewhat limited because I have only

personally dealt with one matter where somebody was charged under section 11. The issue of Internet publication, however, is something that does arise and there has been a case, which is an Australian case—again, I am sorry, I cannot remember the name of it—that indicates that publication occurs where a particular entry is made on the Internet as well as where the entry can be viewed. So that just because it is going to appear on the Internet is not, in my view, sufficient to throw up your hands and say, "This is going to be way too hard. We will never be able to control this because people can talk to each other over the Internet." There are cases that already have decided how publication occurs over the Internet, whether it occurs when it is posted or when it is read. The answer to that case, according to the Court of Criminal Appeal decision, is both. Therefore, it is a matter of enforceability. It may be harder, but just because it is harder does not mean that it should be ignored, in my view.

The Hon. JOHN AJAKA: You may have heard earlier I asked the same question of Mr Cowdery. Do you have any view or recommendation as to the difference between 1 to 15, 16 to 18 and 18 onwards? What would be your view?

Ms SYME: I did hear what Mr Cowdery answered. My view is the same but to extend on that, Parliament has decided in its wisdom that the cut-off point for Children's Court matters be 18, except insofar as particular traffic matters are concerned. There is a reason for that, I am sure. If Parliament decides that the cut-off date for juveniles should be 16, then perhaps it should be 16. If Parliament decides it should be 21, then perhaps it should be 21. It is a line in the sand. It is an arbitrary line in the sand, but it is one that is drawn, I am sure, with appropriate advice as to whether 18 is a good age or not. Of course, section 11 refers to 16 as well as 18—16 being the age to give consent. Again, I do not know why 16 was chosen. I am sure the young man in Melbourne was 16 and if asked he probably would have given his consent as well.

The Hon. JOHN AJAKA: Your view is it should be attached to or synergised with the Children's Court cover?

Ms SYME: Yes, the Children's Court jurisdiction.

The Hon. JOHN AJAKA: They should correspond with each other?

Ms SYME: Yes. At the moment, again unless there are some other reasons, I would have to ask: If there is going to be a change, what problem are you trying to solve here?

CHAIR: Thank you for your evidence today. It has been very valuable, as I also said to Mr Cowdery earlier. I am sure the Committee has very much enjoyed your insights.

(The witness withdrew)

(Luncheon adjournment)

TERESA MARGARET O'SULLIVAN, Solicitor in Charge, Children's Legal Service, Legal Aid Commission of New South Wales, sworn and examined, and

ANDREW HAESLER, Deputy Senior Public Defender, Public Defenders Office of New South Wales, affirmed and examined:

CHAIR: I welcome you both to this Standing Committee inquiry and thank you for your attendance here today. Before we commence, I make some comments about procedural matters. In accordance with the Legislative Council's *Guidelines for the Broadcast of Proceedings*, only Committee members and witnesses may be filmed or recorded. People in the public gallery should not be the primary focus of any filming or photographs. In reporting the proceedings of this Committee, you must take responsibility for what you publish or the interpretation you place on anything that is said before the Committee. The guidelines for the broadcast of proceedings are available at the table by the door. Any messages from attendees in the public gallery should be delivered through the Chamber and support staff or the Committee clerks. Committee hearings are not intended to provide a forum for people to make adverse reflection about others. I ask everybody to turn off all mobile phones.

Ms O'Sullivan, are you conversant with the terms of reference of this inquiry?

Ms O'SULLIVAN: Yes.

CHAIR: Mr Haesler, are you conversant with the terms of reference of this inquiry?

Mr HAESLER: Yes.

CHAIR: I do recognise that Parliamentary inquiries can be a huge impost on individuals but the Committee is very grateful for your effort and time in relation to this policy issue and we require as much information as possible to put forward recommendations. Submission 18 by the Legal Aid Commission of New South Wales suggests that procedures could be in place for more effective prosecution of breaches of the current prohibition on naming children involved in criminal proceedings. What procedures would you suggest?

Ms O'SULLIVAN: It is the experience of the Legal Aid Commission of New South Wales that section 11 of the Children (Criminal Proceedings) Act has not been vigorously enforced by prosecution authorities and the avenue for complaint is not clear. Criminal proceedings are rarely initiated for breaches of section 11. We are only aware of one successful prosecution. Arguably what is needed is someone with specific responsibility within the police force and within the Office of the Director of Public Prosecutions to ensure that complaints are investigated and prosecuted competently. I have a couple of examples of cases where the prosecution has not been successful.

CHAIR: That would be very useful to us.

Ms O'SULLIVAN: It is actually included as an example in our submission. DR, are his initials which we will use today, was one of two young persons killed as a result of a motor vehicle collision following a police pursuit in Macquarie Fields. This

incident, and the Macquarie Fields' riot which occurred in its aftermath, received a great deal of media attention. Channel 7's *Today Tonight* program broadcast a story on 1 March 2005 that directly identified DR by using his full name, by broadcasting a photograph of his face as well as an erroneous criminal history that was claimed in the story to be that of DR. On 1 March 2005 *Today Tonight* claimed a viewing audience of 1.26 million nationally, winning the ratings at that time and ranking among the top 10 programs viewed across Australia. The Legal Aid Commission referred the breach of section 11 of the Act to the Office of the Director of Public Prosecutions. Criminal proceedings were initiated against Channel 7 and the matter was heard before a magistrate in the Downing Centre Local Court on 10 February 2006. The magistrate found that there was sufficient evidence to establish a prima facie case that section 11 of the Act had been breached by the broadcast of certain material on *Today Tonight;* however, the magistrate ultimately dismissed the case holding the wrong legal entity had been prosecuted. No other entity has been charged with various breaches of section 11 of the Act arising from the broadcast of that material. I understand from people who work in the policy section of the Legal Aid Commission that you can still today find the name of this young person on the Internet—there are several entries as to his name—and yet there has never been a successful prosecution.

Another example is a case that both Mr Haesler and I worked on together. It related to a young person known as GS who was charged with the non-fatal stabbing of a media figure. The case attracted strong media coverage. The young person pleaded guilty to the offences for which he was charged. In open court on 18 August 2006, at the commencement of the sentencing proceedings in the District Court, Judge Nicholson explained to the media representatives present the meaning of section 11 of the Act. In particular His Honour said it was not enough to simply pixellate images of GS himself and the prohibition contained in section 11 included any material that could lead to the identification of GS, including the broadcasting of images of his parents. On the evening news program broadcast by Network 10 later the same day the images accompanying the story clearly showed the face of GS's father and also, less clearly but recognisably so, the face of GS's mother walking with their son outside the Downing Centre. We are not aware that there has ever been a prosecution in relation to that matter.

Mr HAESLER: A complaint was made to the police. Putting it neutrally, they had a word to GS and then he decided that he really did not want to go-ahead because he was still facing court and he was unsure about his own position. He was in a very vulnerable position at that time. I do not know that the police ever referred it to the Director of Public Prosecutions. It is not uncommon for young people to be discouraged by a very formal approach from the police. There certainly was no encouragement of him and I suspect it was explained—explained is too strong a word—a quiet word was had along the lines, "Given your predicament, with an appeal coming up etcetera, etcetera, you might want to focus on what is going to happen to you rather than anything else."

CHAIR: Does the current implementation process of this section relate to the young people themself being involved in the complaint?

Mr HAESLER: It shouldn't.

CHAIR: Is that what is happening?

Mr HAESLER: Someone draws it to the attention of the police or the Director. The Director cannot act off his own bat—he would require a complaint, an arrest by the police. So if the Director receives one it would be referred back to the police. I am unaware of any case where the police themselves have seen something on television, said it was clearly a breach of section 11 and prosecuted. I am not exactly sure how the one successful prosecution of Mr Jones commenced. Through this Committee you may be able to obtain more information than we have, but there is no clear mechanism for the charging of any person. If there is a complaint, then that requires the police officer that is complained to in pursuing the matter. Often the only person complained to is the officer with some knowledge of the case and they are not always sympathetic; particularly if the person named is not the victim or a relative of the victim. The police would certainly be more sympathetic to the victim or their relatives than to the person they have charged with the offence—which was GS's predicament. I am not casting aspersions on the police involved, but it is a bit hard to expect a young person to go to the police officer that charged him and say, "I want you to prosecute someone else for naming me!"

CHAIR: Given the legal expertise between the two of you, is this a legislative issue or a regulation issue?

Mr HAESLER: It is a policy issue.

CHAIR: So it is a policy regulation issue?

Mr HAESLER: If you are going to have a piece of legislation then there should be someone charged with enforcing it, whether that is in the legislation itself—which is unusual—or there is somebody in the police force, for instance, who is given regulatory or other responsibility for taking on the prosecution. In theory any police officer could—they all have a general duty to enforce the law of the State—but we have various squads or units within the police force charged with specific responsibilities, whether that is homicide or child sexual assault.

The Hon. JOHN AJAKA: In reality there is almost a conflict of interest on the part of the police? You can just imagine a young victim going to a police officer whom the young victim may have lodged a complaint against, the young person is pleading not guilty to the offence and the officer is trying as hard as he can to establish the offence has been committed; suddenly the police officer is taking the victim's side by lodging this complaint?

Mr HAESLER: The accused's side—well, the victim of this particular crime. It is different if they have named the children who are involved as police witnesses or complainants, but if it is the actual young offender that has been charged that goes back to the only policeman they know with knowledge of the matter and then expects that policeman, who might well have certain views about someone—

The Hon. JOHN AJAKA: Or had a complaint lodged against him?

Mr HAESLER: Or just has formed a view as to this young person's character.

The Hon. JOHN AJAKA: It is an interesting dilemma.

The Hon. DAVID CLARKE: Mr Haesler, do you have any evidence that the police are not acting in these situations?

Mr HAESLER: Even in GS's cases they did not act after they persuaded the young person to withdraw his complaint.

The Hon. DAVID CLARKE: Except that is one case. For instance, the first case that was referred to by Ms O'Sullivan I understand was knocked out because of a technicality.

Mr HAESLER: Yes, but they did not then pursue it.

The Hon. DAVID CLARKE: That does not establish the case that you are putting because that was knocked out on a technicality and you were referring to the specific case. We heard earlier today from the Director of Public Prosecutions that in a number of instances each year that office just sends out a letter to the offending media outlet and so that has not involved a situation where the police have not passed on the information; that has involved the DPP deciding not to act. So, would you see that there could be a problem in that particular area rather than with the police, or it might be with both?

Mr HAESLER: What we are really concerned about is that it may well be, and you obviously have more information, that the DPP either off its own bat picks up a matter or the police may ask for advice from the DPP as to whether they should or should not prosecute. We are just not aware, because there is such a dearth of prosecutions, of anything ever happening as a result, and it has been our—admittedly small—experience that there is no-one we can actually ring up in the Police Force and say, "There is an apparent breach. Will you act on it or will you investigate it?" What we often do is write to the DPP and say, "Will you do something about this?" But you would have more information on what the DPP actually does.

The Hon. DAVID CLARKE: So you have a process when you come across these situations where you believe there has been a breach of the section of complaining to the DPP or to the police or to both?

Mr HAESLER: The DPP.

Ms O'SULLIVAN: Well, the Attorney General sometimes we would write to, who would then refer it to the director.

Mr HAESLER: So, it might be threefold, I suppose. This is part of the problem, who do you write to? Do you write to the Attorney General, who has prosecution responsibilities, or the independent Director of Public Prosecutions or the Police Force, which is charged with enforcing the laws?

The Hon. DAVID CLARKE: Well, to whom have you been writing?

Mr HAESLER: I generally have my solicitors write to the DPP.

The Hon. DAVID CLARKE: Have you any statistics on how many occasions you have complained to the DPP?

Mr HAESLER: No.

The Hon. DAVID CLARKE: Can you get those statistics?

Mr HAESLER: It has not been very often. In my case, 2 or 3 times in the last 20 years. I could not find those.

The Hon. DAVID CLARKE: That is hardly a pattern being established though, is it?

Mr HAESLER: No. I am not trying to establish a pattern, with respect. What we are saying is that this is what we believe is the possible explanation for the dearth of prosecutions. Now, one would not expect there to be a huge number of these prosecutions in any event.

The Hon. DAVID CLARKE: Except that this is something you saw was of sufficient concern that it has been raised in your submission.

Mr HAESLER: Yes.

The Hon. DAVID CLARKE: Yet you say there have been only 3 cases in 20 years that you have raised with the DPP. Would there not have been a lot more instances? I mean, 3 cases in 20 years does not establish—

Mr HAESLER: It does not cause you to believe there is any great problem.

The Hon. DAVID CLARKE: So, have there been many other cases that have come to your notice and you have not acted on them or is it simply you have only come across 3 cases in 20 years?

Mr HAESLER: From my case, I only ever deal with the most serious cases. So it would probably be only 3 or 4 cases in that 20-year period. Children's Legal Service I am sure would be quite different.

The Hon. DAVID CLARKE: Well, in that case, in regards to serious cases, that is not many cases in 20 years, is it; that is hardly a problem, 3 cases in 20 years?

Mr HAESLER: No, it is not a problem, but if it is fixable, then it should be fixed.

The Hon. DAVID CLARKE: Yes.

Mr HAESLER: When we came across it in GS, that was a particular problem as to what happens with the prosecution. Because it was highlighted by the question, it is not the most serious part of this, as far as I and the Public Defender's Office are concerned; it is one of those little things that if you are reviewing the legislation, you can fix. Children's Legal Service may well have more examples because they deal with children every day.

The Hon. DAVID CLARKE: Let us turn to the Children's Legal Service. Ms O'Sullivan, do you come across many of these instances where you believe there has been a breach of the law?

Ms O'SULLIVAN: We come across them from time to time, but there are only two cases that I know of where we have actually got instructions or we have off our own bat taken a complaint further.

The Hon. DAVID CLARKE: Out of how many cases approximately would have come to your attention?

Ms O'SULLIVAN: Oh, we have hundreds and hundreds of cases.

The Hon. DAVID CLARKE: And you have acted on two them?

Ms O'SULLIVAN: We have had instructions to act on two of them. We do not act for them.

The Hon. DAVID CLARKE: But you said just a few seconds before that you do not necessarily have to have instructions to institute proceedings?

Ms O'SULLIVAN: No. The police of their own accord can take action. When the police become aware of any offence, they can take action.

The Hon. DAVID CLARKE: But you can make the police aware; you could be in a position to have information to bring to the attention of the police if the police do not themselves have it. Have you had many instances where you have come across information and then passed that information on to the police for them to act?

Ms O'SULLIVAN: No, there have not been many instances where we have had information and passed it on.

The Hon. DAVID CLARKE: Is there any reason for that because you mentioned hundreds of cases of which you are aware but say there are not many instances when you have passed on to the police?

Ms O'SULLIVAN: Well, it would mean looking at every media, every newspaper and every television broadcast, and that is not our role. Our role is to represent children in court, not necessarily then to follow up on how their cases have been reported. It is just that in some cases, particularly high-profile cases, where the media have been particularly interested that we have followed it up. Just going back to the case of DR, the recent internet search of this young person showed that there are still 298 entries, including some on the main media outlets. Despite there being the technical problem, unlike perhaps any other offence that a prosecution authority may have corrected and then prosecuted the correct person or entity, that was never done in this case. It leads one to speculate that perhaps it is not taken as seriously as other offences.

The Hon. DAVID CLARKE: Except, you see, that a breach of this section can be a pretty serious breach of the rights of children. Would the Children's Legal

Service not be precisely the sort of body that should be undertaking passing information on to the police and the relevant DPP so that they can act? Would you not see that as being part of your role to ensure that these breaches are followed through?

Ms O'SULLIVAN: Yes. If a client of ours had ever asked us to do that, we would certainly assist them.

The Hon. DAVID CLARKE: Your clients are children?

Ms O'SULLIVAN: They are under 18s.

The Hon. DAVID CLARKE: So would you not very often have to take the initiative? If you saw a process, if you saw widespread breaches of this section, would you not feel that it was your obligation to make representation on behalf of these children under 18 because they are hardly going to know their rights, they are hardly going to know about section 11?

Ms O'SULLIVAN: Precisely, and that is why we welcome this inquiry because it is a really good opportunity.

The Hon. DAVID CLARKE: That is why I am asking the question now: do you see that perhaps your office could have taken a proactive role in acting on these complaints that came to you specifically because you are in a position to be aware of these things, probably even more so than the police? Would it not be an appropriate thing that when you do come across these situations you raise them with the police or the DPP directly?

Ms O'SULLIVAN: Yes, and we do.

The Hon. DAVID CLARKE: Well, when you say you do, I think you said there have not been too many cases that you have raised out of all the hundreds.

CHAIR: Excuse me. No, I believe—

The Hon. DAVID CLARKE: —or am I misunderstanding the situation?

CHAIR: Yes. The hundreds of cases were those within the portfolio of the business.

Ms O'SULLIVAN: Yes.

CHAIR: But there are not hundreds of abuses of section 11.

Ms O'SULLIVAN: No.

CHAIR: I think we had some confusion in a sentence.

The Hon. DAVID CLARKE: All right, let us clarify that. One final question: how many cases, say, over the past five years of which you are aware in which you consider there has been a breach in relation to matters you have been handling in your department?

Ms O'SULLIVAN: Well, obviously I do not represent every child personally. The Children's Legal Service operates in three courts in New South Wales. We do not operate throughout the State, only at three courts. I am aware of the two examples I have given today at this inquiry. I am aware that there have been other breaches of the section in relation to clients that have been represented by other solicitors with whom I work. I cannot say exactly what was done in relation to them, but I am aware that other representations have been made. I do not have the full information today of what happened. Obviously, there were not prosecutions because there has been only one prosecution.

The Hon. JOHN AJAKA: Ms O'Sullivan, if I can go to a different aspect. We heard earlier that when one looks at the commencement of any investigation and the interview of the young person that the young person may be then arrested but not charged and then the charge and everything follows. We understand that section 11 and related legislation applies once the young person has been charged; there is really no prohibition other than possible content at the investigation and interview stage. What would be your view of that? Do you believe section 11 should be brought backwards so that it applies once the investigation occurs so as to ensure that young people's names are not released or do you believe that at the time of charging would be sufficient?

Ms O'SULLIVAN: I think ideally it would protect the young person from when criminal proceedings were commenced, for the same reasons that the protections are in place once the matter is in court—for all the reasons that that protection is in place.

The Hon. JOHN AJAKA: You say from once an investigation starts?

Ms O'SULLIVAN: Yes.

The Hon. JOHN AJAKA: Do you believe that the young person should have a say in mechanism protection, the prohibition, from the moment the investigation commences?

Ms O'SULLIVAN: Yes, because the stigma that attaches can attach from that moment onwards and that would apply to that young person's siblings as well. There is also a detrimental effect it may have on the child, particularly if the matter was never to proceed any further, for instance, if it was the wrong person.

The Hon. JOHN AJAKA: Would that be your view, Mr Haesler?

Mr HAESLER: It is my view, but I would not qualify it as something that needs protection, but I do have to say that the media, in my experience generally, are generally very responsible about publicising the names of children who are under investigation or against whom charges are pending. If I look at some of my adult clients, you can often get someone who is being investigated and the newspaper will have their names and the criminal records, and they are charged the next day and they suddenly become the accused and you cannot publish anything, but the information has got out there.

But I cannot think of a case where the media have exploited that gap between investigation and a formal charge, when a section 11 starts to operate. Generally they are pretty responsible about that. That does not mean that someone might not go too far, and in an appropriate case they might say they are justified in doing it because it is not against the law. They have done it with adults but I am certainly yet to come across a case where they have acted so irresponsibly as to particularly prejudice a charge against the young person by premature publication of names. That may also be because there is privacy legislation, both Federal and State, which might be invoked rather than criminal legislation.

The Hon. JOHN AJAKA: It may just be that they are responsible.

Mr HAESLER: One hopes they are.

The Hon. JOHN AJAKA: Knowing your primary function is to defend your client and provide your client with the best possible defence, looking at it from the general point of view and with your lengthy experience, do you feel that naming a child will create a deterrent to future reoffending and may be another form of facility to somehow or other prevent reoffending, or would you be against the whole notion of it?

Mr HAESLER: My personal view—

The Hon. JOHN AJAKA: That is what I am asking for

Mr HAESLER: —is that the notion of general deterrence is a myth. People are deterred if they think they are going to get caught or by changes to their behaviour, whether that is enforced or learnt. Naming does not assist any of those processes. My personal experience has been my clients have suffered great detriment from being identified. The notion of shaming within the community can lead to violence and threats against them or people being forced from the community where they live and it has made it difficult for them to reintegrate into the community, in terms of jobs, accommodation and things of that nature. Naming, or sometimes just identification, by the overuse of uncommon initials, for instance, can lead and has led to my clients suffering violence against them when they have been in custody. Plenty of people in jail somehow think they are justified in taking vengeance on behalf of the community against other people who have breached community's laws and have been put to jail. I am aware of that happening. So, that sort of primitive vengeance can come from identification both within the community and in jail. It cannot be tolerated, and no-one suggests it is, but it happens.

The Hon. JOHN AJAKA: I take it your view would be that naming a child would create more problems and possibly create a greater chance of reoffending since they have already been named and shamed?

Mr HAESLER: It might make some members of the community feel better that someone has been publicly denounced, and there is a role in punishment in publicly denouncing—

The Hon. JOHN AJAKA: Leaving the community aside for a moment—

Mr HAESLER: But as far as the individual is concerned, not a jot of assistance would be given by naming.

The Hon. JOHN AJAKA: Ms O'Sullivan, would you agree with that?

Ms O'SULLIVAN: I would agree with that. The Committee is probably aware or would have been made aware of various international studies that would all support that.

The Hon. JOHN AJAKA: From the previous evidence we have had from other witnesses, do you see a distinction between the 16 to 18 group as opposed to the group under 16? Do you think there could be a distinction in the rules that apply, other than the consent rules that the provision provides for, or your view would be that 18 is the figure and just leave it at that?

Mr HAESLER: I have no problem with consent over the age of 16, and there have been a number of examples of witnesses who want their name out there, but otherwise no, I do not see a distinction. They are still children and they should be treated the same. If you are going to have a line, that line should be 18.

The Hon. JOHN AJAKA: Ms O'Sullivan?

Ms O'SULLIVAN: I would agree. While there are different vulnerabilities according to age, in some way the older children are more vulnerable in that they are closer to the age where they would be seeking employment. So, yes, I would agree with under 18.

Ms SYLVIA HALE: Ms O'Sullivan, in the submission from Legal Aid, talking about whether the prohibition section should cover children who are arrested and not charged and cover children who are reasonably likely to be involved in proceedings in any other circumstances, you say:

> On the other hand there is a case for separating the provisions for children involved in court proceedings from provisions relating to investigative or diversionary processes. There will be times when it is unreasonable to prohibit the disclosure of the identity of a child or young person who is suspected of committing an offence or who has been arrested but not charged.

Could you outline on what occasions, given we have had lots of evidence about the adverse impacts of what sorts of occasions, when it would not be unreasonable to prohibit disclosure?

Ms O'SULLIVAN: I could not, actually. I would withdraw that from the submission.

Ms SYLVIA HALE: It does seem to be contrary to the weight of evidence that we have heard.

Ms O'SULLIVAN: Yes.

Ms SYLVIA HALE: I notice over the page you say—almost the last point you make—that section 38 of the Children (Criminal Proceedings) Act requires the destruction of fingerprints and photographs, or whatever, of children who have been not guilty or found guilty and have had charges dismissed, as well as discretionary orders for the destruction of orders made against the child, and then it goes on to set out a time frame in which some of those requirements for destruction of fingerprints and photographs come into effect. You say:

> None of these provisions prevent Police from retaining a record of the incident for which the child was originally proceeded against for operational purposes.

Does the police retaining that information work to the detriment of children? Perhaps I should put this in the context of a case of a woman whose daughter had been found guilty of an offence while she was a minor and then subsequently faced a totally unrelated charge as an adult. That conviction, even though she had been assured at the time that it would be expunged from her record, was subsequently brought out in relation to the later offence. What comments do you have?

Ms O'SULLIVAN: It is a difficult area, and Mr Haesler might be able to add something to this. Whilst records may be spent, that means a certain thing but it does not mean they disappear. It means that they cannot be disclosed. If consent is given for a criminal record to be accessed, it not as if it was not for the purposes of disclosure but it is still there. That is my understanding, particularly for the purposes of investigating bodies such as the police, it will always be there. This obviously may have some detrimental effect on a young person in that they may be prejudged. It is something that the police will always have access to, that is my understanding.

Mr HAESLER: If I can give two examples and then I want to come back to the bit at page 11. The lawyers will probably remember this from court. When someone comes up before the court on the first occasion, the police prepare a record of their criminal record and they have a court copy and a police copy. The police copy has all the uncharged or uncompleted matters, bail hearings, all of those matters, including dismissals. It is not unusual for that copy to be handed up to the court so the magistrate can get a hint that this person may not have much on the record but they are certainly well known to police. The police call it their COPS system and there is also an Eagle Net system. It is a computerised intelligence system which contains not just formal police statements but anything of intelligence on anyone.

If they typed Andrew Haesler into the net, it might have, "Associate of the following known criminals." In my case it might be all my clients, who are known criminals. Young people's names will crop up there. It will then be cross-referenced to any information that is on the computer system about that young person. That can be particularly valuable to the police. If they stop someone, say, for potentially carrying a knife and give them a caution—there are no proceedings, it is more the equivalent of a kick up the bum and they have not done anything but they made a record of it—if this person keeps cropping up in the same area they may want to investigate further. I can see why the police would justify that.

There is a danger of having a large amount of unverified information which can be used, say, if police had a reasonable suspicion of searching a young person for drugs because he had known associates with drugs and he was going to a certain nightclub.

We would argue that that nightclub was used for the Director of Public Prosecutions Christmas party, it was not just a drugs venue, but that was enough to form a reasonable suspicion so the police were then able to search him and his car. The judge held that that was lawful. So, in some circumstances that information can be used against a young person but it also serves a useful purpose. In answer to the question you ask, no, that information should never get from this side of the bar table to the judge's or magistrate's side of the bar table and it would be wrong of the prosecutor to try to do that, and generally they do not.

The Hon. JOHN AJAKA: Or out in the public domain?

Mr HAESLER: Or out in the public domain. Can I go back to that second question? There are some cases where the child who has been investigated and named will want their name out. I have not had it occur with a child but I did have it with an adult. There was lots of publicity about being involved in a terrorist event. Subsequently all the charges were dropped but that was not reported because under the ASIO legislation you cannot report anything that happened in the court proceedings. So, the legislation stopped the reporting of the fact that all the charges against him were dropped. But if you go back on the Internet you will find his name crops up as the first person who was ever charged under this legislation is X, and then everything just stops because the legislation itself prohibits the publication of any proceedings under the Act.

If that example applied here, you could have a young person who is, say, arrested in a blaze of publicity, if there was not a prohibition about pre-charging, or investigated in a blaze of publicity and then suddenly there is silence and they are living in a community where they cannot get out to the media the fact that all the charges have been dropped or he has been acquitted. So, the child may want to have that response. It was not all that well drafted but I suspect that Teresa was trying to cover that situation where they are trying to clear their name and the young person wants publicity of the fact that they have been acquitted, to counter previous publicity. So, that is the only situation I can see where that might occur.

Ms SYLVIA HALE: So really no provision is made for a child who, as you say, has a lot of publicity surrounding him or her and then the charges are dropped, dismissed or not proven?

Mr HAESLER: We are covering that eventuality. Going back to what I said earlier, the media have been very responsible in those situations. I do not have an example where they have publicised a child's name and background prior to charge. It is really covering that eventuality, as I said. I have had examples in the adult sphere but, again, that is the problem of giving evidence before a committee. You look at all the things that can go wrong. But, frankly, in the hypothetical case that a child was named prior to investigation that child may want to have publicity about the fact that he or she has appeared put out in the public arena. But, to be honest, my experience has been that the media have acted responsibly and not done that.

Ms SYLVIA HALE: In the Public Defender's submission you state that section 11 (1) provides for a prohibition of the naming of child witnesses but does not specifically prohibit the publication of material that could lead to the dedication of a trial. So you believe that the legislation should be broad?

Mr HAESLER: It should be broad, yes. Technically, if you publish someone's photograph, you are not naming that person.

Ms SYLVIA HALE: Right.

Mr HAESLER: You use a pseudonym. Obviously the intent of the legislation is to prevent the identification of a child. But the exact wording of section 11, which I did not bring with me, speaks of naming. It refers to "the name of any young person". If I were defending someone, which is what I am paid to do—thankfully not media organisations—and if I were being paid a large sum of money to defend a media organisation I would be saying, "They were not named; they were identified." The legislation specifically prohibits naming. It is a potential loophole that they may be able to exploit. That may be one of the reasons why there have not been many prosecutions. In the GS case the unpixelated face was a good example. He was not named at all but everyone knew exactly who he was because he was seen walking out of court with a pixelated face next to his two identifiable parents.

Ms SYLVIA HALE: It was suggested—and Mr Ajaka raised this issue earlier—that in the Skaf case there was reference to Lebanese rapists and members of the Lebanese community were anxious that they be named in order to deflect shame attaching to the entire community. In your view would the naming of that person, given a system of ethnic or cultural identifiers, be sufficient to deflect that blame from the entire community, or is a question of, "You are damned if you do and you are damned if you do not?"

Mr HAESLER: I will adopt the "damned if you do and damned if you do not". You can try to exploit that. I was briefed and appeared for one of the Pakistani rapists. In the public imagination they were confused with the young people associated with the Skaf trials. There was a conflation in the public between one or two quite distinctive things and everything was mucked in together. In the view of people in the general public, if you were a Muslim and you were charged with rape, somehow it became a pack rape and ethnic inflaming. At the same time I was acting for a number of Australian surfer types down the South Coast charged with gang rape offences and they got no publicity whatsoever. I am making up their names because they were not particularly spectacular, but Brad, Steve and Alan happened to commit these offences as opposed to Mohammed or someone else. I do not think the problem would be solved by allowing the identification of one specific person to avoid racial stereotyping.

Ms SYLVIA HALE: So the benefits for allowing naming in that circumstance are not sufficient to outweigh the disbenefits to the principle as a whole?

Mr HAESLER: Yes, and in a specific case the media, if they are acting responsibly, can make that clear. But we have to rely on them for that I think. We cannot have too many prohibitions on them, in my opinion. It is a free society and we have to be very careful. But the protection of children and individual children has to be paramount.

Ms SYLVIA HALE: This is probably outside the expertise of both of you, but in submission No. 21 Peter Breen, a former member of this House, made the point that children can be named, or at least photographed and identified in civil cases. He supplied us with a copy of the *Daily Telegraph* that has a full photograph of the boy in

question. His argument is that that can have as adverse an impact on that child, even though it is a civil matter, as it would have in a criminal matter. Do you have any view on that?

Mr HAESLER: I can see the same arguments that we make for children applying to a child who has his or her personal details spread over the newspaper. Let us assume that it is someone suing for a horrible brain injury with all sorts of detrimental effects, and psychologists are giving evidence in court about the psychosexual problems of a young child, which are compensable. It would be horrendous if that were reported and it would cause inestimable damage. Probably one of the reasons that it is not is that the media might then be afraid that they will be joined as a party for making the damage worse. I do not know, but my answer is that we have to protect children if we can. If the legislation could be drafted in such away as to cover civil proceedings where those sorts of things are revealed, I would not be opposed to it.

Ms O'SULLIVAN: I wish to add to that. Forensic procedures are not strictly criminal proceedings. There is real danger that the children could be named at a stage before they have been charged. It might be that there has been an application to have a forensic procedure, for instance, for their DNA, and for their photograph to be taken. Strictly speaking, they are not protected by section 11. I think section 11 should definitely be extended to include those situations because clearly the same stigma is attached. I imagine that the reporting would be, "Such and such is at court where there is an application for a forensic procedure in relation to this offence."

The Hon. JOHN AJAKA: Are you saying that you would like to see section 11 extended outside the criminal area but also into the civil arena?

Ms O'SULLIVAN: Yes, particularly for matters that are quasi-criminal—a forensic procedure application.

Mr HAESLER: Generally, again being very careful, I am not aware of the media publishing the name of a child. What happens with the Crimes (Sentencing Procedure) Act 2000 of this Parliament is that persons who are not formally under arrest but who are suspects in proceedings can be asked to provide a DNA sample or have a photograph taken. They have to be suspected of involvement in a crime but they are not necessarily charged with that crime and brought before a court. If it is opposed the magistrate has to decide whether to make an order that they provide the sample or have their photograph provided. So that is a court hearing, which is quasi-criminal, but they are strictly not charged. Sometimes they are, but often they are not. The way the legislation is at the moment, the media are not covered. That being said, I am not aware of any case where the media has been brave enough or has wanted to abuse privacy enough to report those proceedings that have not used a pseudonym or an initial. So it is a potential problem and one for which we can quote examples. But it does highlight that there are gaps in the legislation.

The Hon. GREG DONNELLY: Mr Haesler, to some extent you addressed this question in part in an earlier answer. What are the possible consequences for the conduct of the defence of a juvenile accused if the accused is named either during a police investigation or during the hearing or trial?

Mr HAESLER: On a personal level, especially in the sorts of cases that I am dealing with, public defenders act only if you need barrister, so generally they are serious cases. Child defendants are distressed enough without having to deal with the consequences of their family or themselves living in the community. So that puts an additional burden on them when conducting their defence. The naming can create problems in any criminal case, particularly in a jury trial, where you have to deal with the consequences of adverse publicity. If someone is named it is a lot of publicity and then there is always a risk that the jury will act on the publicity rather than the evidence before it. Jurists are given directions by the judges but how effective they are we just do not really know.

You can go to the court and ask for a delay in proceedings until the publicity dies down. That can be effective, but justice delayed is justice denied for all parties. That would remove one of the problems, or a number of problems in acting for the defence at that level. In relation to running the case, it is more the consequences that I am concerned about in our submissions. What happens if you are acquitted? What happens if additional punishment is part of the naming? To reiterate, there are problems of stress for the client and potential problems of prejudice, which can be shared with adults.

CHAIR: You touched on this issue in some way but I will read the question that has been presented to me. If the prohibition were be extended to cover juveniles who are reasonably likely to become involved in criminal proceedings as a defendant or witness, how do you think reasonable likelihood could be determined? This is a question about presenting issues in the future.

Mr HAESLER: The phrase "reasonable likelihood" is not an uncommon phrase. Before an offender who has served his or her sentence is forced to stay in jail under the Crimes (Serious Sex Offences) Act there has to be a reasonable likelihood assessed as to whether or not he or she is likely to re-offend. It is a phrase that is known to the law. That would be one way of putting the onus back on the media organisation before they took a step further.

CHAIR: Maybe it is a phrase that should not be used in these circumstances?

Mr HAESLER: You have to place an onus on someone to inquire. Someone has to be forced to ask, particularly in a media organisation, "Can I publish this child's name? What circumstances are there which stop me publicising that name", putting aside moral and other issues, privacy or legislative. If the test is that they are before a court that solves the problem. If the test is a reasonable likelihood that they will be put before the court, the media organisation would have to make more inquiries. If someone is being DNA tested one would think that there is a reasonable prospect. Anyone would say, "The police think that they are suspect enough to test them" so obviously there is a reasonable prospect that they will be before a court at some time.

It has to be that you engage them in an inquiry that is not absolute but forces them to make a clear choice and to investigate before they make their choice. That is off the top of my head. I am sure the Parliamentary Counsel can come up with alternative words to "reasonable likelihood" but that is certainly a term that has been used by the Parliament before. It is one that is used commonly in the law. If you hit someone hard enough and there is a reasonable prospect that they might be injured you are liable for those injuries. If there is a probability that they might be killed as a consequence then

you are liable for their death. So the reasonable possibility and reasonable probability concept is understood by lawyers and by Parliament.

Ms O'SULLIVAN: If I may say something in relation to the first question I was asked about whether Legal Aid would have any suggestions about how to perhaps make the section more effective, an additional regulatory mechanism may reinforce the seriousness of a breach by enabling an action for damages by a person affected by a breach of section 11 of the Act. Such an action would have the additional benefit of compensating the individual for the damage caused by a breach of section 11. There is an example of an existing like provision that may be found in the Trade Practices Act 1974, Commonwealth, section 82. Under subsection (1) it states:

> Subject to subsection (1AAA), a person who suffers loss or damage by conduct of another person that was done in contravention of a provision of Part IV, IVA, IVB or V or section 51AC may recover the amount of the loss or damage by action against that other person or against any person involved in the contravention.

It may be that this would be a way to reinforce the seriousness of a breach of section 11.

CHAIR: Thank you very much. Thank you both for the very important information that you have put before the Committee.

Ms O'SULLIVAN: Thank you for giving us the opportunity.

Mr HAESLER: Thank you.

(The witnesses withdrew)

PETER GRANVILLE ROLFE, President, Homicide Survivors Support After Murder Incorporated, 16 Wongala Avenue, Elanora Heights, 2101, sworn and examined:

CHAIR: Thank you for appearing before the Committee today. Thank you also for your organisation's submission. It is very important. Are you conversant with the terms of reference of this inquiry?

Mr ROLFE: Yes, I am.

CHAIR: Would you like to commence with an opening statement?

Mr ROLFE: I have a very brief one. Our organisation is interested in the rehabilitation of all juveniles who are part of the justice system. We feel that juveniles should be divided into two age groups: young adults aged between 16 and 18 and between 14 and 16. Sixteen- to 18-year-olds are treated as young adults. They have the age of consent and are able to obtain their driver's licence, et cetera. They therefore should be encouraged to take responsibility for their actions.

CHAIR: How do you think naming would influence a juvenile offender's rehabilitation?

Mr ROLFE: As I just mentioned, we feel that juveniles need to take responsibility for their actions. By doing this they can then develop through situations such as drug and alcohol treatment and anger management treatment. But we feel that in a lot of cases they will not take responsibility unless they feel it is absolutely necessary or unless they are forced to. We feel that naming them would be a way of doing this so they would not be able to hide behind anonymity and people not knowing their names.

The Hon. GREG DONNELLY: Are you aware of any evidence to suggest that the naming of juvenile offenders is an effective way of reducing their likelihood of reoffending?

Mr ROLFE: I am not aware of any evidence but I am aware of evidence to the contrary. Under the current system more than two-thirds of juvenile offenders reoffend, as per the Juvenile Justice website of August 2006. According to BOCSAR, Bulletin 86, 68 per cent of offenders reappear before a court for a subsequent offence within eight years. This would give the impression that the current system is simply not working.

The Hon. GREG DONNELLY: How would naming juvenile offenders affect the rehabilitation of victims?

Mr ROLFE: According to our members who have lost a loved one to homicide, there is a feeling of incompleteness after the trial because the offender is able to hide behind the fact that people do not know who he is—he or she is just known by their initials. The feeling of our members is that they have committed an adult crime and so why should they not be treated as adults and suffer the consequences of accepting responsibility for their crime? I am aware of the provisions for the court to name them but this is done so rarely. As a matter of fact, earlier Mr Cowdery mentioned only one case involving the Skaf situation. I am not sure how many people were involved in that

and whether they were named. But it is very infrequently, indeed rarely, that these people are named.

One family who lost a son to homicide who had been missing for three years had to suffer the indignity of people asking them in the street whether their son had been found. As soon as one of the juveniles confessed to the murder and accused another juvenile of complicity, their son's name was never mentioned again in the media. This caused extreme distress as the family had to explain their situation to people. We feel it is hard enough when our members have had to suffer the horror of losing a loved one, but particularly so in this case. Without naming anyone, the case involved a 16-year-old boy who had been missing for three years. He had gone away on a four-wheel drive trip with two of his mates, who were aged 15 and 17 at the time. He was 16. As it turned out they had murdered this young fellow and he was missing for three years. That family had to go through horror. One of them admitted to the crime three years later—it was actually during Missing Persons Week in that particular year—and the other person pleaded not guilty but was convicted. Think of what that family had to go through. No-one knows exactly what happened. It is an extra burden that is put on families after going through a trial.

The Hon. GREG DONNELLY: Is your proposition essentially dealing with criminal acts associated with homicide and murder? Is that what we are talking about?

Mr ROLFE: I hate to say it, but yes and no. As our group suggests, we are basically involved with homicide, which of course includes manslaughter as well. But we also have feelings about other crimes, which in a lot of cases lead up to homicide.

The Hon. DAVID CLARKE: Are you basically putting forward, Mr Rolfe, that the rehabilitation of victims is at least of equal importance as the rehabilitation of the offenders?

Mr ROLFE: Most certainly.

The Hon. DAVID CLARKE: You would say that the victims are the innocent party and the offenders are the guilty party.

Mr ROLFE: Yes.

The Hon. DAVID CLARKE: To follow on from the question you were asked, would you see that if there was an amendment to the law it would apply in the case of more serious crimes—not only homicide but, for instance, rape, serious assault and so forth—where the victims require rehabilitation, and very often substantial rehabilitation?

Mr ROLFE: Definitely. If I can just jump ahead, we have been talking about youth conferencing but youth conferencing is not available for certain types of crimes, including crimes involving death and sexual assault matters. We feel that is an anomaly in itself. That is one of the points I am trying to make. We feel grossly offended, particularly with homicide being the highest charge on the scale—for want of a better expression.

The Hon. DAVID CLARKE: You would see the devastating effects on victims of these sorts of crimes, such as homicide, rape and serious assault, would you not?

Mr ROLFE: Definitely with homicide, yes.

The Hon. DAVID CLARKE: What about other cases such as rape? Do you come into contact with victims of rape and serious assault or are you restricted mainly to homicide?

Mr ROLFE: We are restricted mainly to homicide, yes.

The Hon. DAVID CLARKE: So you have no knowledge of victims in those other areas.

Mr ROLFE: I have in some ways but to a much lesser degree. Our organisation has made the point that, whilst homicide is the worst category of crime as far as many people are concerned, I do not know how victims of serious sexual assaults and rapes are able to cope with the knowledge that the offender is going to be released at some stage and also the fact that they have to bear the brunt of the physical attack as well as the psychological attack. As I said, we mainly refer to homicides but I also appreciate what these victims have to go through.

The Hon. DAVID CLARKE: Do you have any case studies on the devastating effects that these crimes have on victims?

Mr ROLFE: Juveniles?

The Hon. DAVID CLARKE: Yes.

Mr ROLFE: Could I take that on notice?

The Hon. DAVID CLARKE: Yes. If you do have any case studies, would you like to present them to this Committee?

Mr ROLFE: Certainly.

CHAIR: You have three weeks to get them back to us. If that is not enough time, we will be happy with a phone call to the Secretariat to have the time extended.

Mr ROLFE: Thank you.

The Hon. JOHN AJAKA: Are you aware of the difference between indictable matters and summary matters?

Mr ROLFE: Yes.

The Hon. JOHN AJAKA: I take it from what you have said that you believe that names should be published in the indictable matters category, that is, those in the District Court and Supreme Court, and that you are not submitting that names should

be published in relation to lesser matters, known as summary matters, in the Local Court.

Mr ROLFE: I know what you are saying, and it is certainly going from one side of my head to the other. We find in a lot of these cases, particularly with homicide, that there are antecedents with juveniles. So it is difficult to say whether it should be restricted to the District Court and Supreme Court or whether it should be in the Local Court. I would tend to feel that it should be only for serious matters in the District Court and Supreme Court. I do not know what some of our members would say.

The Hon. JOHN AJAKA: Realistically, there would have to be a cut-off point. That would be one type of cut-off point that you would be submitting?

Mr ROLFE: Yes.

The Hon. JOHN AJAKA: I must say, I have difficulty with your argument that the name of a 16-year-old should be published, yet the name of a young person aged 15 years and nine months should not be published. I would like a little more detail from you on that.

Mr ROLFE: I agree with you there. We heard earlier today that the law states that the cut-off point is 18. Some people suggest it should be 21 and that in some cases, with mental and psychological development, it should be 25. We are drawing the line there, with those two age groups of 16 and 18.

The Hon. JOHN AJAKA: Surely, 16 and 17-year-olds are still very immature. I have daughters, including three teenagers. I cannot say that my 16-year-old is mature enough to make any real decision.

Mr ROLFE: I suppose one of our arguments is that both sexes have the age of consent at the age of 16 and also they can get their drivers licence at 16 years and nine months. That is a big responsibility to them. So why can they not take responsibility for their own actions at the same age?

The Hon. DAVID CLARKE: I guess your response is that there has to be a line drawn somewhere?

Mr ROLFE: Yes.

The Hon. DAVID CLARKE: There will always be cases that will fall one side or other of the line, wherever the line is drawn?

Mr ROLFE: Yes, that is right.

The Hon. JOHN AJAKA: Clearly, the group you represent have been through tragedy, and clearly they deserve every cent in relation to that. But is it, in one sense, a form of punishment for young offenders that they are looking for in having them named?

Mr ROLFE: I have to be honest. In some cases for our members, yes. I am 15 years down the track from when I was involved in homicide. So I am, I hope, able to

have a more balanced approach to these sorts of things. Whereas, some of our members who are currently going through the court processes are absolutely adamant that this should happen or that should happen. They say, "Name the lot of them." Yes, I would have to agree that in some ways and in some cases it is a form of punishment, but in others it is a form of rehabilitation. Let us face it, if people are going to be locked up for a certain period of time, they have to come back out again and they have to take responsibility for their actions.

I know of a certain case of a juvenile. He went before the parole board, he refused to take responsibility for his actions, and he had his parole deferred for 12 months. He is due to come back again, and he has done the courses that he had to do and he has taken responsibility for his actions. That is what we feel juveniles need to do at the beginning. It saves them a lot of time in trying to rehabilitate themselves.

The Hon. JOHN AJAKA: What about the situation where you have a young person 16 years of age charged with a serious offence for which you want names published, and then that person is found not guilty? Is not the damage done by the fact that he has already had his name published?

Mr ROLFE: I might not have made myself clear. Named upon conviction.

The Hon. JOHN AJAKA: Your submission is that only if they are convicted of the offence can their name be published?

Mr ROLFE: Yes.

Ms SYLVIA HALE: If the name of the offender is made public upon conviction, can you see this giving rise to a media circus, a titillation of public interest into the background of the offender, and creating a situation which is far more intrusive and harmful to both the victim and the offender, who will presumably be in jail and will not be exposed to the same glare of publicity?

Mr ROLFE: I have to help my fellow members through the publicity at all stages. Yes, and no. Basically our members feel that, with the publicity situation in these cases, they want as much publicity as possible, and in some cases the naming of the offenders as much as possible. I think whatever happens, the media will want to get their story, and I do not think it is going to be affected by the naming.

Ms SYLVIA HALE: You are suggesting that amongst your members there is a whole range of reactions to events, with some people not wanting publicity at all. I know you have sat through all the evidence that has been given today. You must have heard the evidence that there are certain social indicators which indicate a likelihood to commit an offence. Do you think that the benefit that will be derived by some, but not all, of your members from the naming of those offenders will override and perhaps be a substitute for a real addressing of the causes of many of these crimes?

Mr ROLFE: Your question has brought things to my memory, relating to a certain case. It is very interesting that you referred to people's behaviour in early years indicating that there are problems. This was evident in our case where the fellow showed completely antisocial behaviour in his teenage years but no-one did anything about it. It was only when he turned 21 that he murdered two people.

I have probably got away from the question you were asking me, but this is something that has been brought to be now. I wish to God people had taken up some of his behaviour. I wish his school teachers had taken it up, because some of the things he was doing at school were absolutely beyond belief. It is a very sad state of affairs that the only time he was stopped from doing what he was doing was when he was arrested after he murdered two people.

Ms SYLVIA HALE: What you are saying is that his name would only have been made known after conviction. Do you think that the naming of him would have led to intervention prior to that occasion, or are we looking at broader issues that prevent intervention?

Mr ROLFE: I think it is probably apathy in a lot of cases, to get involved and stop this sort of thing happening. I am talking about apathy on behalf of the public. They see someone misbehaving and they do not want to get involved. They do not want to name people, and they do not want to do this or do that. Naming upon conviction—I do not know exactly what help it would be to the situation.

Ms SYLVIA HALE: You said earlier that youth conferencing did not take place in cases of homicide and sexual offences. Do you think some form of conferencing or confrontation in a private setting between the victim and the offender would go towards alleviating some of the loss and suffering that people feel? Would that be a more effective path than publicly naming people, which may have a lot of adverse implications?

Mr ROLFE: That works in two ways. A lot of people do not want to have anything to do with conferencing. In the case of homicide, families do not want to have anything to do with the murder, but then again some do. Some want to know why. They say, "How did my son or daughter become involved with you?" But I do not think it would replicate the naming of the person. We still feel very strongly that these people should be named and, importantly, to get them to take responsibility for their actions, as I explained at the beginning.

Ms SYLVIA HALE: But naming is something that is done to a person. It does not necessarily force that person to take responsibility for their actions. It is something that is done to them, rather than something that they do. I do not know that it will necessarily lead to the outcome you are hoping for.

Mr ROLFE: I know what you are saying. But we do have cases where we know that they are hiding behind the fact that they cannot be named. There is one case, as I mentioned in the submission, of two people who knew that they could not be named so they had no reason to take responsibility for their actions.

Ms SYLVIA HALE: It was suggested earlier—and I think you are agreed with it—that the rehabilitation of victims is equally important as the rehabilitation of offenders. Given that in many cases offenders will be released into society, is it not desirable, in the general public interest, that if there is going to be a focus anywhere it should be on the offender to prevent any long-term adverse effects on society when the offender is released?

Mr ROLFE: Yes. The rehabilitation of victims in these sorts of cases is a very, very difficult situation and it is something that goes on forever and ever. As I said, we are concerned with the rehabilitation of the offender so that they will not do it again. That is basically what it boils down to.

CHAIR: Thank you for your evidence today; it is very important to us. Do you think that the naming of juvenile offenders is a way of making parents more responsible for their children's behaviour?

Mr ROLFE: I think it is very important. The sad thing about society as it is today is that a lot of parents have no idea what is happening with their children; they have no idea where they are, what they are doing or anything like that. I think that sometimes parents have to be brought into the equation, to try to make life a lot easier for the rehabilitation—not only of their children but of themselves in some cases. I think it is very important. I do not believe in the shaming aspect of it; that is not our main thing. It is the rehabilitation aspect. In a lot of cases, if the offenders had not been in the situation they were in, a lot of people would not be suffering the tragedy they have suffered. I think it is one of those things we just have to get into people's heads: that someone has to take responsibility for things. If it is not working the way it is now, let us try something else.

I might just say one thing. I was involved in the Victims Rights Act 1996, which included the introduction of victim impact statements in courts. When that was mentioned the whole world was going to fall in. The Law Society, the Bar Association, everyone was saying that it cannot happen. Here we are so many years later, 12 years down the track, and not only do we have victim impact statements in the Supreme Court in murder trials, the statements were originally written and now they are oral statements and they are also in the District Court and for other matters as well. The world has not fallen in. People just do not seem to want change.

CHAIR: Thank you for coming today, Mr Rolfe, and for your submission.

(The witness withdrew)

(Short adjournment)

GILLIAN ELIZABETH CALVERT, Commissioner, Commission for Children and Young People, Level 2, 407 Elizabeth Street, Surrey Hills, affirmed and examined:

CHAIR: Ms Calvert, thank you for attending this inquiry in relation to the prohibition of the publication of the names of children involved in criminal proceedings. I will not read through all the conditions, as Ms Calvert often has to brief committees on policy and documents that her commission is working on. The information is available at the back of the room. Ms Calvert, in what capacity are you appearing before the Committee, that is, are you appearing as an individual or as a representative of an organisation?

Ms CALVERT: I am appearing as a representative of an organisation.

CHAIR: Are you conversant with the terms of reference for this inquiry?

Ms CALVERT: I am.

CHAIR: If you should consider at any stage certain evidence you may wish to give or documents you may wish to tender should be heard or seen only by the Committee, please indicate that and the Committee will consider your request. Further, if you do take any questions on notice the return date is Monday, 11 March 2008. Would you like to start by making a statement?

Ms CALVERT: I would, thank you, Madam Chair. I thank you for the opportunity to contribute to the inquiry into the prohibition of the publication of names of children involved in criminal proceedings. First of all, I would like to draw the Committee's attention to section 12 of the Commission for Children and Young People Act 1998, which requires the commission to give priority to the interests and needs of vulnerable children. Children involved in the criminal justice system fall into this category of vulnerable children. For these children the stakes are high. I think New South Wales has done well in recent years balancing the many interests involved. What we currently have in New South Wales is an open system. By appearing at Children's Court an accused child is formally judged. The Children's Court is closed but the child can still be viewed outside the court. While in the courtroom the victims or other witnesses may be present to give evidence and the family of the accused may also be in the courtroom.

The Commission also recognises that where a child commits a serious offence the interests of justice may outweigh the need to protect the child. Therefore, it can be appropriate that the child's name be published. This is something that is already part of New South Wales' law. Victims of crime deserve a strong, open justice system that they can be confident in and that treats them with compassion and respect. However, there is no evidence that publicly naming children who offend helps victims in their recovery. Indeed, the prohibition on naming children who offend can help victims maintain their own privacy, helping them in the process of recovery by protecting them from unwarranted outside attention. There are other better ways to help victims, such as the youth justice conferencing system currently in place where there is real evidence of success. By participating in the process of deciding how the offenders should be dealt with, victims are able to recover a sense of power they might have lost as someone who has had a criminal act perpetrated on them.

This inquiry is an opportunity we all have to review and to strengthen laws around naming prohibition in the interests of rehabilitating young offenders, protecting the privacy of children giving evidence and the victims and their families and providing victims of crime in the community with fair, open justice. The commission advocates extending the naming prohibition to children arrested but not yet charged. This will bring two pieces of legislation—the Children (Criminal Proceedings) Act 1987 and the Young Offenders Act 1997—more closely into line, making the prohibition easier to understand and apply. The commission's job is to put children first and the reason that is our job is that the Parliament recognises the benefits to New South Wales of happier, healthier communities of children. The children and the wider community benefit when children are steered away from criminal activity and environments. Our focus should be on building on what we know can work, not proposals such as naming and shaming that have little basis in research or on the ground. Thank you for the opportunity of appearing before you.

CHAIR: I will ask the first question that you received on notice. It has been argued that a major cause of juvenile delinquency is poor parenting and that naming children may be a way to make parents more responsible for their children's behaviour and, therefore, more motivated to ensure that they behave within the law. Could you comment on that, please?

Ms CALVERT: Poor parenting is only one of the many risk factors that can influence a child's involvement in crime. Others include poverty, educational levels, intellectual functioning, substance use and other circumstances or disadvantage. Children who become involved in the criminal justice system are often already vulnerable. They often come from backgrounds of disadvantage, neglect and abuse. Many parents of juvenile offenders are themselves struggling with difficulties like domestic violence, mental illness and substance abuse. I made reference to this in my submission to the Committee. So, in my view, parents in this situation are unlikely to be motivated to do a better job by details of a child's crime being made public. Shaming families would not help a child's rehabilitation and certainly would not help that child's reintegration back into the family at a time when they really need their family and I do not think it would assist the community's regeneration. The causes of poor parenting are complex and are better addressed by early intervention programs, such as sustained nurse home visiting for vulnerable babies and parents and early childhood education and care. So if we want to address the causes of poor parenting, it is through early intervention that we should do that. I cannot see how further shaming and making things difficult for parents who are already disadvantaged and often struggling will, in fact, help them to manage their children's behaviour.

The Hon. DAVID CLARKE: Ms Calvert, correct me if I am wrong, in your opening remarks you put the proposition that victims would not be helped by the naming of juvenile offenders?

Ms CALVERT: We were unable to find any evidence that naming juvenile offenders aided victims in their recovery.

The Hon. DAVID CLARKE: Have you gone out to look for this evidence one way or the other?

Ms CALVERT: We have tried to find evidence because we think it is important in making decisions about whether to name children in criminal proceedings that we base that on what we know works or does not work. So we try to use the evidence as much as possible to help inform our decision.

The Hon. DAVID CLARKE: You really have no evidence one way or the other as to whether it helps victims?

Ms CALVERT: We have not been able to find any evidence. We have been able to find evidence that juvenile youth conferencing has been viewed positively by victims where they felt participating in the process of confronting the young person or the child who had committed the crime gave them a sense of agency back. They were able to see that the young person had taken on board the impact of what they had done on the victim. So the research that we did find, indicates that the victims found that process helpful where it was a one-on-one environment.

The Hon. DAVID CLARKE: That is an entirely different issue. I am raising this, Ms Calvert, because our last witness represented a victims' organisation. He told us that it would greatly assist the rehabilitation of victims for juvenile offenders to be named. He is somebody who has come forward with anecdotal evidence and the evidence of his members and his organisation, which has been in existence for some years, I understand. You are coming forward with no evidence one way or the other. Because you have no evidence one way or the other, you are putting it as a proposition, in effect, that they will not be helped. That is the proposition I am putting back to you.

Ms CALVERT: I am sure that some people individually would find it satisfying and somehow helpful to name the children who have committed crimes. We were unable to find any empirical evidence or any published studies that, in fact, supported that proposition. What we were able to find was that naming children can have a negative impact on those children. So we were able to find empirical evidence to that effect.

The Hon. DAVID CLARKE: That it will have a negative impact on the offenders?

Ms CALVERT: On the child, yes.

The Hon. DAVID CLARKE: We are talking about the effect on the victims. Your opening comments referred to the effect on the victims. I put to you that we have just received evidence from an organisation representing victims that it does assist in their rehabilitation. As you are the head of the Commission for Children and Young People, I guess you are dealing more with the offenders rather than the victims.

Ms CALVERT: I am also dealing with victims because children or young people are most frequently the victims of crimes of other young people. So I am looking at both young people as offenders and young people as victims. We were unable to find any empirical evidence that naming young people aided the recovery of victims. Whether those victims were older victims or whether they were young victims we were unable to find any empirical evidence. I suspect that you will always be able to find people who say, "Yes, it will help me." However, that is the reason why we try to search

for empirical evidence where we have larger numbers involved and we can, in a sense, use that scientific evidence to help guide our policy making.

The Hon. DAVID CLARKE: The situation would be that you have no empirical evidence to support or oppose your contention?

Ms CALVERT: I certainly was unable to find any evidence to say that naming young people in any way helped victims.

The Hon. DAVID CLARKE: Have you any evidence to show the contrary?

Ms CALVERT: No, I have no evidence to show the contrary. But I do have evidence to show that naming offenders can be harmful for those offenders.

The Hon. DAVID CLARKE: That is a separate issue, which I am not covering at the moment.

Ms CALVERT: Except that I am required to think about children both as victims and offenders. So in looking at that, when I look at the victims with no evidence either way and offenders where there is evidence that it does harm them, then I am going to be arguing that we should not be naming children in criminal proceedings because the evidence shows that it harms young people who are the offenders and we do not have the evidence either way for the impact on victims.

The Hon. JOHN AJAKA: Realistically, you appear before this Committee with the obligation for all young people in this State, whether they be offenders, victims or otherwise. So there is no prejudice from your point of view as to one group against the other. You are completely independent. Looking at the area of youth conferencing, which has been raised a number of times, in a pleasing way the statistics show that those attending have less likelihood of re-offending than those that are charged and do not attend. Do you believe that there are sufficient resources in place for youth conferencing? By that I mean sufficient mediators, councillors and other support staff?

Ms CALVERT: I would probably take that question on notice because I do not want to give you an answer that is incorrect. However, I will say that I have not been approached by anybody to raise concerns about the level of resources for the youth conferencing scheme.

The Hon. JOHN AJAKA: If you need to take this on notice also please do so by all means; is there ambit for extending or increasing youth conferencing? Do you feel there is a need for that and are resources needed? Is that something for us to give consideration to?

Ms CALVERT: I suspect that if we were to extend the ambit that we would need resources to accompany that extension. I would probably want to go back and take on notice the question of whether it should be extended and, I presume, in what area it should be extended.

CHAIR: Geographic area or legal area?

Ms CALVERT: Geographically it is available across New South Wales. I would have thought the offences would be the sort of thing you would be looking at.

The Hon. JOHN AJAKA: I meant in relation to the actual offences.

Ms CALVERT: Yes.

The Hon. JOHN AJAKA: As I would see it, the first person to make a determination on youth conferencing would, of course, be the police officers that are initially involved in the investigation. Do you feel that the police officers are sufficiently trained in relation to youth conferencing? We heard earlier that some matters are going before magistrates who are immediately sending them back to youth conferencing because they felt they should have been there in the first place?

Ms CALVERT: I would think it is probably not just a question of training but a question of culture within the police force and the approach to youth crime, if you like, within the police force. I think those things probably have as much impact on the referral of matters to youth conferencing versus the courts as the training they receive. The training is certainly is an opportunity to broaden people's understanding of youth conferencing and a reason why you might go down that path rather than through the court process.

The Hon. JOHN AJAKA: Should this Committee be looking at recommendations in relation to further police training or further encouragement to the police in relation to it?

Ms CALVERT: I will take that on notice but I would have thought if it was going to positively impact on crime rates, and therefore reduce victims in the future which I guess is a benefit to victims of youth conferencing, then yes that is something I would have thought you would be interested in recommending.

The Hon. JOHN AJAKA: You indicated earlier on, and this may be an extension, that you would have liked to see the prohibition that commences under section 11 at the time of charging brought back to even the time a person is arrested. Would you also have the same view, or a view, for the prohibition to apply prior to arrest where the police may approach a young person to interview but not actually arrest him?

Ms CALVERT: The difference is that by making an arrest the police are making a statement that there is sufficient evidence for them to take formal action. I think that is a much stronger statement than someone assisting police with their inquiries, which is how they usually make reference to people.

The Hon. JOHN AJAKA: Are you concerned that the police may be initially commencing their investigation by simply interviewing one or two young offenders, there is no prohibition on the name going out, the name goes out and then all of a sudden a person is arrested and charged and prohibition applies but, to quote the lovely colloquialism, the horse has bolted?

Ms CALVERT: I will take that on notice. I would like to spend some time thinking about that and balancing out the various interests of the young people and children involved in that.

The Hon. JOHN AJAKA: When I look at your role, if I can use that term, the Commission for Children and Young People promotes the safety, welfare and wellbeing of children and young people in New South Wales. One of the areas that you mention in various parts of your submission is that you are seriously concerned about labelling and shaming and that this has adverse impacts and effects. Commissioner, what would be your view in relation to labelling such as ethnic descriptors of Middle Eastern appearance or Middle Eastern crime squad, where there appears to be a labelling of one area of youth or adults but we are only dealing with youth? What would be your view in relation to that and any adverse effects that may have on the shaming of young people within the same community?

Ms CALVERT: That sort of racial description is applied to both adults and children, as you say, and therefore in a sense is outside of my ambit. When I talk about labelling, it is labelling of a young person by identification within their school, their friendship network, their neighbourhood and so on. Having said that, I have had a number of young people approach me and talk with me about the impact of being part of a community that has been labelled in that way. They have talked about the impact on them personally.

The Hon. JOHN AJAKA: Obviously not a positive impact?

Ms CALVERT: No-one has raised it in a positive context. It has been primarily raised with me as an adverse impact. The impact is on them individually; on their sense of identity which, when a young person and you are going through a period of identity development, is a very powerful thing to have happen to you. But it also impacts on them because it impacts on the key relationships in their lives, so their family—both immediate and extended family. They certainly talk about the adverse impact of being a member of the community whose identity is under attack, if you like. My sense is that it has a particular meaning for young people because they themselves are going through an identity formation period that I am not going to go through because I am an older person.

The Hon. GREG DONNELLY: Dealing with a couple of questions on notice that have been presented to you. Juveniles are treated differently from adults in our criminal justice system, imparting recognition of the fact that they have not in general developed many of the abilities they will in adulthood. What are some of those abilities and how are they relevant in offending and re-offending matters in juveniles?

Ms CALVERT: There is already recognition of the different maturation rates between children versus adults. We see that, for example, in the Doli incapax principal that exists. In recent years we have learnt much more about the development of the adolescent brain than say 20 years ago or even 10 years ago. What that research has found is that the area of brain related to thinking ahead, to planning, and the area of the brain related to impulse, which is generally the frontal lobe part of the brain, does not develop until later in the teenage years and sometimes up in to young adulthood—say about 24 years of age. What that means is that we know—if we did not know it through experience we now know it because of brain research—that adolescents often lack the

capacity for self-regulation of impulses and emotion. They do not have adult capacities to control impulses and emotion because that part of the brain has not as yet fully developed and the neural pathways have not yet opened up to enable young people to plan ahead and to control themselves, to exercise restraint. As a consequence of that, we think they have a tendency towards risk-taking—we can see that tendency in higher rates of assaults and car accidents and so on. At the same time as they have the tendency towards risk-taking, they also have less developed capacity to make judgments about risks or the consequences of those risks. They cannot plan ahead and see what might possibly negatively happen as a result of those actions.

The Hon. GREG DONNELLY: Can I just interrupt you? Is there any differentiation between the development of the female brain and the male brain?

Ms CALVERT: Yes, there is. Male brains develop at a later stage than female brains. I have heard one figure quoted that it is up to six years difference between the male brain and the female brain.

The Hon. GREG DONNELLY: That is the worse case scenario?

Ms CALVERT: I am not a neuro psychologist, so I would be suggesting that you follow that up with somebody who does have those qualifications. But you do see that male-female difference in some of the risk-taking behaviours such as rates of assaults, motor vehicle accidents and various things like that. I think the research about brain development and the gender differences does have implications in offending and re-offending. If adolescents find it hard to control their impulses, if they cannot plan ahead, if they cannot see the consequences of their behaviour, then they are more likely to offend on impulse and because they cannot see the consequences they are more likely to re-offend. I think it also has implications if we think about using the argument around deterrence. If you cannot plan ahead, if you cannot control your impulses, if you cannot think through the consequences, then deterrence is less likely to work because you do not see the consequences of your behaviour and therefore it does not deter you from undertaking that behaviour. I think it does have implications in the area of crime and justice. In fact some of the courts in America are beginning to recognise that and it is beginning to impact on what is happening in some of their decisions.

The Hon. GREG DONNELLY: Is there any evidence that looks at the question of stable family relationships and the propensity of young people to act in a risk-taking way or a way that may put them in conflict with the criminal justice system? By and large, as a generalisation, if young people are born into, and nurtured through, a stable family relationship is the likelihood to act in a way which will put them in contravention of the general rules of society less likely to take place?

Ms CALVERT: Yes, I would think that it would. If you think about the brain research that I have just been talking about where you have lack of impulse control and so on, if you are placed in a family environment which has strong boundaries, where there are strong relationships, where those people can act to contain you and exercise judgment and planning on your behalf and to influence you versus that same brain being placed in a family that lacks boundaries, that is chaotic, where the parents are unavailable, you could see how that young person would then tend to end up in contact with a criminal justice system probably more frequently than those children from families where there are strong relationships—and you do see that in the research. If

you look at who are the offenders of crime, you do see that it does tend to be those young people who come from disorganised, chaotic, poorly resourced, families familiar with issues such as, domestic violence, mental health, really families where the parents are struggling to be effective parents. Yes, I think the stronger the parenting, the families, the school and the neighbourhood around the developing brain, then the less likely it is that that young person will end up in a criminal justice system.

The Hon. DAVID CLARKE: Just one question arising from those asked by the Hon. Greg Donnelly: you said that there are implications in respect of the research in brain development and gender differences. I guess that has implications—and you can comment on this as the Commissioner for Children and Young People—possibly in respect to the legal area of the age of sexual consent, would it not?

Ms CALVERT: I think it has implications across a whole range of policy areas.

The Hon. DAVID CLARKE: Including that area?

Ms CALVERT: I think it has implications across almost all policy areas. If you think about driving, for example, I think there are implications there that are both gender differences and age differences. I think that over the next 20 to 30 years we will probably see this research having a big impact on the sort of policy directions we take. Having said that, I also think that the research is in its early stages and there is much more work that we need to do both in terms of the research but also its policy implications.

The Hon. DAVID CLARKE: We could be looking at a situation where it is being argued, and I think you are arguing, that this information, this research in respect to brain development and gender differences, is an argument against us lowering the age for names to be released, but then there are others who have argued about the age being reduced from 18 years to 16 years in respect, for instance, to the age of sexual consent. Maybe there needs to be some consistency in the application of this research?

Ms CALVERT: I think there is a lot of inconsistency and contradiction in relation to the age at which children are considered children and young people. For example, they cannot vote until they are 18 years, they cannot enter contracts until they are 18 years because we recognise that they do not have the capacity. Yet there are other areas where we treat them as adults, for example, in naming them, if you want to go that way. But if we are going to give them adult responsibility like "You are going to be named and tried in an adult court", then why are we not giving them adult rights such as the right to vote. So, I think we have a number of contradictions and I think that is what is going to be interesting about this policy area for the next 20 or 30 years in trying to sort through some of that.

The Hon. DAVID CLARKE: But you would be relying on this research in respect to brain element and gender differences to argue against the age being reduced for naming because you are saying the research shows that young people act very impulsively, maybe erratically and irrationally, and may be taking risks that they normally would not be taking if their brain had matured more. Would that be a fair assessment of your position?

Ms CALVERT: Yes, I would be using the brain research to argue for not introducing naming. Equally I could argue that we should use that brain research to increase the naming age so that you should not name young people who offend, say, up to the age of 21 years or up to the age of 24 years. I think if you are serious about taking this research into account, in a sense you should say let us extend that prohibition on naming to take account of that research.

The Hon. DAVID CLARKE: As Commissioner for Children and Young People are you taking that evidence into account to assist in policy formation in other areas relating to young people, and not only in regard to sentencing?

Ms CALVERT: Yes, we do take it into account, certainly around risk taking. In some of our work on the Child Death Review Team we certainly take that into account. Let me also say that when you talk about the issue of using the research to prevent naming, already in New South Wales there is a capacity to name children under certain circumstances. So there is already a capacity to name.

CHAIR: These questions are asking for personal opinion and I know that you always operate from your job position when you are with us. This morning we heard an interesting term: it was about media use of naming. What is your opinion of the difference between "of public interest" and "in the public interest"?

Ms CALVERT: I guess "of public interest" implies that the public has an interest—it may be a prurient interest—whereas "in the public interest" implies that there is a greater good that overrides the interests of the individual involved. I would read "of public interest" as meaning it is of interest but there may not be any betterment to anybody arising from that whereas "in the public interest" implies that there is a betterment for the public, if you like, or a good to the public that arises. That is how I would see the two.

The Hon. JOHN AJAKA: Where would you see section 11 in relation to what you have just said?

Ms CALVERT: The current section 11 about naming only in certain circumstances? I would hope that the judge who exercises that discretion does it "in the public interest", not "of the public interest". That is what I would hope the judges who are exercising their discretion would be operating within. I think that certainly is the intention.

The Hon. JOHN AJAKA: So there has to be a benefit to the community?

Ms CALVERT: There is a public benefit in naming that child rather than interest being held by the public. So, there has to be some benefit to the public in the naming of that child.

CHAIR: In relation to the labelling issue you have addressed in your submission today, can you tell me as the Commissioner what you perceive of the incident recently in the now unnamed person in Victoria, the young person who, it would appear, developed some sort of hero status from the process of naming him, as a label?

Ms CALVERT: That is not the only example I am aware of. There is some other work that has been done that suggests that for some young people being named does give them a hero status, if you like. When you are rejected by your community or you are rejected by your parents, your family or your neighbourhood, you will turn to those who accept you. Naming can often be a status symbol, if you like, amongst that particular group of people. So, I think that is one of the dangers of naming; for some young people it will become a badge of honour.

The Hon. JOHN AJAKA: Certainly encourages reoffending?

Ms CALVERT: Well, it certainly strengthens bonds with other young people you would not necessarily want them to strengthen their bonds with, yes. I mean it becomes a positive reward for criminal behaviour, offending behaviour, and I think that defeats the purpose. Really we are all here to try to help victims recover. Also we are here to try to stop young people offending. That is really what we are here to try to do. So what does the evidence show is the best way to do that? And within that then, does naming help rehabilitate and stop that young person from offending or does it in fact act against them stopping their career of offending.

The Hon. DAVID CLARKE: Is there any independent research on this area?

Ms CALVERT: Certainly we came across—and I make reference to this in my submission — a PhD thesis that has been submitted by Andrew McGrath, who is a lecturer at the Institute for Early Childhood at Macquarie University. But he did his PhD thesis on the court process and recidivism and he examined the effect on children of an appearance before the Children's Court. He found that feelings of stigmatisation perception—if the child perceives they are being stigmatised—does appear to lead to high rates of subsequent offending. He also found that young people who felt they had been dealt with more severely by the Children's Court were more likely to feel stigmatised and, therefore, more likely to reoffend. So, if you consider naming as one possible way of stigmatising and feeling like you have been more harshly dealt with, then his research suggests that in fact it might lead to higher rates of reoffending. I am more than happy to put the Committee in touch with Andrew McGrath if that would help you in your consideration.

The Hon. DAVID CLARKE: I think it would help, and I would prevail on you also to give us a reference to the research that you referred to relating to the brain development: that would be of some considerable use to us as well.

Ms CALVERT: I will provide you with a small selection.

The Hon. JOHN AJAKA: Do you see a difference between the naming of children in indictable matters as opposed to naming them in summary matters, the clear distinction being District Court and Supreme Court indictable matters or the Local Court and Children's Court summary matters?

Ms CALVERT: I suspect the effect on the child is probably the same, whether it is a Local Court matter or whether it is the Supreme Court or District Court. I would suspect that the exercise of the discretion is probably better done at the Supreme Court and District Court level rather than the Local Court level.

CHAIR: Did you have anything else to tell us?

Ms CALVERT: No, except to reiterate that really I think what we are all here for is to try to stop young people going down the path of crime; they benefit, their families benefit, victims benefit and the community benefits. So the question for me is does naming help that or does it in fact act as a barrier to young people's rehabilitation and turning away from the pathway of crime.

The Hon. JOHN AJAKA: In your submission it is more the latter?

Ms CALVERT: And my submission is based on what we were able to find: that it is more likely to hinder rehabilitation and hinder in turning away young people from a life of crime.

CHAIR: Thank you very much for your informed evidence.

(The witness withdrew)

ROBERT WILLIAM HALL, General Manager, Federation of Parents and Citizens Associations of New South Wales, and

MAREN LEE WILSON, Policy Officer, Federation of Parents and Citizens Associations of New South Wales, sworn and examined:

CHAIR: Are you conversant with the terms of reference of this inquiry?

Mr HALL: Yes.

Ms WILSON: Yes.

CHAIR: If you should consider at any stage certain evidence you may wish to give or documents you may wish to tender should be heard or seen only by the Committee, please indicate that fact and the Committee will consider your request. However, it may in its consideration decide to make it public.

Would either or both of you like to start by making an opening statement?

Mr HALL: If I may begin by just making an apology. The president of the federation, Dianne Giblin, was unfortunately taken very ill this morning and, as a consequence of that illness, could not be here today. She has asked me to convey to you her most sincere apologies for her non-appearance and to mention that we have every confidence in Maren to put forward the federation's point of view.

CHAIR: Thank you very much. I am sure the Committee as a whole wishes her well.

Ms WILSON: I do have a brief statement. I just want to say thank you again for the invitation to come here today. We are really grateful for this opportunity and we hope the results of this inquiry help to strengthen the policy and uphold intrinsic rights. The Federation of Parents and Citizens Associations of New South Wales is primarily concerned with the provision of a quality education for all children in New South Wales. In achieving this we involve ourselves in policy matters that include direct educational provision, and that extends into all aspects of a child's life.

It is not often in Australian history that the Government considers repealing some of those protections of a child's rights. The factors that are being weighed in this inquiry are freedom of speech versus the rights of the child, or crime deterrence versus the rights of the child. The submission from the federation clearly spelled out some of the reasons why naming and shaming is not an effective deterrent to crime. However, even if it is an effective deterrent to crime and effective in restoring order, and even if it boils down to being an issue of free press, it is a fundamental right of the child to have their identity protected when associated with an offence. This special protection is consistent with State laws and international mandates. It is a fundamental human right that cannot be rescinded as a punitive measure.

It is essential that we bear in mind that children are offered this protection for a special reason. The brain is continually developing during this time and there must be societal scaffolding to ensure that the physical, mental, emotional and relational

development is protected. Making mistakes is a vital part of the learning process. It is how we respond to these mistakes that children are either alienated from or integrated into society. We cannot expect young people to fully comprehend and understand the laws of society and the ramifications of breaking them. The reality is that a young person under the age of 18 has little understanding of the protection they currently enjoy. Therefore, taking it away offers no disincentive for juvenile offenders. In their vulnerable state it is imperative that the laws place the rights of the child as the principal consideration, and, in the true spirit of rehabilitation, young offenders must be offered a second chance to learn from the mistakes of their youth.

Parents and guardians must play an integral role in the criminal proceedings and rehabilitation. Rather than punishing parents, all effort must be made to support them and empower them to nurture and to guide their children in their moments of discretion. Society is not validated by supporting those who thrive on their own but how they treat the marginalised. In respecting the rights of young people, New South Wales is paving a promising future. That is a future where change is possible and where societal problems are reversed rather than reinforced. That is the crux of the issue. It is that choice to prioritise that special protection with rehabilitation that the Government is being an agent for positive change, and we do support that.

CHAIR: Thank you very much. Do you think that naming juvenile offenders is an effective way of making parents more responsible for their children's behaviour? I know you have touched on this in your opening address, but can we have some feedback on that?

Ms WILSON: I can flesh it out a bit. As I mentioned in the opening remarks, we do not believe it is an effective deterrent or effective in making parents more responsible. It does not increase their awareness because parents are already notified when the children are arrested. In the experience of our affiliates, a number of factors contribute to whether a child is deviant or not. They are different factors in their background. Parenting is a consideration but we believe it is not the parents who should be held on trial. In some stories we have heard about very strict parents who had a daughter and they set strict boundaries with her. She wanted to go to a party and they said no based on the grounds that they knew there would be drinking there. She snuck out and went to the party anyway. If she had been caught, convicted and named and shamed and if the parents had been held on trial, there would have been little in their power they could have done to prevent the actions of that child without crossing some serious child protection issues of being too overbearing.

So, it is our view that the parents should not be held on trial, because it does not enhance the rehabilitation process. It shifts the responsibility from the child to the parents and it fails to take a teachable opportunity and makes the parents bear the brunt of the punishment. Repealing the current law would not enhance the rights of the parents. It would not equip them; it would not enable them to have greater control. Often in cases where a parent is put out there and put on trial, one of two negative reactions occurs. Either their instinctive role is one of protection—regardless of what the truth of the matter is, they step up and protect the child no matter what, and that does not help in the rehabilitation process. Another negative ramification can be that added stress is put on the parents and that can be taken out in a very negative way and turns the household from a safe haven for children into a destructive environment when

that new lot of punishment is added that is not regulated and cannot foster rehabilitation.

The Hon. GREG DONNELLY: These are questions on notice that I think you have been provided with for the hearing. How could being named influence a juvenile offender's rehabilitation?

Ms WILSON: As I mentioned earlier, one of the core beliefs we are putting forward is that making mistakes is part of the learning process. It is important to understand that the brain is being developed from the age of zero all the way up to 24 or 25 from some of the studies we have seen. This is important to bear in mind because naming and shaming inhibits learning because it results in clear stigmatisation, embarrassment, it hinders future employment and fails to allow our children to bury the mistakes of their youth. In our culture, that is more dependent on using the Internet and Googling people to find information, someone just needs to go to their local paper or they just need to type in someone's name and it pops up and you can never get rid of that. Whether it is just in social circumstances or whether it is in regard to employment or other things, you cannot get past it.

Whatever is stated publicly is often assumed to be the truth. If the naming happens before the trial, innocent children are labelled based on that. If it happens after the trial and you are only talking about guilty children or children who have been found guilty, it still has many ramifications because the label of deviant sticks with them and they become one of the usual suspects. Many of our affiliates have seen that in a classroom setting. This is an environment where we hope that kids could go and that schools would be a place that provide structure and be a nurturing and safe haven for them. However, unfortunately, many adults that students encounter react badly to kids who have been labelled as deviant. School staff sometimes reinforce and buy into those labels and perpetuate the problems.

One of the other questions that I will touch on later, I think the other problem is that it can lead into a negative attention-seeking pattern where they can reinforce negative behaviour trends. So, it just turns classrooms and other peer networking places into a sphere of harassment and degradation rather than being a safe place where the child can go as they continue to go through the learning process, because it is severe embarrassment and isolation that handicaps the social and relational development of the students.

The Hon. GREG DONNELLY: Forgive me if I misheard, but in your opening statement I thought you made some comment that at least suggested to me that young people may not be able to understand the law or comprehend the law?

Ms WILSON: Yes.

The Hon. GREG DONNELLY: Is that what you were saying?

Ms WILSON: Yes. It is not to say they are unable to always understand, but if we recognise—a fact that we have already heard a bit about today—that it is also held up by the United Nations Declaration on the Rights of the Child, that these children need special provisions, because we recognise the fact they are still developing socially, emotionally. relationally, physically and spiritually, and it is our duty to make sure that

can happen in a healthy manner. As we recognise that developing process, and that includes mentally and their mental comprehension of it, it is not to say that we can assume that they have the same comprehension, especially not the comprehension of the ramifications and consequences of their actions long term, as an adult would have.

The Hon. GREG DONNELLY: But you are not letting them of the hook, are you, in understanding what the law provides and what is right and wrong with respect to certain matters?

Ms WILSON: No, absolutely, and it would be our view that we would treat any sort of discussions as an opportunity to work towards rehabilitation. So, rather than just adding on more punitive measures, it is looking more at the big scope of what can be done to ensure they are rehabilitated into society in a way that will lead towards them having a productive, healthy lifestyle. That means learning from their mistakes. It means not being stuck with the stigmatisation and learning what the ramifications are, but being able to have a second chance and to learn from the mistakes they have made.

The Hon. DAVID CLARKE: The view that you just put is that the current law against the naming of juvenile offenders should be upheld. Is that the official policy of the Federation of Parents and Citizens Association?

Ms WILSON: We do not have a specific policy that would use the term "name and shame". The policy that I referred to of the parents and citizens is affiliated in the submission. In the submission I state, "Parent participation is the most effective method of ensuring that the individual needs of students are addressed." We take a more overarching view toward addressing policies and societal structures that play into that. But we do not have a specific policy other than a general view toward enhancing rehabilitation.

The Hon. DAVID CLARKE: The view that you have just put against the naming of young offenders, or juvenile offenders, is not the official policy of the Federation of Parents and Citizens Association. You are drawing that as a conclusion from a general principle.

Ms WILSON: As specific issues relate this is one thing where the discussion was had and the executive team approved, with the full support of the president, that on this issue that would be the stance that they took, in line with the other policy considerations. So the policy of the federation is more a general overarching one. Based on that the council members, the affiliates, the executive and the president finetune those specific issues.

The Hon. DAVID CLARKE: Are you saying that the executive of the parents and citizens considered this issue and made a specific decision in support of the current law relating to the naming of juvenile offenders?

Ms WILSON: Yes. They supported the submission and President Giblin gave her full support in response to the questions we prepared.

The Hon. DAVID CLARKE: Would you be able to supply the Committee with the specific resolution that was approved by the executive that states in specific terms what the policy is?

Ms WILSON: I could provide you with the minutes from the last executive meeting where they discussed the issue, if that would facilitate the Committee.

CHAIR: In line with this questioning could you give the Committee an outline of how your executive is formed and the representation on that executive?

The Hon. DAVID CLARKE: I do not think we need the minutes; we just need the resolution that was approved on this specific issue. That is all I am looking for. That will state exactly what is your policy on this.

Ms WILSON: Okay.

The Hon. DAVID CLARKE: Why is it a right for a 17-year-old not to be named for committing a serious offence but it is not the right of an 18-year-old? What is the specific right to which you are referring?

Ms WILSON: It is an interesting point to be considered. The definition of "adult" is a bit inconsistent from different forms of policy that I came across. What we put forward at the end of the submission is that we would like to see more consistency and more coherence between the documents. If the age of adulthood is said to be 18, we fully support that the legal ramifications that go with it are tied in at 18. But then if you were defined as a child at age 17, due to all the reasons that I have already given about the special protections that are necessary for that developmental process, I would stick consistently with that. As the law currently stands it does allow, in extreme circumstances as the court decides, that they could name that offender and that should be sufficient for any sort of extraneous circumstances.

The Hon. DAVID CLARKE: So it is more a case of the law being consistent rather than for any other reason? You say that there should be consistency in the application of the law?

Ms WILSON: In the studies that we saw—and this is something in which I am not an expert—and in the findings that we had it did not state that 18 was the age at which the brain was fully developed and that reasoning was fully developed, but that would be considered later than 18. So if that were to be considered the age at which there is a real consciousness of law maybe we would make it higher. We certainly would not go lower than 18 because the evidence we came across in doing this research certainly did not indicate that 18 was the across-the-board threshold for complete understanding.

The Hon. DAVID CLARKE: Does your association have a view on what should be, say, the sexual age of consent?

Ms WILSON: It is one thing that the president and I discussed. The view that she has discussed with other executive members, to the best of my understanding, is that they do not appreciate the inconsistencies, especially in regard to the law of consent because it depends on who the parties are, whether male or female, what profession they might have and things like that, that influence it. They would much rather see a consistent set standard, certainly not lower than 18 across the board.

The Hon. DAVID CLARKE: You referred earlier to international charters or international law that may be infringed by naming juvenile offenders. What international law were you referring to?

Ms WILSON: I think I said international mandates. One of the things that many people put forward in their submissions was the general premise of principle 2 in the Declaration of the Rights of the Child:

> The child shall enjoy special protection and shall be given opportunities and facilities by law and by other means to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose the best interests of the child should be the paramount consideration.

The specific wording that I know a lot of people referred to is in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, also known as the Beijing rules, which I would now like to refer to specifically. They spell out:

> Under the protection of privacy clause the juveniles 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.

The Hon. DAVID CLARKE: Those are the Beijing rules?

Ms WILSON: The Beijing rules.

The Hon. DAVID CLARKE: What effect did the Beijing rules have on the international charter?

Ms WILSON: On the Declaration of the Rights of the Child?

The Hon. DAVID CLARKE: Yes.

Ms WILSON: It was adopted by the General Assembly of the United Nations. To be honest, I am not an expert in international politics and the amount of force that they can extend to nations that agree to the mandates they put forward. But so far as enforcing them goes, they are not a policing body. So it is a resolution that was put forward but I do not know what sort of teeth they can sink into that.

The Hon. JOHN AJAKA: You mentioned earlier that you would like to see section 7 extended to cover a situation where a young person is charged and prior to that in the chronology of a person's time of arrest. Would you also want to see it occur even before that? We have heard of situations where police may commence investigations and may interview a young offender and his or her name will go out because there is no prohibition. Subsequently the offender is charged and by that stage his or her name is already out in the media.

Ms WILSON: The federation, in considering that and in considering making the rights of the child a paramount consideration, does not support the naming of the child at any stage.

The Hon. JOHN AJAKA: So when you say at arrest there are prior situations?

Ms WILSON: Yes.

The Hon. JOHN AJAKA: So you really mean from the onset?

Ms WILSON: Anything that could lead to that identification of the child.

The Hon. JOHN AJAKA: It is not limited only to arrest onwards. I think you have already answered my next question. You see no argument for naming a child between the ages of 16 to 18 years?

Ms WILSON: Yes.

The Hon. JOHN AJAKA: If I heard your evidence correctly, in some circumstances you think it should be extended past the age of 18 years, but you accept that that is the law?

Ms WILSON: Yes.

The Hon. JOHN AJAKA: Do you understand the difference between an indictable matter and a summary matter?

Ms WILSON: I am not an expert in the justice system but, to some extent, I understand that indictable matters go to the appellate—

The Hon. JOHN AJAKA: More serious matters go to a District Court and trial by judge and jury in the Supreme Court, whereas summary matters are the lesser offences that would be dealt with by magistrates. Do you see a distinction in the naming of children where it has been argued that at least in serious or indictable matters the prohibition should be removed and children should be named, or do you see them both in the same light?

Ms WILSON: We think certainly the effect might be similar on a child in both circumstances. We feel it should be weighed very strongly in both circumstances. We would only support it—

The Hon. JOHN AJAKA: Do you want to take that question on notice if you are not certain?

Ms WILSON: I am not prepared to say between the indictable matters and the more minor matters. In general, we would only support the naming of juvenile offenders based on current policy. Please correct me if I my understanding of this is incorrect, but is the current policy only for indictable matters?

The Hon. JOHN AJAKA: No, the policy is applied across the board. I think I will leave it at that.

CHAIR: Earlier the Hon. David Clarke referred to your constituency endorsing the policy document. Would you give the Committee not a full description with names

and titles of the members of your executive but the process your executive goes through and the geographic spread of the areas from which they are chosen? It would be good to understand how the federation endorses a policy like this.

Ms WILSON: Would you like Mr Hall to explain that?

CHAIR: If Mr Hall would like to do that, that is fine.

Mr HALL: I can give you an outline. There are about 2,300 State schools in New South Wales and 95 per cent of them have a parents and citizens association.

CHAIR: We have all been members.

Mr HALL: Yes. They are affiliates to the federation. The federation elects 80 councillors and eight executives, or eight office bearers, at its annual conference every year. Council sets the agenda, the direction and the policy for the ensuing 12-month period. The office bearers are then elected at the same time and, if you like, it is like an inverted pyramid. They bring that policy down to the federation headquarters or administration where we enact that policy to the best of our ability. So the reflection that is put into the submission is indeed the reflection of the 80 councillors coming down to an executive and a set of office bearers who then reflect that policy and so on.

CHAIR: Thank you, Mr Hall, for that description.

The Hon. DAVID CLARKE: Do I take it that there will not only be a resolution of the executive; there will also be a resolution on this issue of the 80 councillors?

Mr HALL: Last July this went before the full council at the time of its annual general meeting. Other than that there are quarterly council meetings where information and instructions are taken on a regular basis. I have only been with the organisation since January so I am not sure where it went beforehand.

The Hon. DAVID CLARKE: Are you saying that there would have to have been a council meeting at some time to make a decision on this issue? Would that then go to the executive or would the executive have the power to come to such a decision?

Mr HALL: And then go back to council.

The Hon. DAVID CLARKE: So the council would then ratify it.

Mr HALL: And endorse it.

The Hon. DAVID CLARKE: So this issue, which has been determined by the executive, has since been confirmed by the council at some stage.

Mr HALL: It will go to council in March.

Ms WILSON: It has been communicated to the councillors. The executive acts on any business that is taken care of between council meetings. Anything that is

immediate and pressing in those times they act on in the interests of the council, and report on it in full.

The Hon. DAVID CLARKE: Thank you.

CHAIR: Would you like to add anything further?

Ms WILSON: The only thing I want to reiterate is the importance of understanding the fact that the naming and shaming can in many cases lead to reinforcing that sort of deviant behaviour. Often the children who are brought forward on these sorts of charges are going to end up in some sort of juvenile detention centre. In the research that we came across, it often glorifies them in the perspective of their peers if their name is published for the sorts of things that they are going in for. It gives them a loftier status for negative reasons. In understanding child psychology and child development, we recognise that students and all children are developing their self-image and their self-awareness and that they require attention to validate their experience.

So all children are seeking attention of some form. If they do something good and they receive positive attention for it, it reinforces that behaviour. Likewise, if they do something bad, even if they receive negative attention for it, it reinforces that behaviour. Just having their identity recognised is enough to cause them to fall into that sort of pattern of attention seeking. Most children tend to use a combination but tend towards seeking either positive or negative attention. Understanding that attention principle has real ramifications for understanding that than that negative labelling is feeding into the negative attention, which many juveniles are in fact seeking by acting out through some form of deviant behaviour.

CHAIR: Thank you very much.

Ms WILSON: Thank you very much for this opportunity today. We are very sorry that Ms Giblin could not be here. She is very upset that she had to miss out. We thank you and invite any further discussion that might be invoked.

Mr HALL: May I add two things?

CHAIR: Certainly.

Mr HALL: To take up the Hon. Greg Donnelly's point, if we acknowledge that the whole process of rehabilitation is already difficult, if we do anything that adds to that degree of difficulty, to me, it would seem counterproductive and would not seem the right path to go down. I would like to leave you all by saying that we all have a responsibility to protect all children. Thank you.

CHAIR: Thank you very much indeed.

(The witnesses withdrew)

(The Committee adjourned at 4.04 p.m.)