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 Wednesday, 20 February 2008

The Committee met at 9.30 a.m.

PRESENT

The Hon. Christine Robertson (Chair)

The Hon. J.G. Ajaka
The Hon. D.J. Clarke
The Hon. G.J. Donnelly
The Hon. Amanda Fazio
Ms Sylvia Hale

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JACK RICHARD HERMAN, Executive Secretary, Australian Press Council, Suite 10.02, 117 York Street, Sydney,

RICHARD COLEMAN, Solicitor, Fairfax Media Limited, One Darling Island, Pyrmont, and

JANE SUMMERHAYES, Solicitor, News Limited, 2 Holt Street, Surry Hills, affirmed and examined:

CHAIR: If you should wish at any stage that any of the evidence you wish to give or documents you may wish to be tendered be seen or heard 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 it if the response to those questions could be forwarded to the secretariat by Monday, 10 March. Would any of you or all of you like to start by making a short statement?

Mr COLEMAN: I would like to make a statement. We are very happy to be able at last to speak to the appropriate Committee about what we see are the problems that have been imposed on the media by the 2004 amendments of section 11. That is the focus of our written submission and of evidence that I would like to give today. We are focussed on the problems created by the 2004 amendments and the efforts made in 2007 to deal with those problems. We have made attempts in the past to get through to Government our views on what happened in the 2004 amendments but we have had actually no response, so we are very glad to be here today and at last to be able to get some of this off our chest.

We are not advocating and we have not really dealt with the term of reference that asks whether or not there should be a freer regime in naming children who have been convicted of criminal events, the so-called name and shame aspect of it. The media is actually not pushing for a name and shame regime to be set up in Australia. What it would like this Committee to do is to look at and hopefully to recognise the problems created by the 2004 amendments and to understand the very real way in which those amendments have affected the rights of the media to report a particular type of criminal procedure, that is a procedure in which a dead child was involved, almost always as the victim of a homicide, and these procedures are invariably murder prosecutions or manslaughter prosecutions against an offender who is alleged to have killed a child. Very often the offender is a close relative of the child.

The effect of the 2004 amendment was to radically alter the way the media can report such cases. It is an unfortunate fact of life in our community that such cases are very common. They come up all the time. There is a report in the paper today about an incident last night which will no doubt end up before the courts.

The 2004 amendment, as I said, was a very radical departure from the practice that had operated in New South Wales and in fact that operates in every other State or Territory in Australia. Nowhere else in Australia is there anything like the 2004 amendments to section 11. There is nothing like the 2004 amendment in England, in New Zealand, and as far as I know in any other common law jurisdiction in the world. None of these jurisdictions ban the identification of a dead child involved in a homicide, in a child homicide case, and that is effectively what the 2004 amendment did.

We believe that this change to the law was not appreciated at the time it went through Parliament. If you read the debates about it there was no reference to the fact that this amendment put New South Wales effectively out on a limb in this area of the law. It was a small amendment to one section of one act, but in fact it has had a major impact on the way the media is able to report a very large number of criminal trials in New South Wales and I should say that this amendment and its effect just induces incredulity in news rooms, and enormous heat.

There are numerous pieces of legislation that affect what you can and cannot publish in New

South Wales, an astonishing number. We have our own publication here prepared for us by our outside solicitors which refers to dozens and dozens of pieces of legislation which affect what you can and cannot publish. We are used to working with that, but I can say that the heat generated by the 2004 amendment far outweighs the heat generated by all of these other pieces of legislation put together.It is the media's position that the 2004 amendment should be repealed and if it is repealed then the 2007 amendment and the senior available next of kin can be pensioned off because it will not be necessary. That is what I would like to say by way of an opening.

CHAIR: Thank you very much and along those lines would you, or any of you, like to comment on the exact significance of this? I can hear that it is an issue for the media but I would just like to hear exactly why this is significant and the actual impact it has on reporting these issues.

Mr HERMAN: Madam Chair, I would like to make an opening statement on behalf of the council

CHAIR: I do beg your pardon.

Mr HERMAN: I should point out to the Committee that the Press Council's interest is not exactly the same as those of the media group and we have made a separate submission, even though some of the groups that subscribe to the media group's submission, the print media segments of that, are affiliated members of our council. The Australian Press Council is an independent body which consists of representatives of the publishers, of members of the public and of journalists and has an interest that is different to that of the media itself and in fact as the self-regulatory body of the print media we sometimes find ourselves being critical of the press in particular instances of their reporting. The Australian Press Council was established with two aims, to protect the freedom of the press and to ensure the responsibility of the press in using that freedom.

To look at the first, we make submissions to bodies such as this on proposed changes to the law that might impinge on freedom of the press, or existing laws which do restrict the ability of the press to report matters of public interest and in regard to the latter, we have a complaints mechanism that enables members of the public who are concerned with reports in the press to make a complaint to the council.

We solve up to 50% of those complaints by mediation and conciliation within two weeks of their receipt by the publication of appropriate material in publications providing the complainant with redress.

Those complaints that cannot be so redressed, the complainant has the option of referring to the Council for adjudication and in its thirty odd years of existence, the Council has issued something over 1350 adjudications on matters, some of which touch on issues before this Committee.

You will see that the Council's position does not reflect that of the media groups. While we support the media groups call for revision of the 2004 amendments, our submission is largely aimed at putting before the Committee the view that any restriction on the established tenet of open justice in our society should only be one that is made when the private interest in protecting the identity of individuals outweighs the public interest in having open courts and open reporting.

We do in fact refer to the research which shows that there is a public benefit derived from 'name and shame'. We do put forward to the Committee the view that the current determination of when someone is a juvenile and when they are an adult is an arbitrary line, which at the moment is drawn at the age of eighteen, and that perhaps some revision of that arbitrary line might be within the purview of the Committee, that there may in fact be, as we suggest, some intermediary stage between those that are regarded as children, entitled to protection of anonymity in the courts, unless there are good reasons for that not to occur, and the group that we have called 'young adults' whom we think should have the protection of the courts only in the most extraordinary situation.

You will also see that in that group of young adults we suggest that the naming of them should only be after conviction, not during the conduct of the trial. We put forward those views and the other views in there, with a view to getting the Committee to think more widely about the issues before it, not to just restrict itself to a single issue of one section of the Act but to think wider about whether the public good, the public interest is served by the current regime or a revision of that regime may serve a wider public interest.

CHAIR: In your mind the significance and the impact of this Act and the changes in 2004/2007, in some cases – because you did not say all – it does not serve the public interest. Is that the case?

Mr HERMAN: Sorry, if that question is addressed to me, what I am saying is that the public interest in open justice is a very strong one and that in cases where the law or these amendments have prevented publication of material that the public was entitled to or should have heard, yes it has injured the public interest, and perhaps the media group has further to say on that.

Mr COLEMAN: Yes, I would agree with your proposition, I think it does affect the public interest. I think there is a real interest in the public having information, full information on what happens in open court and in the way that the justice system deals with, for example child homicide. It brings up all different areas of public interest. For example, very often DOCS is involved and this brings out the role of DOCS and the public is entitled to be informed about that.

I think that it certainly does raise issues of public interest and it also raises issues – and this distinction was made on Monday – of matters in which the public would be interested and I think the public is legitimately interested. These are often horrendous human life stories and very often what is the case as a result of the 2004 amendment, a child's body will be found and it might be some weeks before the alleged perpetrator is caught and charged and in that period there will be enormous publicity after the events and what happened to the child, etc, and yet because of the 2004 amendment, suddenly once the person is charged, that child can no longer be named.

There is now this rather cumbersome regime set up because of the 2007 amendment where you have to locate a senior available next of kin and it happens quite often that there is no senior available next of kin. For an example – and I will not mention her name – there was a child – I will call her SW – whose body was found and she died allegedly through malnutrition. Now this happened within a few weeks of the Dean Shillingsworth case and so there was a lot of public discussion about the role of DOCS. I think DOCS was involved in the SW case.

There was a lot of publicity about SW in the few days before her parents were located and then subsequently charged with her murder. Once they were charged, the criminal proceedings were commenced and any account of those criminal proceedings could not name SW and were prevented from naming SW's parents – who had been charged – because under s11 that would be likely to lead to the identification of SW and therefore it was forbidden because of the 2004 amendment.

Now suddenly the public is denied effectively information about this case. There could be subsequent stories about the case but they would leave out the names and it is much more likely that there will be very little publicity given to this criminal trial because of the fact there are no names in it, and that is the effect of the 2004 amendment and I think that this case is a matter of legitimate interest to the public – the public is interested in it, but because of the 2004 amendment, once the proceedings have commenced, once this girl's parents were charged, effectively information on that case effectively dried up.

The Hon. DAVID CLARKE: Mr Coleman, you said in your opening statement that your organisation raised your concerns about the 2004 amendments with the Government and you have had no response. Did I understand you correctly?

Mr COLEMAN: Yes.

The Hon. DAVID CLARKE: When did you raise those concerns?

Mr COLEMAN: I think in about 2005. You have to realise that the 2004 amendments were made without any consultation with the media. Of course, the Government is not bound to consult with the media or with anybody, they are perfectly entitled to make these amendments if they want, but these 2004 amendments were a very significant inroad into the media's right to publish what happens in a large number of court cases, that is child homicide cases.

There was no consultation. I did not really know – and I sit working and advising newspapers all day – that this had gone through, I think until we had a notification – I think from the DPP's office, that we had breached the section. That was the first I knew about it.

Once we found out about it, there was very considerable consternation in the media and a group of media put together a submission, which was the forerunner of this submission – and we today are speaking on behalf of the people who joined in this submission, which is the ABC, Commercial Radio Australia, Free TV Australia – which I think represents most of the commercial television stations – Fairfax Media, SBS and News Limited. So it is all the major publishers in Australia.

A group of us put together a submission which was sent to the then Attorney General – and as far as I know there was no response and as far as I am aware there was no form of acknowledgement.

The Hon. DAVID CLARKE: You would assume as the 2004 amendments would affect very greatly the media, in fact principally concerning the media, that you might well have been consulted on this, but you were never consulted at any stage.

Mr COLEMAN: And neither with the 2007 amendments.

The Hon. DAVID CLARKE: You put together comprehensive suggestions or views regarding the 2004 amendments?

Mr COLEMAN: Yes.

The Hon. DAVID CLARKE: And you supplied those to the Attorney General, Mr Debus at the time and as far as you are aware you have had no response whatsoever?

Mr COLEMAN: Correct.

The Hon. DAVID CLARKE: Would you be able to advise us when you did send that submission to the Attorney General?

Mr COLEMAN: Yes, I can find that out but I think it was in 2005.

The Hon. DAVID CLARKE: Would you be able to advise the Committee – if you do not have it today, if you could make it available to us?

Mr COLEMAN: Yes. It was sent out by Free Television. I can find out. The solicitor who was then at Free Television I think has left that organisation. I am pretty sure it went out in 2005 and what we asked for was that the legislation be referred to this Committee and I do not know if that has, after a few years, resulted in that, I am not sure.

The Hon. DAVID CLARKE: As far as you are aware there was no response to your submission?

Mr COLEMAN: No.

The Hon. DAVID CLARKE: You said that it is important that the law be changed to allow the publication of a child victim and you mentioned the importance of DOCS being very often

involved in some of these cases. The fact that you are able to mention a child victim by name, how does that enhance your discussion of the involvement of DOCS in such cases?

Mr COLEMAN: Well, I use DOCS as an example of why this area relates to a matter of public interest. If the child's name is included in the story it is one of the details – people sometimes question this and I can understand why – but using names is one of the details of the story that gives it impact. Without the names of those involved, stories tend to have lesser impact and tend to be given less prominence in the newspaper or left out altogether.

By including the details, such as the name of the dead child, the story will have impact and the publication will have impact and if DOCS is involved it throws a light on the activities of DOCS in this particular instance.

The Hon. DAVID CLARKE: It would also have an impact if a child offender is mentioned too, wouldn't it?

Mr COLEMAN: Yes, if DOCS was involved it would, true.

The Hon. DAVID CLARKE: But you are not suggesting that child offenders—

Mr COLEMAN: I am not. The media has always worked without objection with section 11 as it existed prior to 2004 and that still exists – that part of section 11 still exists. The media has taken pains, from my experience, to comply with that section, it still does.

The Hon. DAVID CLARKE: So you believe the public interest in the names of child victims being published is that it gives impact to the story when it is published, that is the public interest you are referring to?

Mr COLEMAN: No.

The Hon. DAVID CLARKE: Sorry, I may have misunderstood you.

Mr COLEMAN: That simplifies what I was saying. I am saying that one of the effects of not allowing the naming of a child victim in a homicide case is that it effectively means that the coverage of that case will have less impact and less prominence and I think that the public has an interest in being fully informed on cases and being able to follow through a case from the horrifying discovery of the body right through to the arrest of suspects and right through the whole judicial proceeding, so that the public understands how our judicial process copes with these appalling situations.

The Hon. DAVID CLARKE: So it would have the effect of bringing to the attention of the public matters that they should be aware of?

Mr COLEMAN: Yes.

The Hon. DAVID CLARKE: Do you agree that there is an anomaly in that, the name of a child victim or an offender can be published up until the time of a charge being made and then after that there is a prohibition on publication of such names?

Mr COLEMAN: Yes, I think there is an anomaly. There are all sorts of anomalies in this and that is an anomaly, sure. There is an anomaly, for example, that interstate publications, which do not come into New South Wales, can fully report the name of a homicide victim involved in criminal proceedings in New South Wales and that New South Wales newspapers can fully report interstate cases where there is a child homicide victim, just as they can be reported in each of their own states. New South Wales is the only place where this is banned in the whole of the common law jurisdiction to my knowledge.

The Hon. DAVID CLARKE: What about the United States? What is the position there?

Mr COLEMAN: From my knowledge, and I must say I do not have a detailed knowledge of the United States, but I am not aware of there being any ban on the identification of child homicide victims.

The Hon. JOHN AJAKA: Mr Coleman, if I could start with you, and I will basically put the same questions to Mr Herman to see if there are any differences, if I could put it in its simplest form, what is your position in relation to where the child is a victim and is not deceased, seriously injured and not deceased, do you believe that the name should be published or not published?

Mr COLEMAN: Not published once criminal proceedings have been commenced.

The Hon. JOHN AJAKA: And if the victim child is deceased your position is it should continue to be published?

Mr COLEMAN: Yes.

The Hon. JOHN AJAKA: The child is an offender?

Mr COLEMAN: No, we are comfortable with section 11 as it has always existed prior to 2004.

The Hon. JOHN AJAKA: The child is a witness?

Mr COLEMAN: No, I do not think that child's name should be published.

The Hon. JOHN AJAKA: The child is a sibling of the victim?

Mr COLEMAN: I do not think there should be necessarily a ban because that was also in part of the 2004 amendment and we would like to see that go. If the sibling is somehow involved in the proceedings then you will not be able to publish that name, but otherwise I do not think it is necessary.

The Hon. JOHN AJAKA: What is your view in relation to the 16 to 18 year category? There has been some argument that maybe section 11 should be relaxed to amend the age from 18 to 16.

Mr COLEMAN: We have not addressed that and we are not pushing for any differentiation. We are comfortable with the cut-off of 18.

The Hon. JOHN AJAKA: Do you have a view in relation to the difference between indictable matters, criminal matters and summary matters?

Mr COLEMAN: No, not really.

The Hon. JOHN AJAKA: Mr Herman, if I can repeat basically the same questions, if a child is a victim and not deceased your position in relation to the prohibition?

Mr HERMAN: Our position overall is that the courts and the legislation need to weigh up the competing public interest versus the private interest. We think that there is a greater need for the protection of children than of adults, but we think that in most cases the discretion, if there is any discretion, should be in the hands of the judge at the time. There is a sufficient ability placed in the hands of the judge to suppress information where the judge believes that it would be best in the public interest that that information not be released.

The Hon. JOHN AJAKA: Just on that point, that confuses me from a practical point of view. How does the prohibition apply, or how will the press prevent it from publishing if the matter has not yet gone before a judge to make that determination?

Mr HERMAN: I understand that question. As Mr Coleman pointed out, as the law and practice exists at the moment, until there is an indictment or a charge, there is no prohibition. There then becomes a prohibition. Even though the case has been reported previously, suddenly the case is no longer reported. In the case of reporting of a victim who is not deceased, we would think that the default position would be that that person not be identified.

The Hon. JOHN AJAKA: If the victim is deceased?

Mr HERMAN: We can see no public interest in continuing to prohibit the identity of a deceased victim of crime, particularly in cases where the surviving family, not necessarily the senior next of kin, would like the publicity or the death to mean something, if I can put it that way. Let me put it another way. I was at school a year ahead of Graham Thorne. I would have found it quite anomalous if suddenly once Steven Leslie Bradley was charged with his kidnapping and murder that Graham's name could not be mentioned. It was a very traumatic experience for all of us who knew Graham and to suddenly have a situation where he became an anonymous victim whose name could not be mentioned that would have been for all of us a very strange situation.

The Hon. JOHN AJAKA: What about if the child is an offender?

Mr HERMAN: If the child is an offender we have gone into that. We think that between the ages of 16 to 18 there should be an assumption that the name will be given after conviction but not during the trial itself. Under the age of 16 we think that the current situation should apply, but there could be a case where a judge may rule in some situations.

The Hon. JOHN AJAKA: How do you draw the line between a 16 year old and an 18 year old when all of the evidence appears to be that the maturity still is nowhere near that of an adult at the age of 16?

Mr HERMAN: The age of 18 is an arbitrary age. At the time that the age of 18 was determined as the age of an adult before the courts, the voting age was 21. The voting age has subsequently been lowered to 18. Other ages at which society regards a person as being of sufficient maturity varies from law to law. I mean, we say at 17 they are entitled to have a driver's licence. We say at 16 they have the ability to give consent. It varies. I do not think you can make a general rule. There are some people who are not mature enough at 35 to be able to distinguish what they have done, and there are other people who are mature enough at 12. The line is arbitrary in any case.

We are just suggesting that there may be a case for, if you want, a grey area between what we call children and what we call adults, a group we call young adults, for whom the rules are different than they are for either children or adults, and it is because they are at that age between which in some cases they have adult responsibility and others they do not.

The Hon. JOHN AJAKA: Do you see a difference between indictable matters and summary matters, for example? Is it your position that you want children named for graffiti spraying at the age of 16 years of age, as opposed to a murder or manslaughter situation?

Mr HERMAN: My council discussed that question and in the end we decided that we would leave out the question of the seriousness of the offence, but we would think that that would be one of the things that any judicial officer would take into account in making a determination. We have talked about things like whether or not the offender is likely to be one for whom rehabilitation is a possibility and where naming would not be of assistance, where his private rights might supersede

the public interest. The seriousness of the offence may be one of the issues that a judicial officer would take into account.

Ms SYLVIA HALE: Mr Coleman, when speaking earlier you said that there is often enormous publicity surrounding these cases and that added impact is given to the journalistic accounts of what occurs by the naming of people. I think you or Mr Herman referred to a case that is on the front page of this morning's Sydney Morning Herald, where that family is not named. Can you tell me how actually naming that family, given that the story is on the front page of the Herald, and I would think it regrettable that it gives the ethnic origin of the family, which is mentioned in the course of the story, can you tell me what added benefit the public would derive by naming that specific family?

Mr COLEMAN: Probably nothing to date, frankly. It is a good point. The events are so shocking themselves that they stand the story up, I would have thought, and that is why it is on the front page today. In time, as this story develops, I would have thought that the names of those involved would be an essential part of the story and if they are to be dropped I think the story would fade in significance and impact.

Ms SYLVIA HALE: In this instance I believe there are two children, one three and one five. It might possibly have been a circumstance where there might have been a younger child or a slightly older child who survived. If that family were to be named in subsequent stories would you not be concerned about the impact on the surviving child, or perhaps on the parents, or one of the parent who may not be charged with the offence? Would not you consider that whilst that voyeuristic desire of the reader to know what has happened may be satisfied, the long-term interests of the child may in fact be severely compromised?

Mr COLEMAN: I think that is a very real concern. I am not sure that I would describe the interest of the reader necessarily as voyeuristic or as prurient, which was the word used on Monday. I think it is quite a legitimate interest that the public has in these horrific events. It is a fact of life and very common. Will it have an effect on the child, the event, if there is a sibling? Undoubtedly there has to be an enormous impact on any sibling of an horrific event like this. Will coverage in the media make that worse? Possibly, possibly, but I would argue, and it has been argued, that this is something that is part of our judicial system and the judicial system we have is not perfect but a very strong part of it is that what happens in the judicial system is done in public and there can be fallout on this and I would think that there could well be fallout for siblings and children.

I would like to see studies to see how much the publicity adds to the impact that a terrible event like this would have on a child. When you think about it, the immediate circle of that child, that is, who the child is going to have contact with, school friends et cetera, they will know about it irrespective of the media, I would suggest, because that sort of horrendous news would get out in their own circle. That will have an impact on a child. Whether or not a reader of the Sydney Morning Herald up in Turramurra reads about that, if that has any impact on a child, I doubt it.

I would just be careful before I would accept the proposition that media coverage is going to make it very significantly worse for a sibling in a situation.

Ms SYLVIA HALE: I think in your opening remarks you commented on how many of the instances involving children who died, cases of murder or manslaughter and they frequently involve close relatives, given that we are looking at instances of severe family stress, it is very difficult to maintain an argument as the Press Council in its submission does, it says that there are issues of public safety and welfare to be taken into consideration – I cannot see how the naming of the family in those sorts of cases in particular, in any way advances the public interest, given that the public interest is obviously composed of many, many competing interests.

Mr COLEMAN: I think that that is an absolutely legitimate point. This was all dealt with

in a case in England which we refer to in our submission and if there is a minute I would not mind referring to that case, because the House of Lords looked at this very question, and it was really interesting, the way they dealt with it.

The issues in this case are exactly the issues that this Committee is looking at. It was a case only recently, in 2004, in which a boy sought an injunction from the court to prevent the identification of mother and his murdered brother. His brother had been murdered, allegedly by his mother, she poisoned her other son, and her trial was about to come up. This boy approached the court for an injunction to prevent his mother's name being mentioned for these very grounds, because he said it was upsetting, etc.

It came before one of their High Court judges – which is roughly equivalent to our Supreme Court judge – and that judge heard all the evidence, including evidence from a child psychologist who dealt with this boy and said that the boy had been traumatised by this, he was in a very vulnerable state – he was eight years old – and that the naming of the mother being out in the open is likely to have a deleterious effect on the child.

Nevertheless, the judge decided that he would not grant the injunction, on the grounds that the public's interest in finding out what was happening in the courts was so strong that that interest should prevail, even over the effect it would have on the child.

The child then appealed to the English Court of Appeal. That court was split 2:1. Two judges rejected the appeal and upheld the rights of the press to be able to publish fully what happened in the upcoming murder trial, including the name of the mother and the name of the dead child, and also publish photographs of them.

The boy then appealed to the House of Lords and five appeal judges of the House of Lords rejected the appeal. They went through all of this, they went through the evidence that the child psychologist had given. It was a very interesting judgment. It was a privacy issue and the principles of the European Convention of Human Rights came into it – which now apply in England – but they make the point that even on the sort of principles that would have been looked at prior to 2000 when the European Convention of Human Rights had effect in England, that they would have come to the same conclusion.

They are the sorts of considerations we look at. They gave primacy to open justice and the rights of the public to be informed about what happens in court even with the name, and so they allowed the naming of the mother and of the dead child. This argument had obviously been raised and was referred to on Monday, that why can't you publish a report without the names, what effect does it have, and they said this – I just read this brief paragraph because I think it expresses our position very well.

The five judges of the House of Lords say, "It is important to bear in mind that from a newspaper's point of view, a report of a sensational trial without revealing the identity of the defendant would be a very much disembodied trial. If the newspapers choose not to contest such an injunction, they are less likely to give prominence to reports of the trial. Certainly readers will be less interested and editors will act accordingly. Informed debate about criminal justice will suffer."

It is a really contemporary view which I think is absolutely within these terms of reference and I think it is a very good expression of the media's stand on this.

Ms SYLVIA HALE: I can see the direction from which you are coming. To my mind where we are dealing frequently with issues that revolve around family dynamics, very personal and very private sort of issues, where you are not really, I believe, challenging the criminal justice system as it were, you are dealing with the aftermath of very difficult circumstances, that the requirement of justice being seen to be done is less in those circumstances. I think it is the nature of the beast that you are dealing with that may mitigate against that desire for open justice.

Mr COLEMAN: I think that is a totally legitimate position and it was the position of the

judge on the Court of Appeal who dissented and she wrote a very interesting judgment.

Ms SYLVIA HALE: Could I briefly turn to Mr Herman, when you were speaking in your opening remarks, you said there is research that shows the public benefit from naming and shaming and indeed, in the Press Council's submission it refers to public shaming having an important function in vindicating victims of crime, but there is no reference to any research. Do you have that research?

Mr HERMAN: I can find that research for you and point you to the items that were used.

Ms SYLVIA HALE: Because the Committee has on Monday received evidence, and it permeates a lot of the submissions, that in fact the shaming of individuals may indeed be counterproductive because they are indifferent to the people who are heaping shame upon them, whereas it may merely serve to enhance their standing in the view of the people whose opinions they do respect.

Mr HERMAN: As you will see from our submission, one of the points we make about naming and shaming is not so much the impact it has on the particular offender, but the effect that it may have as a deterrent to other offenders for whom the potential public shaming may in fact be a deterrent.

Ms SYLVIA HALE: But again in a number of the submissions the question of whether the naming would act as a deterrent is questioned quite widely. Do you have any research that indicates how valuable it is as an element of deterrence?

Mr HERMAN: I can pass onto you the research on which we relied in arriving at our submissions, certainly and I will take that on notice.

The Hon. GREG DONNELLY: These are questions relating to questions on notice that have been provided to you. Currently, who other than the prosecuting authority can make a submission to the court to publish a child's name and can you explain, as far as you understand, how the submission is made?

Ms SUMMERHAYES: It is our understanding that anyone with appropriate standing can make those applications, but by and large they are made by the media and they are made at very great expense, counsel is instructed, a brief is prepared, arguments are advanced.

The Hon. GREG DONNELLY: Can you provide to the Committee any indication about the relative success or otherwise of making those applications in terms of do you have any statistics which can inform us about the success of your applications?

Mr COLEMAN: Not at our fingertips, no.

The Hon. GREG DONNELLY: Any general comments about whether you are generally successful or not with respect to such applications?

Ms SUMMERHAYES: It depends on the circumstances of each case. Certainly we could go back through our combined files and have at look at that.

The Hon. GREG DONNELLY: But surely you have some general comment about whether these applications are met with favourable consideration or generally rejected.

Mr COLEMAN: I am not aware of us having made a large number of applications under section 11. We make a lot of applications to the court over other suppression orders and I don't think we have a very good batting average with those.

The Hon. GREG DONNELLY: With respect to section 11 applications?

Mr COLEMAN: No, with respect to the other ones. I don't think we have made terribly many under section 11. We made one in the K brothers' case and we failed there. There is a Court of Criminal Appeal judgment there. We failed in that matter because the legislation in section 11 stipulates that you can only make this application at the time of sentencing and we were coming to the Court of Criminal Appeal after the K brothers had been sentenced and we failed on that ground, even though the Court of Criminal Appeal, I think, would otherwise have had some sympathy with our application.

We failed on that ground because of the great complexity of the litigation involving the K brothers, which went on for years. There were multiple trials, appeals to the Court of Appeal, appeals to the High Court and they came back, some were sentenced and what we were basically told in the Court of Criminal Appeal is that we should have turned up at each of these sentencing periods.

I have brought along here an affidavit which set out the very great complexity of that matter. It is a schedule of all the various court appearances that occurred in the K brothers' case. I will table that.

Ms SUMMERHAYES: On reflection, I can recall three applications that have been made that I have been involved in and in all instances they were successful in the first instance, but two of them were subsequently overturned as the criminal proceedings progressed, and that reflects the discretion of the court and the shifting interests with the progression of matters.

The Hon. GREG DONNELLY: One of the positions put this morning is to repeal the 2004 amendments, but is not an alternate course to provide for some greater scope perhaps in regard to this issue of making application in regard to matters that the media believe are particularly important, that they want to actually have addressed?

Mr COLEMAN: That is a fall back position, yes, particularly I think that the whole senior available next of kin procedure is really clumsy and in a number of cases simply does not work.

I can give you an example, with that SW case that I referred to, that child who died allegedly through malnutrition was living with her parents. So that meant that the relevant senior available next of kin – which Jane has an acronym for – SANOK – the senior available next of kin in her instance were her two parents. Now section 11 stipulates through the 2007 amendment that if the senior available next of kin has been charged in connection with the death of the child, they cannot either withhold or give permission for the naming. In this instance, the SW case, two parents were charged, so there is nobody who can give permission for this. In the Dean Shillingsworth case it was a different situation.

There this unfortunate boy was found in a suitcase in a pond in western Sydney. There was enormous public interest in this horrific story. It was some days before the boy's mother was charged. The boy's mother was the senior available next of kin, potentially. She could not give or withhold permission. She was out of it because of the 2007 amendments. The boy's father was in custody. He could not be contacted to give permission one way or the other. A reporter from the Daily Telegraph did enough leg work to go and establish that in fact the boy's paternal grandmother had been granted care of Dean Shillingsworth and so under the 2007 amendments she then became a senior available next of kin, so the Telegraph was smart enough to go along and ask her for permission and she gave it. That is why Dean Shillingsworth is named.

This is cumbersome and I think these sorts of things should be available to all the media, not just to people who luck upon, as happened here, a senior available next of kin who can give the permission. It is a really clumsy procedure at the moment.

The Hon. GREG DONNELLY: Other submissions have suggested that in the Northern Territory the publication of juvenile offenders' names and images in the media have lead to harassment of those individuals. Would you like to express a view about that?

Ms SUMMERHAYES: The media groups do not seek to interfere with that balance, where there are child offenders, subject to our concern that the application is confined to the time of sentencing. It may well be that is not the best, or the time that we become aware of a conviction and sentence, but other than that we do not seek to interfere with that balancing of the principles, do we?

Mr COLEMAN: No, but section 11 as it existed prior to 2004, and as it still exists, would prevent that sort of publication happening in New South Wales and the media has no problem with that whatsoever. I mean, there is a much looser regime in the Northern Territory and I can well imagine that would happen to those children and the effects could be very serious, but that cannot happen under the pre-existing section 11 and we are comfortable with that. We have always lived with that.

CHAIR: Mr Herman, would you like to answer that question, please?

Mr HERMAN: I am not aware of the extent to which the Northern Territory system does expose juvenile offenders to publicity in the press or in the media, but the same point could be made about any offender and in fact I get complaints, or the Press Council gets complaints on a regular basis about: "I appeared in court in my local magistrate's court and my name and address were published in the newspaper. My privacy has been invaded". It is one of the consequences of an open justice system that those people who are before the courts are going to have their identify exposed. The extent to which juvenile offenders may have their identity exposed is a question that this Committee will be looking at.

t the moment the law says under 18 there is some discretion in some cases for judges to make an exception to the general rule that the names are not used. We are saying that perhaps there needs to be a revisiting of where the arbitrary line is drawn between offenders. This is going to lead to some people having their name appearing, but again that is a consequence of an open justice system. People's names do appear.

There was one other thing and it was something that Richard Coleman said that I think should be noted. In many of these sorts of cases peer knowledge precedes press knowledge anyway. The identity of offenders is known to their peers even when the identity is not made public through the press or through the media, so in some instances you are not going to be able to prevent these sorts of things happening, nor is it necessarily the media publicity that causes the problem.

The Hon. AMANDA FAZIO: In your comments earlier, Mr Coleman, and in the submission from the media groups you mentioned the issue of publication interstate and the fact that newspapers published interstate can name names of victims and their families that are suppressed in New South Wales. In the Australian Law Reform Commission submission to this inquiry they have also raised that as a concern and have suggested that there be an attempt to get some uniformity of legislation across Australia by referring this issue to the State Attorneys General meeting. Would you support that proposition?

Mr COLEMAN: No.

The Hon. AMANDA FAZIO: So you do not think there should be uniformity?

Ms SUMMERHAYES: I think uniformity is a very desirable aim but the media is also participating in the consultation process with the ALRC on the privacy issue at the moment and that is a live issue. Certainly we do not support the submissions that the ALRC made to this Committee.

The Hon. AMANDA FAZIO: Because, for example, Fairfax, the Sydney Morning Herald, the Melbourne Age, in terms of administrative difficulties of briefing your editors and journalists in relation to the legalities that apply in these matters, the differences between the law in New South Wales and, for example, the law in Victoria what sort of administrative and legal difficulties does that

provide you?

Ms SUMMERHAYES: If I may, I would like to answer that because I, like Richard, have brought along just the New South Wales provisions and this folder here, which is one of eight, because I have one for each State and Territory in the Commonwealth, represents statutory prohibition on publications. The Committee heard earlier in the week the concern that one of the people giving evidence had in relation to forensic procedures. The fact is you cannot report forensic procedures before charges are laid, so that is something that has already been addressed. We are used to delving into the statute books of each State and dealing with the law of each State, particularly as one of my publications, The Australian, is published Australia-wide and also because of the internet, which necessarily has given rise to that.

Mr COLEMAN: We are quite practised in - it is not really solely related to children but, for example, reporting interstate cases in which there are specific suppression orders. I am thinking now of the Murdoch trial, the murder trial in up in the Northern Territory of the English backpacker. There were all sorts of suppression orders up there. We could publish those outside the Northern Territory because the jurisdiction of that court is confined within the Northern Territory. However, we have to be very careful and we have procedures, for example, that we do not send Sydney Morning Heralds on the planes that fly into the Northern Territory on that particular day and we keep it off the internet, and that means somebody physically at 2 o'clock in the morning taking that story down so it does not go up on the internet when a lot of these stories are transferred.

We have a procedure in place and by and large it works. We even did it once with Lord Howe Island, a suppression order on Lord Howe Island and we managed not to send any Heralds into the Lord Howe Island that particular day. Unfortunately we did not tell the newsagent and he could not understand why the Herald had not arrived so he sent to the mainland and had some flown in. We then got a complaint from the Attorney General of Lord Howe Island, but we have a procedure which works.

Ms SUMMERHAYES: Returning to the issue of community expectations, there is a case proceeding at the moment in Victoria. A man has been charged with running over six children and killing them. Now that story could not be told in New South Wales and Victoria. With the grief and impact that has had on a small country town and the impact it has had on the school, and web sites have been built by family and friends of those victims in memory, you would not be able to tell that story. That story is also indicative of the wider public interest in a discussion in public on matters like road safety and people safety, or those sorts of issues, or life in a country town, or how a country town responds to grief, so there is a wider public interest at the origin, at the heart of all these particular individual stories.

The Hon. AMANDA FAZIO: There is one other issue and even with the background reading I have done it is still something that I have not sorted out in my mind and the main example I can think of is in relation to the Janine Balding murder case some years ago, where a number of the people convicted were under 16 at the time, and in some media reports they are named and in other media reports only their initials are used. Is that as a result of the sort of legislation that we have in play in New South Wales?

Mr COLEMAN: Yes. The 2004 amendment. I am sorry, that is not the 2004 amendment.

Ms SUMMERHAYES: They were then child offenders. There is a lively issue of consent in that matter.

Mr COLEMAN: That was the existing prohibition in section 11 even prior to 2004, which still continues.

Ms SUMMERHAYES: My understanding of that matter is one of the child offenders has

always been named from day dot by court order. Another one largely was not until more recently.

The Hon. JOHN AJAKA: Are you able to give any indication as to how many prosecutions you are aware of in the last few years that have breached section 11?

Mr COLEMAN: I had a look at this last night. No prosecutions, but Fairfax has received four letters from the DPP since the 2004 amendments. One of those letters the DPP subsequently withdrew, because we pointed out to him that in fact the District Court had allowed the publication in question and he did not know about that, so he withdrew that complaint. The other one was a complaint to the Newcastle Herald and they apologised to him and notified the staff and reminded the staff and he was satisfied with that. The other two were complaints to the Sydney Morning Herald and, again, it was a question of the Herald acknowledging the mistake and sending out a circular to staff, reminding them of the requirements of section 11 and that is the way it was dealt with.

CHAIR: These were in relation to Fairfax?

Mr COLEMAN: These were Fairfax, yes.

Ms SUMMERHAYES: In relation to News we have had three letters. One was the Greenup matter, which was withdrawn. I would need to check exactly but I do not think it was more than three and, of course, there was a conviction in relation to the Alan Jones matter, which is still part-heard.

The Hon. JOHN AJAKA: If I can just go back to something that the Hon. David Clarke raised, I am still a little bit confused by what you said. You used DoCS as an example. I am still confused as to how the naming of a child victim changes any ambit relating to DoCS. If there was an allegation that DoCS had been negligent, an allegation that DoCS failed to act in a reasonable or proper manner, how is it not a similar situation if we talk about a nine month old child and DoCS creating a problem? How does suddenly giving the nine month old a specific name, change or enhance the decision?

Mr COLEMAN: The point I was trying to make was that naming the child adds to the impact of the story and the likely prominence of the story and the public is likely to be able to follow this story through to its ultimate conclusion. Why I mentioned DOCS was, as an example of a possible matter of public interest relating to this story. That is the only point I was making.

The Hon. JOHN AJAKA: So the contention basically is that if you put a name and a face to the story – if I can use that analogy – and DOCS have been negligent, you believe that the public would be more inclined to look at it in a deeper, more realistic, more emotional way and want further answers from DOCS as opposed to simply a nine month old child, no name, no photo?

Mr COLEMAN: I think that generally is the position and I refer again to what the House of Lords said.

Ms SUMMERHAYES: Perhaps I can give an example, and this is one where I think we need to reserve our position on child victims who are dead. The example I am thinking of is Sophie Delezio. Sophie became a very public figure and the events surrounding the two accidents in which she was involved raised great matters of public interest – road safety, age of elderly drivers, what programs are in place to enforce those, fundraising for the hospital, fundraising for childcare, stories of bravery on the part of emergency services. There were a huge number of subjects of public interest that were explored and the media, with the best efforts in the world, because we are not just prohibited from naming, we are prohibited from identifying and often the way to illuminate the subject of public interest is to set out the particulars of the event, and it is those same particulars that tend to identify.

The Hon. JOHN AJAKA: Had you not been in the position to name little Sophie – if I can

use that analogy – you are saying that there may not have been as large a public interest or as large a support base that would have followed?

Ms SUMMERHAYES: Absolutely.

CHAIR: Some questions that came up on Monday related to the difference between in public interest and of public interest. Much of your evidence today has touched on this issue but would all of you like to give the Committee your impressions of these expressions.

Mr COLEMAN: I think we have touched on this today. I think a matter is of interest to the public, I think that child homicides are horrendous events and obviously the public is interested in reading about them. I do not think that that interest is necessarily prurient or that there is something wrong with it - that is of interest to the public, but these cases also relate to matters of public interest. Jane, in the case involving Sophie Delezio, enunciated some of the many matters of public interest that relate to that particular story.

When she had a second unfortunate accident and the elderly driver was charged, she was a child, she could not be named. I am not sure in that instance if there was permission granted, but I think that there are numerous matters of public interest that arise out of a lot of these cases and DOCS is just one instance.

Jane just mentioned a whole lot of other matters and they are separate from the natural interest that the public has as a matter of interest of following through these dreadful cases to their ultimate conclusion.

Mr HERMAN: You have raised one of the questions that the devil is the Press Council, which is when it meets and considers these things, 22 individuals who have a different view of what the public interest or a series of public interests might be in any particular case. The Press Council, in its adjudications, has made a distinction, not between of public interest and in the public interest, it would see those two things as being much the same, but it has made a distinction between things that are in the public interest and those things that are interesting to the public – if I can make that distinction.

What it looks for is trying to determine if something is in the public interest or of the public interest is something in which the community as a whole has a genuine need to understand or know about and in many instances they do relate to matters that concern the public in their day to day activities.

Public safety would be one of those, and whether that relates to things like in reporting stories that may have involved the death of people in rock fishing accidents or as a result of inadequate care in setting out to see in boats or as a result of road traffic accidents or people speeding outside schools, all of which may involve the death of a child for which someone may be charged with an offence. We believe the reporting of those matters can be matters that are of public interest.

We also, as I said before, see a definite public interest in the maintenance of a system of open justice, for the reasons enunciated in the judgment that Richard Coleman referred to and also enunciated by Ruth McColl J in a recent case in the NSW Supreme Court, where she went into some detail about what the public interest is in matters. That did not again relate to children but to other matters – but it was an interesting discussion and the courts themselves are coming to grips with what that term means.

That is as far as I can elucidate the Press Council's view. If I can summarise what I said, we make a distinction of what we see as something in the public interest and something published because of the fact it is interesting to the public and we would not necessarily defend the latter as strongly as we would defend the former.

CHAIR: While we are talking about the Press Council, could you let me know how the public members become members of the Press Council?

Mr HERMAN: They are appointed by the Council on nomination of the chairman after the placement of advertisements in the State in which there is a vacancy. From those applications we make a short list. They have to be people with no previous association with the press. So anyone who has ever been employed by a publisher is ineligible. They have to have displayed some community involvement and have a knowledge of the press from the reader's perspective. A short list of five or six are selected, they are put in a room together with several members of the Council, including the chairman, discussion ensues, on the basis of that discussion the chairman makes a selection as to the person he thinks may best serve the Press Council and nominates that person to the Council.

CHAIR: I am not actually picking on you, we have had a precedent in this hearing of requesting from persons how they are structured.

MR HERMAN: All of it is explained on our website.

CHAIR: We recently had the episode in Victoria which you people have heard us discuss during this hearing of a young person gaining an incredible amount of publicity after an incident and there would appear to have been a very widespread hero status developed for this young person amongst certain groups of persons. Would you people be able to comment on that in relation to the issues we are discussing today?

Mr COLEMAN: I don't think we have a position, but I could express a personal view. From the newspaper point of view, I am close enough to the newspaper to understand it was an amazing story, a going story. I think in YouTube that day in the middle of presidential primaries, the YouTube interview of that boy with the channel 9 newsreader was the most down-watched episode, so a lot of people loved watching this. I would hope that the publicity has not done any lasting damage to the boy and when things calm down it will be an amazing episode that he will look down on in his life. I must say, I did not feel uncomfortable about it, reading about it and monitoring stories about it.

Ms SUMMERHAYES: So much of the publicity in that matter was driven by the way young people access the media. I think a discussion in major publishers about that phenomenon is a legitimate matter of public interest and should be able to be reported.

CHAIR: I guess my question relates to your impression of the value of 'shame and blame' in relation to rehabilitation or punishment, your impression of the effect of that episode on the case to increase the punishment.

Ms SUMMMERHAYES: I think the discussion in that case has not so much been about the charges but about the notoriety.

Mr HERMAN: The notoriety appeared before any charge had been made and at this stage I think the only thing we know is that two 16 year olds have been charged and no names have been associated with whoever has been charged. In that instance any publicity did not relate to the punishment of an individual for the breach of the law, which is where I think it would be argued that the naming and shaming argument would come in. I do not think you could argue that saying someone hosted a party is enough for that to occur, but I understand the point you are making and it does create some interesting questions, particularly as Jane said, given the way that young people consume news nowadays.

I can also tell you, the Press Council received no complaints about the press coverage of that incident. We only deal with the print media, I have no idea of the electronic media, if providers received any complaints.

CHAIR: What kind of complaints do you receive and from what sections of the community in relation to these issues, individuals or groups?

Mr HERMAN: Both. Let's take a couple of examples that I can give you. In regard to the Mildura hit and run incident that Richard referred to earlier, we received a complaint from the Salvation Army chaplain who was administering to the families, who was concerned of the publicity that ensued.

In the case of a very similar incident in northern Tasmania where six young people died in an horrific accident, again in a small community, we received complaints from the families of the young people about the reporting of the accident in four different newspapers, three in Tasmania and one in Victoria.

We get complaints from interested members of the public. At the moment I am dealing with a number of different complaints about some members of the print media suggesting in either bi-line opinion columns or editorials that the apology made last week in Federal Parliament should not have been made. Some people have disagreed, that have said that either the facts on which the people have based their opinions are wrong or that the opinions should not have been published or that the publication of that opinion has given rise to a number of letters posted on the internet or published in newspapers which create apathetical attitudes towards indigenous Australians.

We are dealing with all of those issues, some of them by trying to encourage the publication of responses, balancing opinions, or whatever, and some of them by taking them up directly with the newspapers and seeking their response. It covers a very wide range of issues. Invasions of privacy take up fewer than five percent of our complaints. Issues involving children and young people are a very small number of issues that we deal with, but occasionally groups like the Commission For Young People in Queensland will take up a complaint with us if they think there has been unethical behaviour by newspapers in relation to young people, which is not a breach of the law.

CHAIR: Did any of you have anything to tell us before we wind up that we have missed?

Mr COLEMAN: If I could make two very brief points, and this arises from evidence that was given on Monday and from the submission of the public defenders and the evidence given by the public defenders on Monday said that section 11 is deficient because it only prohibits the naming of a child. It does not prohibit the identification of a child. I am sure you are aware that subsection (5) of section 11 defines name, and it is a very broad definition, and it covers basically anything, any information that is likely to lead to the identification of a child, so I would point that out.

Somebody said that in the Young Offenders Act and these conferencing provisions that there should be a prohibition on the identifying of young people involved in those. Well, there is and it is section 65 of the Young Offenders Act which does prohibit identifying children caught up there already.

CHAIR: Thank you very much for the clarification.

Ms SUMMERHAYES: Madam Chair, I can see that the Committee is concerned about this public interest aspect and I have prepared some written answers to the question addressing that and have given more examples.

CHAIR: The Committee would be very grateful if you would table those.

(The witnesses withdrew)

(Short adjournment)

LINDA MARIE CRAWFORD, Policy Officer, New South Wales Aboriginal Justice Advisory Council, Marsden Street, Parramatta, sworn and examined:

CHAIR: Would you like to start by making a statement?

Ms CRAWFORD: I would. Is it appropriate for me to just read the statement?

CHAIR: Yes, that is fine.

Ms CRAWFORD: The New South Wales Aboriginal Justice Advisory Council, the AJAC, supports the commitment of an open justice system. An open justice system protects individuals from arbitrary decision making processes and informs citizens of the way they can expect to be dealt with should they come before a court in this country. Having regard to the aforesaid, the AJAC submits that children fall into a particular category and should be protected, indeed are required to be protected by virtue of their vulnerable stature in society.

The AJAC submits that naming Aboriginal children involved in criminal proceedings will have a greater impact on an already disadvantaged group over-represented in the criminal justice system. Naming Aboriginal children will stigmatise and marginalise further an already marginalised group. The AJAC argues against the publication of the names of children involved in criminal proceedings and, in particular, Aboriginal children for the reasons noted.

CHAIR: How would being named influence a juvenile offender's rehabilitation and are there any factors that pertain particularly to Aboriginal juvenile offenders?

Ms CRAWFORD: The AJAC would submit that naming juveniles can often damage their reputation. We also submit that it can also harm other innocent people involved with the juveniles, in terms of influencing rehabilitation. Often rehabilitation is ordered to be undertaken in communities, by way of community services, and by naming individuals who have committed offences, particularly juveniles who come from small communities, this can influence to the detriment of, we submit, their rehabilitation. If, for example, they have to do community service in organisations in small communities, they are often named and shamed or stigmatised in small communities. Aboriginal children particularly, we submit, are well-known in small communities, and not only Aboriginal children but juveniles are often in and out of trouble because it is the nature of their personalities and we submit that naming them can stigmatise them, not just for the period of their rehabilitation but later on into their adulthood.

We, possibly like other organisations who have given evidence here, would like to cite the research of Braithwaite, saying that children often do not have the benefit of the corporate veil like corporations do. They often come from situations where stigmatisation can be further enhanced in their families. Some of these children, particularly in Aboriginal communities, are not coming from a background of loving - I should say that often Aboriginal juvenile children come from troubled backgrounds and they do not often come from families that are going to reinforce positive effects of what naming and shaming may do. It may further increase the stigmatisation involved. Their rehabilitation may indeed be affected by naming.

The Hon. AMANDA FAZIO: In relation to the issue of the rehabilitation of juvenile offenders, how do you think being named would impact on a young offender's prospects for rehabilitation? Do you think there is a particular issue for Aboriginal juvenile offenders in relation to this?

Ms CRAWFORD: Going back to my earlier comments, although somewhat confusing, I think I should say, we do say that naming and shaming children in particular is not advisable. We particularly say that Aboriginal children are already marginalised. Aboriginal children who come

before the courts are already stigmatised. Naming Aboriginal children will further stigmatise them and further impact on their prospects for rehabilitation. No research exists. I am sure the Committee has already heard this, this week, that no research exists to suggest that naming individuals helps them in their rehabilitation process. Indeed it can further stigmatise them.

I have been thinking about this recently and one of the fine examples just recently is the young man in Melbourne. We have all seen him on the television and in the papers. I think he is 16 years old. He caused great distress to the community in Melbourne. There has been great media coverage of this in Melbourne recently and I would argue that that coverage will not support that child in his or her rehabilitation. Indeed, we have seen the effects of the naming. We have seen the child further on YouTube and further is enjoying the media coverage. The media coverage has not shown, to my viewing, any sort of remorse for the actions and I think that is a fine example of what naming can do to young offenders.

The Hon. AMANDA FAZIO: I know that a lot of young Aboriginal juvenile offenders are dealt with by way of circle sentencing programs. Does shaming play any role in circle sentencing and what other factors contribute to making circle sentencing successful programs?

Ms CRAWFORD: The shaming in indigenous communities has a different concept to shaming generally. Shaming in indigenous communities is indeed deeply connected with kinship and family, extended family and culture. The shaming aspect of the circle sentencing has a different meaning and impact to shaming in the media, for example, so first of all, the way the circle sentencing works is the offender must apply to have their matter heard by way of circle and it is considered to be an intervention program and they also choose and nominate respected elders of the community to be involved in the circle. Unlike our court processes, where they appear in front of the court system here, many indigenous offenders who come before the courts have come through the system from an early age and do not have the same respect that they have for the circle, the elders who make up the circle.

Mostly the circles are made up of respected elders in the communities and if I could just read this to you, this comes from a review and evaluation of the circle sentencing in new Wales. I will just read to you a little quote here. "In particular the Aboriginal community members stressed the impact of an offender being sentenced by respected members of their own community and the sense of shame involved in having to confront ones own elders. One offender stated it had a great impact. He felt shamed being told off in front of the elders. Another stated 'I think it's good'. 'They', the offenders, 'think it's an easy road but they get shamed out before the elders'", so there is respect in the circle with the elders.

If you take the notion of shaming in indigenous communities, as I said earlier it is tied up with kinship, culture, traditions. To be shunned from your community has a greater impact than to do gaol time, for example, or to be shamed within the media. There is a greater impact to be shamed in your community.

CHAIR: Can we ask for you to take on notice to send a copy of that document to the secretariat?

Ms CRAWFORD: Yes.

The Hon. GREG DONNELLY: Apparently in the Northern Territory, and I do not know whether you are familiar with the position up there, the publication of juvenile offenders' names and images appears to be permitted at least to some extent. I am not sure of the precise position. If you are aware that that is the case, given the indigenous community population of the Northern Territory, are there any comments you would like to make about that in terms of indigenous communities?

Ms CRAWFORD: The only comment I would make is that the Northern Territory is

clearly a different jurisdiction and I am not going to comment one way or another on what I think the Northern Territory should do. That is a matter for them. The AJAC submits that we do not agree that individuals in New South Wales, indeed anywhere, juveniles, children, should be named in criminal proceedings and for the reasons I have already stated in the Aboriginal community, Aboriginal children should not be named or shamed.

Ms SYLVIA HALE: You have said that the shaming has the greatest impact when it is done within the community and being shamed in front of the elders. What is your view of the impact of non-indigenous ways of shaming, namely, naming in the media? What impact does that have, both on the Aboriginal child as well as on the broader community?

Ms CRAWFORD: We submit that naming and shaming, naming in the media of Aboriginal children, Aboriginal people, will further stigmatise and marginalise and already stigmatised and marginalised group. Naming indigenous people can, we submit, feed into an already intolerant view of the way indigenous communities live and behave, without understanding fully the concepts involved, for example, in internal or the circle laws. It can feed into an idea that somehow the community play less of a role and support that kind of behaviour.

Without understanding and fully knowing all of the facts of situations, we submit that it can be more detrimental and feeding to a more intolerant view.

Ms SYLVIA HALE: There have been submissions, particularly from the media groups, that in fact there is an anomalous situation where children can be named prior to charging, but once they are charged they cannot be named. There has been a suggestion made that the provisions of section 11 should be widened to prevent children being named whenever there is a reasonable likelihood that charges will be laid. What would be your response to that?

Ms CRAWFORD: AJAC supports the idea that children should not be named at any stage. They should be afforded natural justice – innocent until proven guilty like everybody else, but particularly children. We submit that section 11 should also protect children who have been charged and not yet convicted. We think that section 11 should cover children.

Ms SYLVIA HALE: That period before they are charged?

Ms CRAWFORD: Before they are charged as well. We submit that children in every circumstance should be given the protection that they deserve, they are vulnerable individuals in this society because of their age, their immaturity and they do not have the ability, we suggest, to make the proper decisions for themselves and provision should be made for that.

Ms SYLVIA HALE: The media representatives seem to be pretty strongly of the view and are supported by a decision in the House of Lords, that the need for a system of open justice, presumably to prevent miscarriages of justice or to ensure that proper procedure is followed, more or less overwhelms the other considerations of the vulnerability of children. What is your view of that?

Ms CRAWFORD: We would submit that the media would say that, because the media rely on sensational stories, if you like, to maintain their relevance. I am not on top of the whole facts of that House of Lords case, I think I read somewhere about that, but I think the law is different in England. It does name serious young offenders.

We submit that, as I said before, that children are vulnerable, they should be protected. A mistake today may not be made again and we submit that the only people who benefit from that are media. What value does naming the child offender have to public interest? We submit that it has none. There is provision in the law to name serious young offenders. Generally if we just arbitrarily name children it is not in the public interest and indeed, could damage and create another class of offenders, because they want to get media coverage. It would not, we submit, encourage rehabilitation.

The Hon. JOHN AJAKA: If I understand you correctly, your concern with naming the young indigenous offender is not only that it is to the young offender's detriment, but you go one step further, by also saying that it is to the detriment of the similar community of young indigenous Australians. Is that correct?

Ms CRAWFORD: Yes.

The Hon. JOHN AJAKA: Your view is that any stigmatism, any labelling of a young offender has repercussions throughout the whole community, where that community is also suddenly labelled with stigmatism and it can cause adverse effects?

Ms CRAWFORD: Yes.

The Hon. JOHN AJAKA: Would you say that a similar analogy would be in relation to any other Australian ethnic origin group, whether they be Lebanese, Italian, Greek, would the same principles apply in your view?

Ms CRAWFORD: Yes.

The Hon. JOHN AJAKA: Do you believe that, for example, ethnic descriptors which are utilised by the police force, ethnic descriptions such as "Middle Eastern Crime Squad" for police or "middle eastern appearance" has also an adverse effect within the community for young people?

Ms CRAWFORD: Yes.

The Hon. JOHN AJAKA: And you would like to see an abolition of that?

Ms CRAWFORD: I am not here to speak on behalf of other marginalised groups.

The Hon. JOHN AJAKA: Relating to indigenous Australian groups.

Ms CRAWFORD: It is our view that indigenous Australians have a particular place in this country. It is well known that indigenous Australians are over represented in the criminal justice system. I do not have the statistics on the other groups you mentioned, so I cannot comment on that, but we believe that any marginalised group who is named as a particular group can be further marginalised unnecessarily.

The Hon. JOHN AJAKA: When we look at section 11, of course, we are looking at we cannot name or identify a young child. Would it be correct for me to say that you go that one step further where you do not even want the child referred to as "a sixteen year old indigenous Australian was convicted of or sentenced of", it is even using that labelling aspect that causes concern within the community?

Ms CRAWFORD: It does, because at the end of the day if it is a sixteen year old indigenous Australian charged and convicted or a sixteen year old Lebanese Australian charged and convicted or a sixteen year old Chinese, it is unnecessary to label the ethnicity of the person. Once we start doing that type of thing then we create further distinction, unnecessarily so.

The Hon. JOHN AJAKA: Your view is it simply should be a sixteen year old person, nothing else?

Ms CRAWFORD: Indeed.

The Hon. DAVID CLARKE: Ms Crawford, what is your attitude to the naming of juvenile victims of crime?

Ms CRAWFORD: We submit that victims also should not be named, because they can then

be further stigmatised, depending on what the offence was that was committed against them. We see this in the sorts of crimes like sex offences. Victims can then be often labelled later on and can carry those labels with them. Although it is not punishing the victim as such, it is a further stigmatisation that they can then carry with them.

The Hon. DAVID CLARKE: What about homicide victims?

Ms CRAWFORD: What about homicide victims?

The Hon. DAVID CLARKE: The deceased victims.

Ms CRAWFORD: We submit unless there is any public interest in naming these sorts of people, then we do not support that. The broader implications are greater for the family than the public interest.

The Hon. DAVID CLARKE: You do not think there would be any benefit to the Aboriginal community as a whole, and you are representing the Aboriginal Justice Advisory Council, in the naming of Aboriginal deceased victims of crime?

Ms CRAWFORD: Certainly we do not support that. We do not support that naming deceased victims at all is positive, and certainly the Aboriginal Justice Advisory Council does not support naming deceased Aboriginal individuals at all.

CHAIR: Could you just elaborate a bit further on the specific issues for Aboriginal persons in relation to naming of the deceased?

Ms CRAWFORD: It can be considered in Aboriginal communities inappropriate to name deceased people. As I said before with the shaming, it is tied into kinship culture, tradition, individuals who are deceased are not often referred to by photograph or name. It is inappropriate.

The Hon. DAVID CLARKE: You reject the idea that there could be any benefit to the community in any way in the naming of juvenile, deceased victims of crime in exposing widespread criminal actions that were responsible for the death of the particular juvenile victim who has been named?

Ms CRAWFORD: We submit that there is no benefit at all, and one of the reasons for that is often situations are covered in a way that does not fully explain all of the facts surrounding offences.

The Hon. DAVID CLARKE: Except that the facts come out in the court, the facts will be there whether or not the deceased victim is named. That will not affect the facts coming out that went to that particular aspect of that crime.

Ms CRAWFORD: We submit of course the facts are going to come out in court, that is the nature of the system. We would submit that there is no benefit in naming any deceased victims to anybody. They are deceased.

The Hon. DAVID CLARKE: The Honourable Greg Donnelly asked if you wanted to make any comment on the position in the Northern Territory and you declined to do so. Would you think that it might be appropriate to refer to either the advantages or disadvantages that you see of the Northern Territory position and that that might actually help us to get the position right here in New South Wales?

Ms CRAWFORD: We say that the position in the Northern Territory with regard to naming children involved in criminal proceedings is ineffective for the reasons set out earlier. It does not help in the rehabilitation process, it further stigmatises and marginalises an already marginalised group and we do not advocate that position.

(The witness withdrew)

(Short adjournment)

BRETT ANTHONY COLLINS, Coordinator, Justice Action, PO box 386, Broadway, affirmed and examined:

CHAIR: In the Justice Action submission, page two, a number of negative effects of naming and shaming are listed. Would you be able to expand on these for the Committee please?

Mr COLLINS: If I could make a earlier statement beforehand.

CHAIR: Would you like to make an opening statement?

Mr COLLINS: What I would like first to do is refer to the three documents that I have handed out. One of them is the JA Mentoring handbook, which was published a year and a half or so ago and is the basis of the JA mentoring scheme, and gives a significant amount of history of the work we have been doing over the last 30 or 40 years and tracks that work, the accommodation, the counselling, the mentoring and the campaigning on different areas and that is one document I refer to during my address.

The second one I refer to is copy of Just Us. We have printed 25,000 of those and it has been distributed throughout Australia and New Zealand before the end of last year, funded by Breakout Design & Print web, distributed to every Member of Parliament by name in Australia, every judicial member in Australia, down to magistrates and has gone into every gaol in five states and territories, but there are three states that have so far said that they will not accept it inside the prison system and that is currently before the Supreme Court, awaiting a decision on whether it should enter the New South Wales prison system.

The third document is a brochure from Breakout Design & Print web, which is the basis for the self-funding organisation of Breakout, which funds Justice Action, whom I represent.

I would like first of all to identify myself as in fact a prisoner at the age of 17 in a youth institution, youth prison, and was sentenced to a period of 0-2 years. It was actually in New Zealand, very similar to in Australia. I was also sentenced to 17 years gaol in 1970 and served 10 years, almost 10 years of that time. I have been involved in the prison movement now for 40 years and I am proud to have led the team of ex-prisoners, or people from Justice Action, and to have been asked to defend the right of prisoners to vote nationally in the Senate last year, which of course was won before the High Court of Australia later in the year last year.

The strength of the organisation we represent is that we are unfunded. We fund ourselves out of an organisation which is based upon a business. I have been managing director of the business for the last 23 years. We run that business preferably employing people who have had trouble with the law, employing volunteers. We have at the moment 20 people who are working with us. We are based in Trades Hall. We have an office there with 10 people working there. We also have a significant printing operation, design and printing operation, which is based out at Alexandria in another space, where we employ ex-prisoners as a preferred industrial base.

In the process we also link up to organisations such as the unions, who are our major support, plus organisations in the community, and some corporations, major corporations who also give us work in preference to giving work to other organisations.

CHAIR: Would you like to expand on the effects of naming and shaming, the number of negative effects? Would you like to expand on that for the Committee?

Mr COLLINS: We have been carefully through the other submissions that have been presented to the Committee and we have just a couple of extra points to make. We do not want to reiterate the material that has already been presented. We would see that as even doubting the

goodwill of those people who would oppose the naming and shaming of those vulnerable children. We would see them particularly as our children, coming out of our communities, as the children of prisoners and children out of the same areas who are inside the gaols. They are the children who come to us for support and to alienate them or to damage them and isolate them even further can only be to the damage of the community as a whole, and we question the goodwill of anyone that would create problems and difficulties within the community on the back of legislation which produces a a process such as this.

We would like to point out an issue that has so far not been advanced by other organisations which is the use of the internet and that changes the scene, contrary to what it was before. To now be named means that for ever you will be named and you will find it extremely difficult as a prospective employee, or even with girlfriends, for example, who might decide to Google you and to discover who you are and will then discover your history. You can never escape your history in this current use of the internet.

Our strong view is that environmental factors lead to crime and it is the areas that are most represented inside the gaols that should be receiving social services. We feel that to name and to shame in fact focuses upon the individuals, rather than accepting the fact that there are warnings, these individuals misbehaving are in fact a warning to the community as a whole that that area needs support and it is a distraction to look at the individuals and demonise them. In fact there should be an offering of teaching life skills to those children in fact instead of having the alienation effects that we have been talking about.

The Hon. DAVID CLARKE: Mr Collins, on Monday we heard evidence from a victims support group and that evidence was to the effect that the naming of offenders, at least those between the ages of 16 to 18, not those less, would assist in the rehabilitation of victims. Would you have a comment to make on that?

Mr COLLINS: We have been involved. A lot of our members are also not only offenders but also victims. In fact they are quite often in the same group. We never hear that comment made. In fact, quite often in our dealings with victims groups, and we have very intimate dealings with the three major groups - we have a trusting relationship with them - that is not the statement we get from them at all. There is almost an obligation on some of those victims groups to present a harder face than what their members present behind them.

I did have some other comments in response to the other questions that were actually sent to us? Is it appropriate to respond to those?

CHAIR: I think we will get around to them and if we do not, at the end we will tidy it up.

Mr COLLINS: Maybe I can briefly cover them, to make sure we mention them.

CHAIR: No, we will definitely do that at the end.

The Hon. DAVID CLARKE: The evidence that came from the body which I think was called the Homicide Victims Support Group, that comes as a surprise to you, that they consider over their years of experience that there is assistance provided to the rehabilitation of the victims from the naming of these offenders?

Mr COLLINS: We have never heard that expressed by any victims. Of course sometimes we feel there is a vengeance individually and we acknowledge and understand that, but that is certainly not the experience and the feedback we get.

The Hon. JOHN AJAKA: I note your concerns in relation to specifically naming the young offender and in your mind that would apply to any young offender from the age of 18? You do

not see a difference between, for example, naming a young offender between 16 to 18 years of age?

Mr COLLINS: I think it would equally apply. They are at a vulnerable age and still learning and finding their way in life and they need to have support.

The Hon. JOHN AJAKA: Do you see any adverse effects through labelling, stigmatism, adverse impact on not only the young offender but a community that the young offender is associated with? We heard earlier that with indigenous Australians there is a stigmatism not only to the young offender but the community as a whole.

Mr COLLINS: Absolutely. We have had many situations where in fact other members of the family who are close by are also damaged in the process. In fact the whole community around that individual who is affected is demonised in the process.

The Hon. JOHN AJAKA: I think you were present when the last witness was giving evidence. Would you also say the same would apply to other Australians of ethnic background origin?

Mr COLLINS: Without a doubt. One of our major concerns is that certain sectors of the community are disproportionately affected and the media attacks them in a way that is really unfair.

The Hon. JOHN AJAKA: Not only would you be concerned about the offender's name being utilised, but what is your view about the ethnic background of the offender, whether it be indigenous Australian, Lebanese, Asian?

Mr COLLINS: We are most concerned about the labelling of any ethnic origin. That lays a smear on the whole of that particular community and we are totally against it.

The Hon. JOHN AJAKA: When you hear that Government departments such as the police force are utilising terms such as Middle Eastern Crime Squad, or an offender of Middle Eastern appearance?

Mr COLLINS: We are appalled at that. It amazes us that such at blatant racism should be accepted by a government department.

The Hon. JOHN AJAKA: Would you like to see section 11 extended to cover protections in those areas?

Mr COLLINS: Absolutely. We are surprised that it is actually maintained as it is.

Ms SYLVIA HALE: Mr Collins, clearly the Committee is concerned, and I think most people are concerned, with rehabilitation of offenders and the most effective way to do that, to prevent recidivism and whatever. What are Justice Action's views as to the main factors that affect that chance of an individual being rehabilitated?

Mr COLLINS: We would say that reintegration into the community is actually the most significant thing, that they actually do have a community that is supportive underneath them; that they have employment; that they have an upward path into employment; that they have a sense of self-esteem, that they do feel good about themselves; and they have good role models around them with whom they can identify; and a whole range of social and intellectual and emotional skills that should be nurtured in school and nurtured around them. Quite often we have found that people do not easily enter the structure of the school that is being offered to them and it requires something more creative and wider for some individuals in that situation in order to give them rehabilitation.

We have, over the years, offered a Justice Action mentor, the JA mentoring format, which is

the basis for that handbook, which is in fact reaching out from the community of people who have previously had the experience of breaking the law and realise that there are other ways of dealing with their angers, tensions and frustrations, and then offering from like an elder's point of view the benefit of their experience and using the opportunity for trust to give them guidance in a new way.

Ms SYLVIA HALE: So how would you see naming and shaming as countering that rehabilitation?

Mr COLLINS: First of all it indicates to the young person that they are excluded, it means that people around them no longer want to be as closely associated with them. It makes it difficult for anyone who wants to give them support because there is this counter pressure on the individual. In fact, in some notorious cases when you actually associate with someone who has the media glare on them, it makes it difficult for other people around you to also give support. It gives them a wash of that guilt and it makes it difficult for the whole process of rehabilitation.

The Hon. GREG DONNELLY: Could you perhaps elaborate on the mentoring program that Justice Action has and comment on your views about its effectiveness or otherwise in terms of dealing with rehabilitation?

Mr COLLINS: The mentoring program is one that has been running now for a number of decades. We began it in fact in our early stages when we ran a halfway house called Glebe House back in the late sixties, early seventies. I was co-ordinator of the halfway house for two and a half years. After being released from gaol I was given the support of the halfway house and then remained there, lived there and eventually became the co-ordinator. So we had, at times, twenty people who were living in the house whom we saw as our responsibility, not just to provide accommodation but also to ensure that they had some jobs to go on to and also that they did not put themselves at risk.

That JA mentoring we found was a vey fine model. We never actually put a word on it until after a period we said, we have really got something here that is quite significant and it really was the basis of our social support given to our own community. That extended back into the gaols themselves and over the whole period we have been working with the prisoners, their families and their children to try and lessen the risk that they are obviously confronting.

Most importantly, showing them other ways of dealing with their issues. So quite often their issues which were quite alienating to them, they could not see a way through them, then we would offer them another way of dealing with them. So effectively it would be a series of ears that would actually offer them support available at any time.

The basis of the JA mentoring relationship is one of trust and because we are part of the offender's community, we are in a situation to listen to them without being betoken to the Government and being seen to be independent of the Government. As such, we have an opportunity to listen to them carefully, let them say what they really feel and then give them an indication about how it really could be dealt with in reality or some other ways of handling the same problem.

Quite often we have some quite outlandish propositions put to us which may well have either been carried out or not, where we have been in a situation to bring in a breath of reality and also find other ways of dealing with things, and this is a day by day activity.

We finally formalised it just before a conference in Toronto in the year 2000 and proposed it as a response to incarceration. This was a conference called the International Conference on Penal Abolition and we then presented a draft paper, which then formed the basis of this booklet.

There are two things that are different in our JA mentoring program, one is that the person in fact was recallable. It was not a person who was imposed upon the individual but it was a recallable position where the person became a role model and a friend, but in fact it was up to the offender or the person who needed assistance to accept or reject that mentor.

The second thing we proposed in the model is that the mentor should be paid. It should be acknowledged as a position, it is not just one of community good will but it is a particular role that is very significant as a crime preventing project, which allows it to build and allows training to occur, allows the people who have had the experience of breaking the law to serve a function.

So it not only gives some special support to the individual who is at risk, it also allows people who have previously actually breached the law and quite often has not had a great opportunity to fit back into the workforce and struggles to survive, it gives them a special opportunity to give a positive benefit of the experience.

We have found again and again that this has actually worked in remarkable ways and we have a whole series of individuals, and probably the most remarkable one is Gregory Cable, who is referred to in this report, he was a man who was regarded as being so dangerous that the Community Protection Act was brought in against him. He has been our primary case worker for the last probably twelve years now and is currently working at Justice Action on a number of cases. He has had the spread in front of him, fully engrossed in mentoring other people who are facing the same problems that he has faced in the past. That, of course is being paid for by Breakout Design Print Web.

The Hon. GREG DONNELLY: Other witnesses have given some evidence about circle sentencing. Do you have, first of all, an understanding of it and secondly, would you care to comment about its effectiveness?

Mr COLLINS: We think circle sentencing is extremely valuable. The whole idea of restorative justice, of which that is part, we think is a way forward. It clearly keeps the person in the community, allows the community around the person to participate in the solutions and empowers in them in the process as well. So it gives them a chance to learn about the problems that that person has had to encounter and it gives them a chance to be proactive for others around them. We have no doubt at all that that is one of the ways forward.

We would also propose that as an extension of circle sentencing that mentoring is also a natural part of it too. We say rather than voluntary mentoring, it should be acknowledged as a function in the community for which it should be paid and for which training should occur, but it should be independent of Government, because it is that issue of trust that is essential to be retained in the mentoring function. If it becomes say, a part of a Government department, like an extension of the Probation and Parole Service, for which there would be a lot of temptation, we would say that would totally lose the benefit of the mentoring, which is based upon trust.

The Hon. AMANDA FAZIO: Mr Collins, my understanding is that most of the ex-offenders that Justice Action deals with are adult offenders, is that correct?

Mr COLLINS: Well, no adult and youth offenders, we deal with them all.

The Hon. AMANDA FAZIO: We have heard a lot of theoretical comments about the effect on people who are juvenile offenders who are named in terms of making it difficult for them to rehabilitate or to move on to a different phase of their life where they are not involved in any criminal activities. From your experience in dealing with the many people who have been in contact with Justice Action over the time you have been involved in it, would you be able to give us any practical examples of the difficulties that people have encountered by having been stigmatised as juveniles because of their offences?

Mr COLLINS: Yes, in fact when this issue was first raised with us we had a discussion about what it actually meant in practice. The surprising thing and one of the special things we actually bring to this Committee is what it is like to be named as an individual.

Rather than actually something that is an issue of shame – and one would assume it would be an issue of shame – it is not just an issue of shame, it is an issue of pride. There is the bravado of someone who has previously been told that he or she is just rubbish and of no consequence and quite often has suffered physical, emotional and psychological abuse. If for the first time they actually have

their name in the paper and they are seen as having a status, instead of as previously having been regarded as a person of no worth, they then take on a hero status, and not only hero status, they then for the first time feel as though they have been recognised, and in that recognition they also provide a beacon to other children, how they could also become recognised.

For these children sometimes it is the only way that they are recognised as an individual and they can from that point on identify, not in a negative term but in a positive term, and they are the criminals of the future, and they not only present with such excitement and they wait for the media bulletins stating what they did, they are dismayed when it has not been expressed properly and not in the newspaper. Then they compete with one another for the more horrendous crime that they can actually commit as a way in which they can actually at least boast of their hero status.

That is a reality on the ground and that is what happens in the cells in Baxter and in Kariong, as well as in the major prisons in the State. That is a situation which does not work for the community, it works against the community.

CHAIR: Can I just extend that a bit further, in your mind is this issue in relation to young persons aged sixteen to eighteen being permitted to give permission for the names to be printed?

Mr COLLINS: Well, no, sorry – the proposition is that they have the choice?

CHAIR: Young persons from sixteen to eighteen actually have the right to give permission for their name to be printed. This is how it is now under the law. Can you tell us what you think of that?

Mr COLLINS: We would propose that there is no benefit in ever publishing names of children and it should not be in the hands of the child who is not trusted not to commit an offence, to make that decision for him or herself. That is, the decision should be in the hands of the Court, as it currently is, as a discretion.

The Hon. JOHN AJAKA: You feel the child at sixteen years of age does not have the maturity to actually make that decision voluntarily?

Mr COLLINS: Absolutely.

The Hon. JOHN AJAKA: And should not be placed in that situation.

Mr COLLINS: Absolutely.

The Hon. JOHN AJAKA: Anymore than I say a child under sixteen would enter into a contract that is binding?

Mr COLLINS: Yes, absolutely.

The Hon. DAVID CLARKE: Does that flow over into other areas as well, for instance, with regard to the age of consent?

Mr COLLINS: Well, one would hope you would get a lot more support from some parents and community around them on those sorts of issues. The other question I guess is with whom the person is fraternising with to require the age of consent. There are other social issues involved in that, but here is the situation where the criminal law is directly affected rather than social interactions.

The Hon. DAVID CLARKE: Are you suggesting, or have I misunderstood, that the right of offenders, aged between sixteen and eighteen, to have their names published should actually be taken from them?

Mr COLLINS: That is right, yes.

The Hon. DAVID CLARKE: I am putting to you that by pursuing that precedent that would also have a flow on effect into other areas, as I say, the age of consent.

Mr COLLINS: I don't think the same thing runs at all. I would have thought that a public issue of criminal law and public policy is very different from personal relationships between individuals.

The Hon. DAVID CLARKE: Except that if the young person was adversely affected and was immature to make the appropriate decisions in those other aspects of his life, that is what I am referring to.

Madam Chair, could I just make one clarification to the record. When I asked Mr Collins to comment on evidence given by – I think I referred to "a victim support group" without giving a specific name, I was in fact referring to the evidence given on Monday by the Homicide Survivors Support After Murder Group Incorporated.

I just want to make that clear because I think there may be victim support groups around that actually have the name Victim Support Group.

The Hon. AMANDA FAZIO: You mentioned about the internet and how people will forever have a criminal record because of the internet, which raises an interesting question, because at the moment after a certain number of years without reoffending your criminal record basically lapses, unless you commit certain serious offences. Have you got any recommendations or suggestions about what might be done to overcome that?

Mr COLLINS: Absolutely. We have many instances in fact of men and women who have gone on to significant positions of authority, and we can think straight away of someone inside the Government itself, but in other areas where they are in fact contributing to the community, through an internet search they have been uncovered and have been shamed in their community and the projects on which they have been working have actually had pressure put on them to have funding withdrawn if they are not removed from those projects. This is a matter of major concern to us where people have transcended their problems and are still limited by their histories, so to limit them at this stage in the time of the internet, to limit them by that shaming would be unthinkable and should not even be considered by the Government as a matter of policy.

Ms SYLVIA HALE: Mr Collins, there has been a view expressed that rather than the prohibition on naming coming into force as soon as an offender is charged, that it should come into effect as soon as there is a reasonable possibility of charges being laid. Would you support that, or what would be your thoughts?

Mr COLLINS: I would have thought that would be a simple practical issue to be adopted. I would find it hard to understand why the same principle does not exist there as it does when a person has been charged.

CHAIR: In your submission you actually have addressed this issue of bad genes. Quite interesting persons express an opinion that there is such a thing as a bad gene in relation to criminal behaviour. Can you very quickly or perhaps can you take on notice to give us back some information that you people have in relation to this question?

Mr COLLINS: I think it is a matter of perception really. A lot of people feel that they are locked down into their group of criminal sub-culture and it is just lifting them out of that. That is what JA mentoring is about as well, to give them a role model. I did not say this, by the way, we have just been asked to join Mission Australia in a partnership in JA mentoring for 500 young children in the western suburbs, and it appears that there has been a larger acceptance, at least in the community and community organisations, for people who have previously had trouble with the law linking across and using their experience in a positive way.

The Hon. JOHN AJAKA: Maybe, Madam Chair, if Mr Collins still has any answers he can table them.

CHAIR: Yes, thank you. Would you be willing to table the answers that you have brought with you that we have not yet heard?

Mr COLLINS: That is fine, I think most of it has been covered.

(The witness withdrew)

(Luncheon adjournment)

JAMES DUNCAN McDOUGALL, Director and principal solicitor, National Children's and Youth Law Centre, Centres Precinct, University of New South Wales,

JANE ANN SANDERS, Principal solicitor, Shopfront Youth Legal Centre, 356 Victoria Street, Darlinghurst, and

KATRINA WONG, Solicitor, Marrickville Legal Centre, Youth Justice Coalition, affirmed and examined:

CHAIR: Would any of you like to start by making a short statement?

Mr McDOUGALL: No.

CHAIR: Can you tell us about other jurisdictions internationally where the naming of children involved in criminal proceedings is used and how effective or what effect has that approach had?

Mr McDOUGALL: We had a brief caucus beforehand to work out the most appropriate way to answer questions, given our experience, so we have tried to divide them up so that you won't necessarily have to hear from all of us on all of the questions. In relation to the first question, we wanted to make the preliminary comment that we are probably not the best or the most qualified people to answer this question. We are advocates, we are not academics, and we are not researchers, so the information that we will give has to be considered in that light. We would also commend to you that there are plenty of academics around who we think could more authoritatively answer that question.

Having said that, from our perspective a lot of our work is built around an examination of the application and practise of the principles of the International Principles of Youth Justice which are found, as our submissions refer, in the United Nations Conventions on the Rights of the Child, the Beijing Rules and the Riyadh Guidelines. It is our view those principles have developed over a period of time so, in light of international research, represent best practice in the broad area of youth justice. So to that extent we would suggest that in answering the question the best starting point will always be to turn back to those principles.

I have a little experience outside Australia in terms of jurisdictions in the Asia Pacific region and I make the observation that a lot of those areas are still only developing what we would describe as a youth justice system. A lot of them deal with their young offenders within the adult justice system, so to that extent they have not yet developed some of the specialised rules that we have in our system and which we would say reflect best practice. So there probably are jurisdictions. But they are not jurisdictions that are necessarily looking at it from what the effects might be for naming children specifically, but naming practices.

There are, I would have to say anecdotally, jurisdictions in Asia that do not prohibit the naming of offenders and that obviously comes from a cultural viewpoint. I cannot refer to any research which has examined the effectiveness of those measures, other than to refer to my answer previously that from our perspective best practice represents the existing rules that we currently have here within our system.

The Hon. AMANDA FAZIO: I am not sure if you have had a look at the other submissions that have been put into this inquiry, but the New South Wales Government submission suggests making information about juvenile offenders available to certain groups and the example given was the Rural Fire Service in the case of arsonists. How could this suggesting be practically implemented and does it conflict with existing procedures relating to juvenile criminal records?

Ms SANDERS: I have had a skim of the New South Wales Government submission but I have not been able to read it in detail. Perhaps we could clarify for what purpose would such information be available to the Rural Fire Service, that is, would it simply be made available so that anybody seeking to work with that service would be prohibited from doing so, in a similar manner to the working with children check, for example? If it is for that purpose we have no issue with that and in fact that sort of disclosure is already permitted by the Criminal Records Act and Regulations, so we would have no problem with that.

If it was a more wide dissemination such as these kids are arsonists keep an eye out for them, that is something which would perhaps have to be given much more careful consideration and there would have to be really careful controls imposed to ensure that that information was not misused and that young people were not unduly stigmatised.

It is already the case that police and other law enforcement agencies have that information available to them. They have criminal histories on young people. They have intelligence available on offenders, or alleged offenders, and they use that for law enforcement and crime prevention purposes among their agencies, so we have no objection to limited disclosure of information if it is for crime prevention and obviously if it is to prevent people from taking up employment which clearly would pose a risk to the public. Does that answer the question? I might not have really answered about how it could be practically implemented but I think it could be because we already have a framework for it.

The Hon. AMANDA FAZIO: The other issue I wanted to talk to you about was juvenile offenders' rehabilitation. What are the main factors affecting juvenile offenders' rehabilitation and how would naming influence a juvenile offender's rehabilitation, if it was known publicly that hat had committed certain offences?

Ms WONG: I think there is a significant body of research and literature that clearly demonstrates that with a young person, rehabilitation is the primary focus when you are looking at young offenders, particularly in relation to ensuring that they are able to re-integrate into the community.

In relation to the factors that can impact on the rehabilitation process for a young person, we know that there is significant protective factors or factors that kind of make a young person or a child more susceptible to re-offending. Some of those would be previous contact in the care system, having a parent who had been involved in the criminal justice system, break down of family, lack of education, truancy, all those sorts of issues.

There has certainly been, particularly in New South Wales, adopting the juvenile justice model, early intervention has been a particularly important focus in rehabilitation. So in that particular sense you are looking at linking the young person with particular therapeutic interventions to address those offending behaviours.

If you are looking at the impact of naming for a young person, the idea of naming a young person is, I am gathering, to shame them into not being able to repeat that particular offence or go on to re-offend again. However, it is quite clear that that is not the case for young people. The fact that you name them pretty much stigmatises them and labels them as being an offender and it really then makes it quite difficult for them to re-integrate into the community.

For example, the idea of being able to participate in the community is the idea that you can participate fully in some sort of counselling, being able to find some sort of links and support for them in employment and education. Being publicly named and stigmatised would seriously inhibit their ability to do so, and we have some particular case studies from members of the Youth Justice Coalition who have worked directly with young people. One of them who worked as a case worker within the employment training program says that the young people that they deal with already come to them with a very, very stigmatised view of their identity, that is, they are a criminal.

Should their identities be known, their level of self esteem, being able to identify with

members of the community would be significantly lowered and what happens then is they find that they cannot identify with that particular community, it becomes isolating for them and they then revert back into their criminal behaviour.

I do have some other case studies that perhaps the Committee might be interested in.

CHAIR: Before you move off that topic, we have had some evidence in relation to the naming, actually moving the person to another community where it is good to be famous for that. Is there any documentation or evidence on those issues?

Ms WONG: When you say famous, in terms of?

CHAIR: Well we started the question with the recent Victorian episode, but we have had evidence since that in some circles the naming gives a certain credibility and fame to the individual. We have anecdotal evidence on this issue, but do you have any evidence or documentation?

Ms SANDERS: Probably not that we can put our finger on. I know that there is some PhD research by Andrew McGrath which has been referred to in the Commission for Children and Young People's submission. I have not read that research, but I understand that it does relate to labelling and there may be something contained in that research about young people being labelled as a criminal and therefore identifying with a criminal sub-culture.

There is also something which I could certainly provide the Committee with details of, it is a report from the UK by the Institute for Public Policy Research. It is called Make Me a Criminal – Preventing Youth Crime and it is just recent, it is hot off the press in fact.

I confess that I have not read it in its entirety, although I have read the summary and about half of it. There is certainly a suggestion in relation to ASBOS or anti social behaviour orders in the UK that the stigmatising effect of those has undermined their effectiveness as a deterrent to anti social behaviour, and in fact amongst some groups there are kids who wear the ASBOS as a badge of honour.

There may well be something that we can gain from that research, but again, as James said at the outset, we are not criminologists, but if we were aware of it we would let you now.

The Hon. AMANDA FAZIO: It was put to the Committee in the context that, as you just referred to, young people with ASBOS that it has been more as a badge of honour to be named publicly as a juvenile offender, particularly if the person came from the background where they may have had contact with other people who had interaction with the criminal justice system and as a consequence of that discussion it was raised that the current legal provisions that allow a young person at the age of sixteen to waive their right to confidentiality when they are appearing before courts is inappropriate because it was felt that at sixteen they could not understand perhaps the life long ramifications of being named. Do you have any comments on that aspect of the legislation?

Ms SANDERS: That is a difficult dilemma. We face that constantly as children's advocates, where we are trying to balance a child's right to autonomy versus the right to protection and I think in most cases the balance can be struck.

I do think that is a very valid point and in practice as a practitioner who has appeared in the Children's Court on a regular basis for about fifteen years, it is very rare, in my experience for a young person aged sixteen or over to waive their right to confidentiality in that way. I think given that children, at least in New South Wales, who appear before the Children's Court are almost invariably legally represented, most of them I think would receive some fairly strong legal advice that that is not a very good idea. Not that kids necessarily do what their lawyers tell them – if they did, it would be easy, wouldn't it?

I do think that is a valid concern but there also needs to be a balance. There are some kids, for example, some of my clients have been involved in projects where they might tell their story to the

media in the context of a story about youth homelessness, for example, and some of the older young people are actually quite keen about wanting their identities to be disclosed, they are happy for their photos to be taken, they want to talk frankly about the experience of homelessness. In the context of that, they will, of course, mention that they have been involved in the juvenile justice system and I think for a more mature young person, they are capable of making an informed choice, but yes, there is a risk that there may be some who are not quite mature enough.

The Hon. GREG DONNELLY: You spoke about the orders in the UK example, but I am wondering in the context of Australian jurisdictions. Is there any research that has been done where there has been, through either a legislative provision or otherwise, the naming of juveniles in the media that you are aware of?

Mr McDOUGALL: The Northern Territory is the only jurisdiction which currently still permits the publication – in other words, does not have a conditional prohibition. I am not aware of any research in that jurisdiction and our submission refers to the fact that that position in the Northern Territory has received attention and that the practical effect following a recent Court of Criminal Appeal decision in the Northern Territory is that in a practical sense the courts will apply the same principles and reach roughly the same position as exists in other States and Territories. But that is only a relatively recent development.

We have also got some case studies in our submission about circumstances in which there has been publication of juvenile offenders' names within the Northern Territory and some of the consequences of that. I cannot really elaborate.

Ms SANDERS: Could I just add, Duncan Chappell who is in this room and I think is going to speak to the Committee later this afternoon, may have something to add on that. I know he has looked at this issue and he is keen to do some research in the Northern Territory, but as far as we know there is no empirical research, there is a lot of anecdotal evidence of the negative effects in the Northern Territory.

The Hon. GREG DONNELLY: Could you inform the Committee about the main factors that you are familiar with affecting the rehabilitation of juveniles? I know this has been covered to some degree but specifically can you highlight the particular factors which are important and pass some relevant comment?

Ms SANDERS: Katrina has already outlined some and a lot of it is to do with connectedness to family and support services.

One thing that the Committee might benefit from reading is the BOCSAR – Bureau of Crime Statistics and Research – report on the transition from juvenile to adult criminal careers. That is BOCSAR crime and justice bulletin no. 86. It came out in May 2005. That is a study about children who appear before the Children's Court and then go on to re-offend as adults. It assesses some of the risk factors that make children more likely to re-offend.

A useful inclusion in the report, and this is in the summary and discussion at the end, is a bit of a review of some of the literature about what works and what does not in the context of preventing re-offending.

It refers to some work by Doris McKenzie, who is an American academic and there was a book chapter that she published in 2002 and that was as a result of some quite extensive work about what works and what does not, at least in an American context.

Things that have been found to have been effective in terms of rehabilitation are rehabilitation programs that target known risk factors such as anti social attitudes, poor impulse control. Cognitive behavioural therapy is a effective intervention. Obviously that is relatively expensive, because it would involve one to one therapy, but it has been found to be effective, drug treatment for young people who require that.

Also, another intervention that is becoming more popular – it has been practised in Western Australia for some years with great success – is multi systemic therapy. It is something which is being piloted by the Department of Juvenile Justice in New South Wales, I understand in western Sydney to begin with. I do not profess to have a full understanding of what it involves, but what it does is, it works with adolescents and their families, in fact all of the significant people in the community, in a very intensive way to target the known risk factors and to probably try to break the cycle of some of those unhelpful behaviours, whether it is by the young people or the parents.

What does not work in terms of preventing re-offending, and I think this might be instructive in terms of where naming fits in, McKenzie's work showed that at least in an American context things like boot camps, military style models do not work, Scared Straight type programs, put the kid in gaol for a day or take them down to Long Bay or whatever, those have been proven to not be effective.

Those kinds of things which rely on shock, deterrence, perhaps stigmatisation, humiliation, do not seem to be effective in addressing the behaviour.

Also, to be fair, at the other end of the scale, rehabilitation programs that are very vague and non-directed and unstructured do not seem to have much effectiveness either.

So it is complex. I think now we have very well known risk factors, but I think there needs to be more research done in Australia in the context about what works and what does not, and I know that DJJ in New South Wales is committed to developing best practice in that area and is constantly striving to find out what works and to apply it.

The Hon. GREG DONNELLY: The circle sentencing concept where the offender is put before or spends time with the victim, the victim's family perhaps, other community members, do you think that concept has any particular value in the context of dealing with young offenders. Do you think it has some merit as an idea?

Mr McDOUGALL: Definitely and the youth justice conferencing model under the Young Offenders Act really is a parallel system, a statutory system and to that extent it is a good example of the re-integrative shaming model. Something that works with identified members of the community who already have a relationship, also introduces the principle of victim/offender mediation, which assists the young offender recognising what the consequences of their actions have been and reaching some point of recognising the need for changes in behaviour.

Circle sentencing is a slightly different model as it works within more finite communities. So to that extent it also introduces a point where the information about the offender and the circumstances are shared, but those people it is shared with are chosen because of the likelihood of their ongoing involvement in a young offender's life.

Ms SYLVIA HALE: In this inquiry, from the evidence that we have received, there seem to be a number of influences or points of view, one of which is the need for open justice. Another is that naming and shaming will provide some sense of vindication, or satisfaction, or restitution to the victims. I assume that it is your view that these claims cannot compete or really do not balance against the claims of the interests of the child being rehabilitated. Would that be so?

Mr McDOUGALL: I have no quarrel at all with the importance of attending to the needs of victims, victim restitution, and in fact victim-offender mediation. Once again to refer to the conferences model, it is one that in fact places the interests of the victim quite high up but yes, it is a model that does not compromise in terms of the application of the principles of rehabilitation. Similarly, I would argue that there is a balance that can be achieved with the interests of open justice, that there is capacity for appropriate reporting, appropriate recognition of the circumstances and the interests of the wider community in criminal behaviour and how it is addressed; confidence that the broader community can have that they are safe.

One other observation that I would make in respect of the interests of victims is that I think

there has been some interesting research done internationally on the most appropriate strategies for meeting the immediate interests of individual victims. And, interestingly, it indicates that the victims are often concerned about the fact that they feel they have been targeted. They have an anxiety that they would be victims in the future again and I think they are real fears. They are an indication that crime prevention programs need to address that.

The provision of information to a victim to identify that they have not been targeted specifically by an offender is often a very important part in addressing that victim's concerns and in the future making them feel safer. And, once again, that is something that I think needs to be acknowledged and to some extent the broader justice system has not done that necessarily as effectively as it might have.

In the context once again of programs where there are some forms of victim-offender mediation, that is an easier issue to address. It is more difficult in those circumstances where the victim is, for very good reason, not prepared to face the offender. It is a challenge for the justice system to find ways to effectively address those concerns, but none of that in my view means that you have to compromise in terms of the effective operation of the youth justice system.

Ms SYLVIA HALE: Would it be reasonable, or does this research show that victims could be concerned that if an offender's name appears in the public print that may be an encouragement to the offender to retaliate against the victim, or there is no connection?

Mr McDOUGALL: I do not know the answer to that. I am only familiar in very broad terms with the area.

Ms SYLVIA HALE: We have had evidence before the Committee that in fact in the vast majority of cases young children who offend against the law are either given a warning, or a caution, or they can participate in the youth justice conferencing, but to do that they have to first admit their guilt. Is that need for them to actually admit their guilt an indispensable aspect of that conferencing, or is there any other procedure that can get the same effect without requiring that admission on the part of the offender?

Ms SANDERS: That is a really interesting question. A child can be given a warning on the spot without admitting guilt but you are completely right about conferencing. I think it is essential to the effectiveness of the conferencing process that the young person accepts some sort of responsibility for their actions. Clearly it is all about them accepting responsibility, recognising the harm that has been done to the victim, and making efforts to try to repair that harm, or restore the victim to their previous position. We would have to have a fairly dramatic rethink of not just that model but the criminal justice system to accommodate a process where a young person does not admit their guilt

Having said that, I have seen so many young people go before courts and they do not admit their guilt, or they may admit some of the allegations but not the entirety, or yes, I did something but it did not happen like that, it happened like this, and the only option at the moment is to go through a very lengthy and protracted and quite formal hearing at court with the rules of evidence and everything. It is an important legal protection for young people to have the protections that adults enjoy in terms of the rules of evidence and due process, but I do find and, importantly, young people do find that kind of adversarial court process a very difficult one and at this stage, of course, it is the only way to resolve the issue of whether a young person is guilty or not. It would be desirable to perhaps have a less formal forum where a young person can say okay, I did this but I did not do that, and have that kind of forum taking place with the victim as well, but it would be difficult. It would have to involve quite a major rethink.

Mr McDOUGALL: The only comment I would add to that is that I think there is capacity in a pragmatic sense in terms of policing and crime prevention for semi-structured cautions and warnings to have, once again, a pragmatic effect in allowing a young person to acknowledge what

might be broader concerns, without necessarily bringing the full force of the criminal justice system, triggering it in its various processes. I think that happens in many communities on a practical level. It is something which is a little bit difficult for those of us who are more involved in the formal criminal justice system to deal with. But I think it is probably something which is worthy of further research and it is something about the good practice of experienced police officers and experienced community members who know how to address those issues that are going to basically mend a community.

Ms SYLVIA HALE: What is the actual difference between a warning and a caution? Do they both involve the parents or the family, or is one just to the child and the other one broader reaching?

Ms SANDERS: A warning is designed to be given on the spot, pretty much, without having to arrest the child or require them to attend a police station. It is only available for very minor offences not involving violence, so maybe offensive language, or trespassing, which would be a classic one, possibly shoplifting or maybe attempted shoplifting, maybe very minor graffiti or possessing a spray can, or perhaps travelling on a train without a ticket. For those kinds of things a police officer can warn a young person. It is simply saying, "Do you know this is an offence? Don't do it again". The child does not have to admit guilt. There is no formal record of it kept, although the police are authorised to record the child's name on their system and the fact that a warning has been given.

A caution is more formal and does require a parent or an adult to attend. The young person has to attend the police station on a nominated day. The young person must admit the offence and there will be a formal record made of it. That does not give the child a criminal record that they have to disclose in the future for employment purposes and the like. A formal caution or a youth justice conference will appear on a child's court alternatives history. That is admissible in the Children's Court if a young person ever has to go before the Children's Court subsequently to be dealt with for an offence. The Children's Court has a record of those interventions available to it.

CHAIR: Back to our terms of reference on this issue, and I was not stopping you, I was picking up your question, these particular forms of justice are not included in section 11, are they? My question is are they included? The names of these persons who receive a warning or a caution can be released.

Ms SANDERS: There is a parallel provision. The Young Offenders Act is the one that sets up the scheme of warnings cautions and conferences. There is a parallel provision in the Young Offenders Act. I cannot tell you what section it is. It is not strictly within the terms of reference, that is true, but I think there is a similar provision.

Ms WONG: It mirrors pretty much section 11 of the act.

CHAIR: We have had evidence this week in relation to difficulties with youth conferencing, in relation to publication or public naming of young people, because they can be named at the investigation stage.

Mr McDOUGALL: I think that is an issue in a number of jurisdictions. I think it has been raised in Victoria recently and it does not just apply to conferencing. I think it applies to all investigative criminal processes, yes, that is right, and it is a matter of concern that basically the effect of the act can be avoided if a media outlet gets in early enough and publishes the information.

CHAIR: Does youth conferencing only occur after a charge has been laid?

Ms SANDERS: Not a formal charge. A young person can be referred to youth conferencing in two ways. Ideally the way the scheme is designed to work is that the young person is

referred by the police, without ever having to front the court. It is a diversionary program, so the young person gets maybe arrested or spoken to by the police. The allegation is put to the young person. They can have legal advice. They can have a support person there. If the young person chooses to admit the offence the police can refer them to a youth justice conference.

Another alternative way is that if the police charge the young person and send them to Court – that can happen for a variety of reasons – in many cases it is because the young person chooses to exercise their right to silence and not to admit the offence, at least until they have had the opportunity to get some more comprehensive legal advice, or the police do not seem to think that it is appropriate to refer the young person to a conference. In that case the police may charge the young person and send them to court and the court can refer the child to a conference. In at least 50% of cases there is no actual charge laid, they are just referred straight to a conference.

Katrina has very helpfully found section 65 of the Young Offenders Act. "The name of any child dealt with under this Act or any information tending to identify any such child must not be published or broadcast". So that only kicks in I think when there is a decision made to either administer a caution or to refer the child to a conference.

Under both the Young Offenders Act and the Children (Criminal Proceedings) Act, when you are in that investigative stage where police are either maybe looking for the young person or in the process of deciding what kind of process to pursue, children are not protected, and that is something that we would all recommend, that protection be extended.

CHAIR: Can you tell us the effects of such public naming at the early stages of such a process in the clients you have seen?

Mr McDOUGALL: No. I think this situation arises very, very rarely. I cannot think of a circumstance in recent years, and the reason is because police officers understand that the Young Offenders Act comes into operation at a very early stage.

I think in a practical sense it is only going to be a problem if we find circumstances where there is particularly aggressive media attention on a particular individual or in particular circumstances and where there is a clear delay in the course of police investigations.

That is probably a matter which is more likely to come to the attention of the Director of Public Prosecutions. The Young Offenders Act in a practical sense, because it is about dealing with young offenders at a very early stage, it is unlikely that that is going to generate, I would have thought, any significant difficulties.

If we deal with a much more aggressive media or circumstances where they are particularly interested in a particular individual or a particular crime that is still under investigation, yes, it could be a practical problem.

Ms SYLVIA HALE: There is also the prohibition on the naming of children who are dead and the media seems to find this an unwarranted restriction. It could be the victim who is dead or presumably even the offender may subsequently have died. Do you have any comment on that, because certainly from the media group we heard from this morning, they seemed to feel that was an unnecessary restriction on their ability to report.

Ms SANDERS: Clearly if you are deceased rehabilitation and stigma is not an issue, but there may be stigma attaching to the family and particularly siblings, if there are other children in the family, and I think that is probably the main objective behind that provision.

We see what happens sometimes with the media, they do doorstop interviews with traumatised relatives and if some kind of prohibition on publication of the name of the deceased child can protect families from that sort of trauma, then I think we would support that, but it the objectives that we are mainly concerned with here today obviously do not apply.

Ms SYLVIA HALE: We heard earlier evidence that mentoring could be a particularly effective way of proceeding in terms of rehabilitation of young persons. Do you have any experience with mentoring programs?

Ms WONG: I can only speak with some experience from members of the Youth Justice Coalition. To a certain degree every part of therapeutic intervention involves some sort of mentoring, regardless of whether it is just a one on one with a particular juvenile justice officer, but certainly with those young people who are identified as being able to be diverted away from the system, ie, they do not have the significant risk factors that would highlight them to come back into the juvenile justice system again, they do have a system of mentoring.

That is where they employ other people from the community, because bear in mind a lot of these young people do not have a lot of role models in their lives, so the existence of this mentor model is to be able to provide that young person with some sort of support from a person that is separate from the juvenile justice system or from the law enforcement system, where they are able to perhaps not only just speak about their particular issues, in terms of a counselling case worker scenario, but also as a practical model in terms of assisting them to perhaps participate in some things that they may not have had an opportunity to so before.

I think mentoring is certainly something that is used in all models of rehabilitation at this point in time, and certainly when a young person is then referred outwards to other youth services, like post release programs or other particular offending behaviour programs, the mentoring system is something that is highly used and regarded highly as well.

Ms SYLVIA HALE: It has been suggested that in fact young people who commit offences may be encouraged to do so by the knowledge that they cannot be named. Have you encountered that in your experience?

Ms WONG: No, from my personal experience I have to say no. I think that most young people who come before the court come in with a lowered self esteem already in terms of identifying themselves to be a delinquent or a person who has been charged before the courts. I think that a lot of the youth workers and community workers who work with young people have to deal specifically with the identity issues that a young person has in relation to how they are to assist them to integrate back into the community. There is certainly no, in that sense, vigilante kind of action in terms of: We've gotten away with it and we'll do it again.

It is certainly not seen in that particular perspective. If anything, it is more in terms of: We can't get away from this. They may not be named but certainly within their small community, particularly if we are looking at rural communities, the impact there is even more significant for a young person. The impact there is: The whole community knows me and has labelled me as this offender. I am trying to perhaps re-integrate and rehabilitate. I don't feel that I am able to because my whole community views me as this.

It is a constant struggle for youth worker and community workers to try and re-emphasise that – the offence you committed was related to the context of that particular point of time. They are trying to isolate the offence for the young person and work with that young person to build on whatever skills that they are lacking or address the offending behaviours.

Just purely the naming part of punishment for a young person is problematic, from the point of view that it does not address the structural causes for re-offending, and that is something that I think needs to be looked at quite carefully when thinking of using this as a means of rehabilitation.

The Hon. AMANDA FAZIO: In the questions that were sent out to you, one of them was "Were there any situations in which you think the public naming and shaming of juvenile offenders would be effective?" I think from the answers you have given that you do not think there would be any cases, is that correct?

Ms SANDERS: I imagine that it means effective in terms of deterring re-offending.

The Hon. AMANDA FAZIO: Yes.

Ms SANDERS: Probably not. To be fair, there may be cases of older and more comparative and more mature young people who may be committing perhaps less serious types of offences, traffic type offences, maybe regulatory type offences. Children from solid middle class families who might perhaps be sufficiently shamed or sufficiently deterred by the prospect of being named.

But those are generally not the sort of young people who we are terribly worried about anyway as offenders. They are the sort of young people who are probably going to be deterred by other things.

I think the evidence seems to show that young people are much more concerned about being shamed by their families or their immediate community, they are more concerned about getting caught and they are probably more concerned about whatever may happen to them, being locked up or having a criminal record, so maybe, but probably not would be the answer.

Ms WONG: The only thing I have to add to that is, as well we are looking at the impact it may have on the young person and you really have to look at the role of the media and how young people are represented in the media. There is significant research that shows that young people are stereotyped and sensationalised in the media.

So, to a certain extent where a young person is being named, they have no control over the extent to which that naming will go, in terms of how they are going to be labelled, how their identity is going to be formed in relation to that.

I think that is something that is really important. I do not think that we can underestimate the impact the media can have in terms of when you are just naming a young person, that lots of terms are usually used to describe young people, hoons, delinquents and I think that this can be counterproductive to the principles of rehabilitation and certainly it has a flow on effect in terms of how they are able to participate in therapeutic counselling, a lot of that is inhibited.

Some parents as well, when they find out that a young person has been named for that particular offence, is participating in this particular service, they may not want their young person to go there.

It is an all in all kind of process which I do not think is fair, particularly taking into account that we do acknowledge that young person have different developmental capacities to adults, that they should have that imposed on them.

The Hon. AMANDA FAZIO: Can I also get your comments on the value of the restorative justice program. I am not sure if that encompasses therapeutic counselling and things that you have been talking about, but would you view that as being far more effective than naming and shaming?

Mr McDOUGALL: Yes.

Ms WONG: I support that as well. We have talked about how it is in a controlled environment, where the young person is really able to take responsibility for their actions and able to see the consequences of their actions on that particular victim and also make reparations to that.

I think if you are looking at a way of really deterring them from re-offending again and also getting them to acknowledge what they have done, then that is pretty much a model that we should be basing this naming and shaming kind of effect on.

Ms SANDERS: I think if we have not already said this, it is probably important just to raise

that particularly in the context of the earlier question from Ms Hale about victim's needs. There have been a number of evaluations done of the youth conferencing system in New South Wales, also of the young adult conferencing pilot scheme as well, and some of those studies have focussed on victim satisfaction with the process and the rates of the victims' satisfaction with the process are very high, consistent across all the studies. I think that you will probably find that studies of other restorative justice programs in other jurisdictions would be the same.

So certainly not only from the point of view of rehabilitating the offender but from making the victim feel that they have got something out of the process as well, it seems to be useful.

CHAIR: You have referred to certain documents that you have with you. Would you be comfortable to table them for the Committee?

Ms SANDERS: Certainly.

CHAIR: This might be a question you need to take on notice due to the time, but what are some of the possible effects of naming juvenile defendants and witnesses on conducting the defence in a juvenile criminal matter? I guess also in relation to the witness issue, is it possible that some young persons who are witnesses may be discouraged from actually becoming witnesses, recognising they may be named in the process?

Do 16 to 18 year olds need to give consent in court for themselves to be named, or can they actually give consent directly to media outlets?

Ms SANDERS: The final question, I am not sure. I would have to have a look at the section more closely.

CHAIR: It may make a difference to how we think about that particular issue.

Ms SANDERS: I think if it is a child under 16 the court has to make an order and there has to be concurrence of the child. If they are 16 or over I do not think they do have to give consent in court. I think they can simply consent to the particular media outlet concerned. Katrina is just looking at the section, but in relation to the impact on witnesses there is something in the Shopfront Youth Legal Centre's submission about that and that come from our experience working with young people. We work with young people who are victims, who are offenders and who are witnesses, and in many cases all three. We are often called upon to advise young people who have been subpoenaed as witnesses in criminal matters and there is already a great fear amongst some young people of giving evidence. Partly that is sometimes because they know the people they are giving evidence against and they fear retaliation. Sometimes it might be unfamiliarity with the court process, fear of being in the witness box and being cross-examined.

Certainly in many cases, particularly when you look at a lot of juvenile offending, it is committed in groups. There are often kids on the sidelines who do not participate in the offence but who might be watching and they might have relevant evidence to give. You often have young people called upon to give evidence against other young people. There is a very real fear of retaliation there and not necessarily just retaliation from the people who they are giving evidence against. The Committee might be aware that there is - I hate to use this term - a criminal subculture, because I do not think there is necessarily a criminal subculture, but among people who are offenders, or people who are in prison, or in detention centres, there is a very, very strong culture that you do not dob people in. It is well-known in the adult prison system that if you get known as a dog you will be very severely treated by other inmates, even if they personally have no beef against you.

If a young person is a witness or potential witness, if their name becomes publicly known, they might have legitimate grounds to fear retaliation, not simply from the person they are directly giving evidence against, but on a wider level. There is already enough barriers to kids coming forward and giving evidence.

CHAIR: Did you have anything further that is tight and specific that we missed?

Mr McDOUGALL: I would make a quick observation. Returning to the issue of an international perspective, and that is that my work with agencies overseas and organisations overseas has lead me to realise that our current system is held in high regard internationally. It is a system that we can be proud of, particularly the Young Offenders Act and some of the programs that are developed in that. I find in a practical sense that I often get asked questions from overseas about our system and why it works. I think this inquiry is a good opportunity for us to review that and revisit some of that. It is, I think, important that we recognise that we are fortunate in that regard and that there are in fact great opportunities for us to build better systems and support the building of better youth justice systems in other countries, in other societies. That would be something I would not want us to lose.

(The witnesses withdrew)

(Short adjournment)

ROBERT JOHN TAYLOR, President, Homicide Victims Support Group, 3/36 Upper Fairfax Road, Mosman, and

DAVID NIGEL BERRETT, Retired, Homicide Victims Support Group, PO Box 772 Mona Vale, sworn and examined:

CHAIR: Would either or both of you like to start by making a short statement?

Mr TAYLOR: The Homicide Victims Support Group represents families of homicide only. Our brief is for homicide victims, so we have no view on other crimes or offences.

Mr BERRETT: I am here as the father of a victim. My 17 year old son was murdered by a 17 year old and this was in New South Wales, here in Sydney, and so I have the experience of the justice system here in New South Wales from the outset and can give an opinion, my opinion, of my experiences. I would like to just explain the situation. My 17 year old son was at a dance, an under 18s dance, and he was approached for money by a complete stranger and he did not have money. The next thing was that he was lying on the floor and the complete stranger had disappeared. From that point the press got hold of the situation and the very next day the name of my son was in the paper, the fact that he had died on the dance floor. They had nobody at that time. I think that information and the fact that it was published contributed greatly to the subsequent bringing to justice the offender. I have heard a number of comments about whether victims should be named and I put my point forward.

We were not involved very much after that. We had to take care of our own situation, but in terms of the system we were asked whether we would attend the coronial inquiry or hearing and a committal hearing, which we did. It was the very first time I had been to court. I had never been involved in the system before. I went to court and sat through a coronial hearing and it went to a committal hearing and a request was made by the defence counsel that the court be cleared and I was asked to go. I was, to say the least, angry. I had a couple of members of my family with me. I had some close friends and because a juvenile was the offender the victim did not count. We were just asked to leave. I spoke to the public prosecutor and expressed my dismay. He spoke to the magistrate at the time and we were allowed to stay. The close friends with us had to leave and were highly humiliated whilst on the offender's side there must have been 10 or 15 people, young, old, whatever, who were allowed to stay. That was my very first experience of our criminal justice system.

After that the matter was referred to the Supreme Court and again we attended the Supreme Court, my wife and I. A plea of not guilty was made by the offender and we had to sit through three weeks of court where, effectively, my wife and I were the only representatives. We were not entitled to be there. I understand the law has changed now. We were not entitled to be there. We had to have special permission to be there for the trial of our son's killer. We went there, the two of us, and we sat through the proceedings and we did have support from a couple of representatives from the DPP occasionally. The police were there occasionally. So there were just the two of us for three weeks for the most part. On the other side there may have been any number of attendees on behalf of the offender, so there was no restriction.

It is my strong view that the offender should be named, should have been named. I believe that it gave a veil of anonymity that allowed anything to be said in court and that allowed, effectively, the offender not to take responsibility. At no time was there any remorse or any indication that the offender had taken any responsibility. The guilty of murder verdict was found and so we went through three weeks, after pleading not guilty. There was an accusation against my dead son that he in fact produced the weapon. There was no corroborative evidence and, effectively, the other evidence was sufficient for the jury to make their decision.

So I have very strong views. It was a wretched experience and a lot of that was to do with the fact that we seemed to be unimportant, because the court was closed, it seemed to be protecting the offender rather than them making any provision for the victim.

CHAIR: Discussing that specific issue and recognising it happened to you before this change occurred, do you feel that the avenue now for victim impact statements in child cases has made a difference for others?

Mr BERRETT: I think victim impact statements have made a difference for others. I think Robert would be able to comment on that because he has submitted one of those. I think it has made a difference. Now victim's families are allowed to attend court. I see no reason why other friends and family of the victim should be not allowed to be present, why people like myself have to sit in a court like the Supreme Court building in Taylor Square where there is just two of us and an offender can have as many friends and relatives as they like, I am not quite sure that that is justice, certainly in my eyes.

The Hon. JOHN AJAKA: Just following on from the question of the Chair, would it be sufficient from what you have been saying if court was an open court in relation to young offenders and the name was still suppressed, or are you seeking both or would you feel from your personal experience that one was more important than the other?

Mr BERRETT: It should be an open court. The offender should be named. I see no reason not to name. We understand that the naming of offenders and rehabilitation seem to have been linked together and nobody has explained to me why they need to be linked together.

The Hon. JOHN AJAKA: This question is to either of the witnesses, Madam Chair. You mentioned earlier on Mr Taylor that you are here in relation to any matters involving murder, where there is a death of a victim. You are asking for the prohibition on naming to be removed in relation to those types of cases only?

Mr TAYLOR: Our brief is purely homicide, murder and we only can speak from that point, and yes, we are requesting the prohibition be removed from naming of the offender.

The Hon. JOHN AJAKA: I have noticed that one of the answers that was given in your submission states that your group supports the naming of juveniles and then it goes "Thus, (1) the juvenile regardless of age should be named if that person is bailed or convicted or murder, and (2) the juvenile aged thirteen years and above should be named if that person is bailed or convicted of a crime of violence designated by the Crimes Act."

Mr TAYLOR: We take that violence is criminal, in the fact that murder is a violent crime.

The Hon. JOHN AJAKA: I understand that, but you are not saying if someone assaults someone he should be named.

Mr TAYLOR: No, that is not our brief.

The Hon. JOHN AJAKA: In relation to bailed or convicted of murder, what would occur if a young person is named because they have been charged and bailed to appear at court but subsequently after the trial they are found not guilty. Would you see that there would be a huge damaging impact on a child or a young offender in those circumstances, as compared to when you have said convicted?

Mr TAYLOR: No I do not, because to my knowledge, it is most unlikely that if somebody is charged with murder, there is strong evidence and that they most likely would not be bailed. However, to answer your question, if they have been charged and go before the Children's Court and bailed, they may be bailed to their parents or to another responsible person who has taken responsibility of that person and in the case of a twelve, thirteen, fourteen, fifteen year old person, it may be in the interests that that person be bailed and held in home custody.

The Hon. JOHN AJAKA: I understand that but you are saying that that person also on bail, not yet been convicted, in fact not yet been tried, you are still supporting the notion that that person should be named?

Mr TAYLOR: Yes.

The Hon. JOHN AJAKA: Even before conviction?

Mr TAYLOR: Yes.

The Hon. AMANDA FAZIO: I have had a look at your submission and in response to question 1, which was "How would naming influence a juvenile offender's rehabilitation?" and down at the bottom of that page, point 2, you say, "We give accurate information to the public through responsible and ethical media channels on the nature of the crime and the criminal." My question goes to how reasonable it is to expect that you are always going to have responsible and ethical media coverage of cases, particularly murder cases, which often the circumstances are very dramatic and very heart rendering, whether you think that by naming a young person and then leaving the responsibility for giving an accurate portrayal to the media outlets, whether that is a reasonable thing to do?

Mr TAYLOR: I believe so, we believe so. We have found that the media has always been responsible, especially in the case of murder and they have sympathy for the victim's family and the victim and therefore I am not aware of any time where the media – be it radio or print or television – where they have crucified anyone involved in that murder because I believe the press, the media, takes particular care in the instance of murder.

The Hon. AMANDA FAZIO: You also say that you think that one of the other beneficial offshoots of naming people would be that it might elicit a public response that would assist in finding new witnesses. Have you read anything in your research that would support that or is that just a feeling that you have?

Mr TAYLOR: It is not any research that I have read or that I am aware that has been done, however I will speak from a personal point. I am hoping Madam Chair will give me the opportunity to speak to our family's paper, but my personal response to that is the evening of my son's murder people came forward and after the event other people came forward to give evidence and to make statements of that offence. It is something very positive as far as I am concerned and we are very grateful. These people came forward irrespective of any problem that may arise and made a statement.

The Hon. AMANDA FAZIO: They did that because they were made aware through the media?

Mr TAYLOR: Yes, through the media, yes, because my son's murder was in the evening and it was on the late evening news, late evening television and in the papers the following morning.

CHAIR: I can see in your submission you have actually made statements that the naming of victims does not relate to the rehabilitation, that they are separate issues for you?

Mr TAYLOR: Yes.

CHAIR: Would you like to elaborate on that a little further?

Mr TAYLOR: I was going to cover that in my next paper, with your permission.

CHAIR: You would like to table another paper?

Mr TAYLOR: Yes. It is a paper from my family and I will cover that in this paper, if I

may.

CHAIR: Yes. The paper is fairly extensive?

Mr TAYLOR: No, it is a very brief paper and I would like the opportunity to be able to read this as a public document?

CHAIR: I am very happy for that to happen. I just have to say that if there are terms in there that we cannot publish relating to individuals, then we will actually move to have that piece of your paper deleted, but I will be very happy to hear your paper.

Mr TAYLOR: Madam Chair, in conclusion – if it is conclusion, unless there are more questions, which we are very happy to take, plus we have another couple of points – I would like to emphasise that my submission is based not on news items, not on anecdotal evidence, nor on research but on first hand experience.

My wife and myself were present at the time of the murder of our son and I was stabbed in the same attack. The Homicide Victim Group supports over 2000 families in New South Wales, all victims of homicide.

The Group supports the naming of every person, young or old, male or female, including those who plead mental instability at the time of the attack who are charged with or held for homicide.

In our case the apprentice jeweller pleaded guilty to manslaughter from the day he was charged and held in custody. He was treated as a child (I would like to take a side bet that any person between the age of sixteen and eighteen would object very strongly to being called a child unless, as in this case, there was an advantage to them). This assailant turned eighteen about six weeks after our nightmare event. That means that throughout all the sixteen plus mentions at the Children's Court, the trial, the sentencing, and later appeal, this child had reached the legal age of eighteen, an adult by society standard.

As I state in my preamble, this perpetrator was sent to Cobham, a remand centre, with certain conditions applying. Cobham is generally considered a home away from home which houses children as directed by the court. This child did not live up to the opportunity given to him by his Honour and soon was transferred to the Baxter Detention Centre at Gosford to see out his sentence.

I would like to pass on to this inquiry the most hurtful statement ever made to my wife, myself and my daughter following our son and brother's murder. As we were leaving the court the mother of these two young murderers rose to her feet at the rear of the court room and bellowed "Thank God my sons are alive" and repeated her statement a second time. The statement was heard by all those in the court room.

My family wishes to support the response from the Homicide Victims Support Group, but also wishes to take this opportunity to respond to the questions posed by the Committee.

Question 1: for anyone to seek and succeed in rehabilitation, the first step is to acknowledge and accept responsibility. Just as an addict is required to first admit that that they have a substance abuse problem, an offender must first acknowledge that they have committed an offence that caused harm. This acknowledgement can only come from full realisation of their actions and the effect. If this is done in a controlled environment, such as during rehabilitation, then it is not realisation, only conjecture, as they are not in the real world, observing the real effects of their actions.

Question 2: I can only give evidence where not naming a juvenile offender did not prevent him from re-offending. At the time of the attack in which our son was murdered, the elder brother was later found guilty of murder. He was on a bond from an offence committed, as we were informed, as a minor, one for which he was not named.

If this is fact, withholding his name did not prevent him from re-offending and re-offending

from committing the most serious crime in our criminal code.

In response to question 3, as a victim I can wholeheartedly tell you that my life was shattered through the act of a juvenile and his brother. I believe it is important that you release we will never be rehabilitated. The most we can do is try to learn to live with the pain that is now ever present and at times overwhelming, a pain that no-one can analytically understand. After the murder of a loved one we encountered this immeasurable pain. We now also face the justice system, the police, the media whirlwind and being launched most harshly into an unknown world of injustices for us, injustice that our loved one has been taken from us violently by somebody else's hand, the injustice that has become newsworthy to the media, the injustice throughout the justice system where we had no voice, no decision making ability and the injustice that the offenders in our case could not be named. They were both protected because one was a juvenile. It was injustice upon injustice upon injustice.

When the legal processes are completed we must continue to fight for our rights. It is the victim that is constantly in a battle to lessen the injustice we experienced. Therefore in response to this question it would be one area where we need to face another injustice.

In response to question four, justice acknowledgement is necessary for rehabilitation, so it is necessary to ensure responsibility is taken. The lack of anonymity will encourage parents to take responsibility. They also need to acknowledge the pain and harm their child or children have caused to the victim and to society. If in our case this had occurred we would therefore not have had to endure the mother of the offenders calling out to us at the time of sentencing, "Thank God my sons are alive". Removing the protection of anonymity would help to discourage the perpetrators and their peers from engaging in similar violence and acts against society as their anonymity is no longer guaranteed.

CHAIR: I thank you very much indeed for sharing that with us. You said that you had some issues you wish to address with us today?

Mr BERRETT: Yes, we do. Perhaps if I could raise those, during the session this morning I think the media raised a situation where they described the difficulty they encounter when a child goes missing and it is widely mentioned in the press or such like, and then suddenly perhaps the child is found dead and somebody is charged and then all communication has to stop, all reporting has to stop.

CHAIR: Of the name.

Mr BERRETT: Of the name, so if somebody goes missing, the name can be published of the missing person. If they are found dead then the naming has to stop at that point.

The Hon. JOHN AJAKA: Once a person is charged.

Mr BERRETT: We would ask to whose benefit is the name withheld? It is not the victim. It must be to the offender's benefit and we certainly do not believe that should happen. In fact there should be a consultative process between the police and the senior person responsible for that child as to the whether the name can continue to be reported on.

The Hon. JOHN AJAKA: The name of the victim only, not the name of the offender.

Mr BERRETT: No, we are talking about the victim, so that does not happen at the moment and we certainly believe that should happen.

CHAIR: Did you have anything else to add?

Mr BERRETT: I have one other comment. I came in today to sit through some of what was going on. There was talk of circle sentencing which, on the youth side, is youth justice conferencing. Both are community-based rehabilitative programs where the offender's identity is known and we understand that they both work, that is circle sentencing and youth justice conferencing, so in both of those situations the name of the juvenile or other offender's name is known, whether they are juvenile or otherwise, and that appears to be working from our understanding.

(The witnesses withdrew)

(Short adjournment)

KENNETH BORGE MARSLEW, CEO, Enough is Enough, PO Box 24, Jannali, affirmed and

HOWARD WILLIAM BROWN, Vice President, Victims of Crime Assistance League, PO Box 3331 North Strathfield, sworn and examined:

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

Mr BROWN: I have some concerns in relation to the Terms of Reference of this Committee, purely and simply because of the nature of the responses which have been given to the Committee in the form of submission which I have accessed through the web site in relation to this. I suspect that a lot of these problems come about as a result of the Second Reading Speech of the Children's (Criminal Proceedings) Act 1987 where there seems to have been an association put together that the naming of people involved in offences has some long-term detrimental effect through publication. I put it to the Committee that I would imagine that if I was to give you the names of recently high profile murders you would be aware of each particular victim of that particular crime and yet if I was to ask you where that crime had been perpetrated by an adult who that adult was, I would suspect that the answer to that would be that you would not be able to tell me.

For example, in the case of Jai Jago, Jai Jago was shot down in Canterbury Road, Hurlstone Park in 2000. Two offenders were involved in that. One was an adult and one was a juvenile. Obviously the juvenile cannot be named, but I doubt if there is anyone present in the room right now who could tell me the name of the person who was responsible for Jai Jago's death. If Mrs Jago were here, she would be able to tell you. I can tell you. The New South Wales Parole Authority will tell you in six weeks' time when that person comes before that authority seeking release to parole.

Unfortunately, because of the nature of this inquiry, there seems to have been some correlation that the naming of a person is going to have a detrimental effect. I would put it to you that our very ignorance of the names of these perpetrators clearly indicates that there is no direct connection between the naming of the person and there being some form of vilification on an ongoing basis.

The second point which is obviously of a major consideration is that there appears to be a view common throughout those people who have made submissions to this Committee that the naming of the people and rehabilitation cannot occur simultaneously. I believe that they are two factors which the Committee must take into account when providing an overview of the discussions and meeting with the people, because I believe that the two over-riding influences of the majority of people who have provided submissions to this Committee have failed to recognise that there is absolutely no association between the two events and until such time as that does occur, it is very difficult for the Committee to come to an understanding of what is involved.

CHAIR: Did you have an opening statement, Mr Marslew?

Mr MARSLEW: Just to give you a background on myself, basically as the gentleman previously, my son at 18 years old was murdered, but not by juveniles. That set us up to look at a lot of support for victims of crime. I need to say here and now that our interpretation of justice is that justice begins where revenge ends, so what we are talking about today is not revenge but looking at the real rehabilitation of young offenders.

My background to be able to come to you today to talk at length about this is the fact that we work in juvenile correctional centres. We work in the maximum security area out at Campbelltown where we deal with 10 to 15 year olds and up at Kariong where we deal with 16 to 21 year olds. We also run programs through mainstream prisons for men and women. We usually have discussions following the program presentation and it is the information that I gather there that I want to bring to the Committee today that I believe will support the naming of young offenders.

CHAIR: I will start with a question and either of you can answer it, or both of you can answer it, unless individual Committee members have a specific person they want to ask a question of. You have said that you do not believe that naming of an offender bears any relationship to rehabilitation. I guess that not just from the evidence that we have been given but from some of our reading there would appear to be evidence that public naming actually can make a difference to a person's ability to be rehabilitated, or naming them into a group that maybe would make it more difficult. I would like you to put more meat onto that statement.

Mr BROWN: Obviously you have my initial submission in which we have relied very heavily on figures provided to us by BOCSAR relating to reoffending rates in relation to juveniles which are only slightly significantly worse than those of adult prisoners. Recidivism rates in this State and this country, generally speaking, are absolutely disgusting. Our recidivism rates are far too high. In fact there is absolutely no evidence to indicate, on recidivism rates, that not naming then has provided them any encouragement.

I have drawn attention in my submission to that most unfortunate situation down in Griffith involving the young person killed in that case. I have named that case in my submission. One of the principal offenders in that particular case was on a bond at the time he killed this young man. His name had been suppressed. It made no difference because the problem was this person had never accepted that he had done the wrong thing because he was capable and able to hide behind this veil of anonymity. Until such time as we get to a point where we actually name these people and make them take responsibility for what they have done, we are never getting to be in a position to assess the difference between naming and not naming.

The Hon. GREG DONNELLY: Are you aware of any evidence, that is domestic evidence, from Australian jurisdictions or even from overseas jurisdictions about the effect of naming juveniles and how that may have contributed one way or the other to matters of recidivism and repeat crime, repeat activity?

Mr BROWN: Unfortunately most of the other jurisdictions suffer the same anomalies that we actually do here in New South Wales. One of the things Don Wedderburn will openly accept is that our statistical data in relation to recidivism and offending rates generally relating to juvenile is quite poor. The Crime and Justice Bulletin No. 86 of May 2005, to which I made reference in my original submission, from the Bureau of Crime and Statistics and Research, in this particular bulletin one of the things that Don draws attention to is the fact that he was not able to go to other jurisdictions to provide information which would give him a point of comparison and that is one of the difficulties that we have.

Despite the fact that I am of the view that we are well behind in relation to moving forward and being a little more lateral in the way we deal with these things we are, as a State, generally speaking, far in advance of other countries and other jurisdictions as to the manner in which we deal with these things and that is one of the reasons why I am so supportive of changes to this particular process, even if it only provides us with the opportunity to gather empirical statistics to actually prove what any victim of crime would be able to tell you, which is at this stage it has to make a greater difference than the old system because the old system clearly is not working.

The Hon. GREG DONNELLY: When you say that the old system is not working, is that because the instances of recidivism of juvenile offenders in your view appear to be quite high? Is that the nexus you are drawing?

Mr BROWN: The nexus I am trying to draw and, of course, this comes about as a result of the advocacy work I do for victims of all types of crimes, not just homicide, before the New South Wales Parole Authority so I am dealing with adult prisoners virtually on a weekly basis. One of the things that we have learnt about current prisoners and their application and their process through the

parole process is that up until such time as they take responsibility for their crime, take responsibility for their misgivings and their offending behaviour, they do not progress through the system. Once they do, or once that catalyst is provided to make them take the anger management course, or the drug dependency program or the violent offender therapy program, and actually put their hands up and say "I did this. I, Howard William Brown committed this crime", they do not progress. If it works for adults I cannot understand why it does not work for kids.

The Hon. GREG DONNELLY: Let us assume that is correct. How does that relate to this issue of putting the juvenile offender's name in the public domain and how that will improve this outcome? Are you saying that needs to be done as part of the process and without that there is something fundamentally missing to facilitate this rehabilitation?

Mr BROWN: For us, for there to be proper and adequate rehabilitation, the person has to take responsibility for the crime. To do they must do it publicly. I am often involved in juvenile conferences. In those conferences we have this ability to know who the offender is, and we sit around a table, very much similar to this, and we go through all of the various issues, but if I walk outside that conference and I tell anyone the name of anyone involved in that conference, I go to gaol. Even though that system works well, no-one can name that child outside and that is why we see reoffending because they do not have to take ownership of it. They can hide behind this anonymity. The problem is they do not have to put their hand up and "I say I did that", and when they get out they can say "that wasn't me".

I heard some of the previous people when I first arrived here, Katrina Wong being one, talking about the influence of peer group and things of that nature. One of the things that people tend to lose sight of is by not naming people you often have guilt by association. The Jamie Bulger case was the classic example, when Jamie Bulger was killed and the two juvenile offenders were involved. When a couple of juvenile offenders were released from one of the maximum security gaols over in England, everyone assumed that they were the two who killed Jamie Bulger. They were not. And the problem was, because they had not been named, no one had to take possession; that is the difficulty.

The Hon. JOHN AJAKA: If I could just go back a little bit through your submission to make sure I have got it right. Your contention is that for anyone between the ages of sixteen and eighteen, the prohibition in section 11 should be removed, irrespective of whether it is an indictable matter or a summary matter, would that be correct?

Mr BROWN: No, not really, it would only be for indictable offences.

The Hon. JOHN AJAKA: When you say all matters, you mean all indictable matters?

Mr BROWN: All serious indictable offences, yes. I thought I did actually say that. If I was unclear, I apologise.

The Hon. JOHN AJAKA: That is what I was trying to clarify. You of course say upon conviction, but then when you go between fourteen and sixteen you say the presumption should be in favour, and then you talk about serious indictable offences. I was trying to understand what is the difference between your sixteen to eighteen category and your fourteen to sixteen category.

Mr BROWN: My sixteen to eighteen does relate to serious indictable offences as well.

The Hon. JOHN AJAKA: Is there a difference between them or there is no difference?

Mr BROWN: I do not believe that there is any prohibitive value in naming a sixteen to eighteen year old involved in a summary offence.

The Hon. JOHN AJAKA: The situation with naming an offender between those ages, in relation to naming of a victim who is deceased, where is your stance?

Mr BROWN: I have some real issues with this because it is such a diverse area of the law. I heard Mr Taylor and Mr Berrett speaking before and I understand exactly where they are coming from, and if it was my child that had been killed, I would want to make sure that every avenue was taken to ensure that those people were brought to justice for what they had done, and if that meant publicising the name of my child, I would want that done, but I would always want that permission vested in the parents.

Obviously the way the law is currently drafted, there is an exception to that rule, and that is where the parent is in fact charged with an offence. What do we do, however, when that child is actually under the protection of the State? Because as far as I am concerned, the State should be held responsible under those circumstances and this prohibition prevents that from happening.

So I would like to see there be an extension where that child is under the protection of the State, then that person should be named and it should not fall to the State to give permission or otherwise.

The Hon. JOHN AJAKA: Going back earlier, your contention would be that any child under the age of eighteen years, the prohibition of section 11 is sufficient as far as the non-serious offences are concerned?

Mr BROWN: Summary offences, exactly.

The Hon. JOHN AJAKA: We are not looking at: Let's name children for spray painting or let's name children for something of that nature. Would that be your position Mr Marslew?

Mr MARSLEW: Exactly.

Ms SYLVIA HALE: Mr Brown, you say in your submission on page, "We are also of the view that offenders between the ages of fourteen and sixteen years who have more that two previous convictions, consideration should be given to the naming of these offenders, as clearly the non-publication of their details has had no beneficial impact." What do you say to people who may object that the naming of that person could further stigmatise their siblings or their family who may be already facing very difficult circumstances, because most of the serious offenders seem to come from backgrounds of deprivation or disadvantage in some way.

Mr BROWN: What we refer to as a dysfunctional family?

Ms SYLVIA HALE: Yes.

Mr BROWN: As I said in my opening address, one of the real difficulties I have is that people seem to place undue stress on the effect of naming as it occurs in the press, because you see, the amazing thing is we live in a society today where we are a throw away society. What is today's headlines is tomorrow's fish and chips wrapper and unfortunately as a society that is the way we are, and even if we were in a situation where we have an offender who is obviously quite recalcitrant, and obviously has an ongoing issue with re-offending, the fact that it has the potential to stigmatise other members of the family, it would, at best, last a day or two and I do not see that, in relation to the more important aspect of getting this child into rehabilitation, actually dealing with the offender's offending behaviour, I think that is of greater significance than the need to protect, for maybe a matter of days, other members of the family.

Ms SYLVIA HALE: Don't you consider there might be a situation where at school with the siblings – children are notoriously cruel in many of their comments and bullying is not unknown – that those siblings would be subjected, not just to a day or two's aggravation but ongoing, which could have major impacts and also contribute to their offending?

Mr BROWN: With all due respect, I doubt very much that naming would have any effect on that in that particular environment that you are talking about. Can I say that when I am involved in

juvenile conferences in the Campbelltown region, which is where this is a huge issue, where we currently do not name juvenile offenders, everyone at the school knows exactly who has been involved. Naming or otherwise makes no difference in depressed communities and depressed economies.

Ms SYLVIA HALE: One would expect that there is always the possibility that because they suffer this collateral damage, as it were, that a child or family could move and adopt a different name, change their school merely to avoid that stigmatising?

Mr BROWN: There is always the potential for that type of situation but I think we have to be practical about it, and that is one of the reasons why when we made the recommendation that we did, we spoke about it being for two or more offences.

In other words, there are systems in place to provide assistance to people. If they choose to ignore those, then we must put the offending values of the actual perpetrator first. They have to be dealt with, and the way we deal with that is by putting it out there so that they must seek treatment. If the family is dysfunctional, well unfortunately they have had two occasions to try and address that and obviously have failed to take it.

Ms SYLVIA HALE: How do you respond to the evidence that has been presented to the Committee about adolescent brains, that really some are not maturing until they reach the age of twenty five and that adolescents can be impulsive, unaware of the ramifications of their act, the long term consequences for themselves or for others. How do you respond to that?

Mr BROWN: I suppose the difficulty we are always going to be confronted with in a situation like this is at some point there has to be an arbitrary line drawn and where do we actually draw that line? We have developed a system where we have broken these ages up into increments in an attempt to try and come up with the best possible compromise. I can assure you from my experience in our criminal legal system, that in the situation where development retardation – for want of a better word – is a major issue, defence counsel will push that to the absolute ultimate and I am quite sure that that would not become a huge issue in relation to the general population of the general offenders.

CHAIR: Another piece of information that has come to the Committee from several different sources relates to some young persons particularly being in a social circumstance where it is a badge of honour to have your name attached to some sort of criminal activity. I want to hear your thoughts on how that process would be dealt with if the Government decided to remove section 11.

Mr BROWN: Ken is by far and away the best equipped to answer this.

Mr MARSLEW: The situation is there is an element out there that would love to see their name in print, being associated with it, and there needs to be put in place structures, programs, whatever, and yes, they are there, but most of the young people that we have spoken to would say that they are afraid of having their name in print. They are using their age to hide from a crime and putting their name in print. It is only a temporary thing because it will dissipate. As Howard says, it is on tomorrow's chip wrappers.

To hold them accountable for what they have done is one of the prime reasons for the success that we are having with our programs in juvenile correctional centres and in mainstream prisons. We talk about the young mind taking up to the age of twenty five to develop, if there are drugs and alcohol involved, it may take even longer than that for a mind to develop.

Also, the older offenders, the ones I talk to in mainstream prison, are also telling me that their experience with the juvenile justice system is such that they feel it is too soft and had it been harder and held them more accountable as they are going through, that they may not have been in mainstream prison now.

Most of the evidence that I have seen today and in some of the submissions that I have read

is based on us dealing out of one book. The people that we are dealing with are getting their information out of another book, and I think that the correlation between the two lots of information is: Are we spending enough time talking to young offenders to find out what makes them tick?

Also, in naming young offenders it starts to hold parental responsibility further up the tree, because the parents will not want their name in the papers or wherever the media decides to put it.

A lot of these young people are dealing with learnt behaviour. They have learnt a lot of what they do from home in the first place. I am thinking that by putting a little bit of fear – you talk about stigmatising, how about there are several types of stigmatising. We have Braithwaite's version, which is the non-stigmatised shaming or there is the other one, where we put a t-shirt on them: I'm a little bastard and we stand them out in the street. That is stigmatising. That is stuff that will impact on a kid forever. But by having them within a circle where people are actually looking for a rehabilitative process by naming them, and even if the media does get hold of it, I cannot see what the harm is.

The gentleman spoke before about we have a good system, I think we do, but I think we can make it a hell of a lot better if we get off this protection approach where we start holding people accountable and responsible for their actions.

CHAIR: Just to extend a bit on the parental responsibility issue, I think we have spoken already with you about dysfunctional families. Naming an offender who is a young person of course in most communities names the entire family as dysfunctional.

Mr MARSLEW: Yes.

CHAIR: Can you tell me why that is a good thing?

Mr MARSLEW: When you say a good thing, it is terrible that we have to do it, but again, if these kids are exhibiting behaviour that they are living with, and that is what the proof is, that these parents need to be held accountable.

What we have got now is young offenders hiding behind their age and you have got parents hiding behind the fact that their children are not being named, so they are not being held accountable.

You heard about the woman standing up in court and saying "My sons' alive". I had a similar situation happen to me, although mine were not juvenile offenders. That sort of thing I think would bring these people to heal, to get an understanding that they are responsible for some of this behaviour.

Mr BROWN: I think it might help you too to understand some of the functions of the juvenile conferencing. I am heavily involved in juvenile conferencing where there are victims who do not have the desire or the courage to attend a juvenile conference, especially in an assault matter, and we have the capacity as victim's advocate to go on their behalf.

One of the things that we find with more dysfunctional families is that often that support mechanism that the offender requires is something that Mum is lacking, but Mum has no idea how to access services and the like which are going to assist her in the process.

One of the things that we do actually achieve in these juvenile conferences is lining Mum up with those services, and she actually becomes aware – which is one of the reasons why I spoke about more than one offence before we start naming them – of those services to which she can draw assistance and help from. Then, of course, hopefully, we never see the offender again, because it is a low range offence and it is only until the level starts to escalate that we become more concerned and look to taking a far more radical approach.

Putting dysfunctional families in line with services is something which is achieved in the juvenile conferencing process.

Ms SYLVIA HALE: Naming is not a necessary prerequisite for that, is it?

Mr BROWN: It is not actually allowed at the moment.

Ms SYLVIA HALE: It is one thing to say dysfunctional families should be given access to services but it is another to then jump and say that naming is a desirable thing in relation to dysfunctional families.

Mr BROWN: I am talking about lining families up in first instance. I am not talking about naming young offenders at first instance. We are talking about them having two previous instances.

The Hon. JOHN AJAKA: You have now confused me in one area. As I understood earlier, you were talking about serious criminal matters. What is the percentage of youth conferencing in serious criminal matters, such as murder?

Mr BROWN: There is not.

The Hon. JOHN AJAKA: My understanding is that the vast majority would be what one would consider summary matters.

Mr BROWN: Yes. The type of matter that CK was involved in, the person who killed the young man down at Griffith. We need to get them early. If we do not get them early they become serious offenders and that is where the problem is. That is why we want them named.

The Hon. JOHN AJAKA: You even want them named in those sorts of situations where they are not serious?

Mr BROWN: I am talking about two previous convictions.

CHAIR: For summary offences.

Mr BROWN: Yes, so when they come to their third one that is where we deal with the problem. This is why we talk about people taking responsibility for their actions. This is one of the great things about juvenile conferencing. If we can get these unfortunates early enough and divert them, they do not become serious offenders. The problem is what do we do once they have become serious offenders. That is when we have to grab it.

Mr MARSLEW: Anti-social behaviour, in my opinion, is running rampant out there and we do not seem to be dealing with it in any form. Through the conferencing process, and we are as heavily involved in it as Howard is, we offer victims representatives and in some cases we actually go in and support the offender. We send counsellors along to support the offender. We are in a unique position where we can understand both sides of the equation, which I think is very important.

Often I think you are going to get submissions from people who are working totally with offenders or totally working with victims, and I have often used the term that if you live with lame people you learn to limp. I am not picking on people with disabilities. I believe that we bring a balanced view here and that we are looking for rehabilitation. If we can cut a lot of people off from going down the path that they are going and if we can see a lowering of the prison population we will maybe see a bigger impact in JJs and some of the other schools that are also involved with behaviour modification.

We are not dealing with some of the things like anti-social behaviour early enough. It has to wait until it has hit the fan before we start to bring in resources. This conferencing has been a powerful way of getting to this early and bringing a rehabilitative element to it. Do not forget for one moment that non-stigmatised shaming does have a rehabilitative element to it. When the word shame

is used a lot of people head for cover. They think it is, as I said before, putting on an "I'm a little bastard" T shirt and standing out the front. That is not where we are coming from. It is using it as a tool to get people to accept accountability and to start doing something with their lives.

The Hon. JOHN AJAKA: Going back to what Ms Sylvia Hale was mentioning earlier, you feel that for youth conferencing to be more effective young offenders should be named, because if you spend the hours of having the conferencing and they take responsibility within closed doors, the fact that they know they can go out of those closed doors and not take responsibility--

Mr MARSLEW: It is all over.

The Hon. JOHN AJAKA: So the reality is even for minor offences, or the less serious offences, if I can put it that way, you believe if they were involved in youth conferencing it would be to the advantage of the young offender's rehabilitation if they were in fact named?

Mr MARSLEW: You are aware that there is an outcome plan drawn up within a conference?

The Hon. JOHN AJAKA: Yes.

Mr MARSLEW: With the outcome plan, a lot of the outcome plans fall short because once the young people get outside it is all over, the pressure is off, I am not named any more, I can do whatever I like and nobody will know. I can do this up until I am 16 and you can all go to hell, and that is the attitude of a lot of the young people. They hide behind their age. They know what the limitations are. To say their minds are not developed, I have to tell you that in that area of criminal action or anti-social behaviour they are experts.

Ms SYLVIA HALE: Just going back to the question of shaming, there has been evidence presented to the Committee that in fact shaming can be powerful when it involves people who the offender respects and that can be, say in an indigenous community, the elders, or it can be members of their peer group, but they often will not be shamed by people whom they do not respect, for example, the legal fraternity, or the police, or more abstractly, society. Because we are talking here basically about naming by the media, which makes it very widespread, if that is not going to result in shaming because your name becomes known to the wider community, that the only form of shame you are going to be responsive to is your immediate peers or people you respect, how can that broadcasting of the name to the wider community be said to be efficacious and in any way serve any usefulness?

Mr MARSLEW: With these young people there will be people in the community that they do respect who will probably see that in the print media. That, I am hoping, would be part of the element of the fear. Just on the other side of the naming, and we have not really touched on this part of it, if we are going to help victims of crime rehabilitate that is part of the whole process and that is where I see that conferencing has its strongest role.

I noticed that Howard, thankfully, did not mention the justice system. I have difficulty with the word "justice". By bringing people to a court process a low level of justice appears to be the outcome, whereas with conferencing there is a high level of justice for both victims and offenders. They appear to get more out of the process. I think naming a young offender is going to help victims feel better. You heard what Mr Taylor said. You do feel left out of it. You are a superfluous part of the process and yet it is your whole life in someone else's hands, and that is irrespective of the level of seriousness of the crime. Victims are victims. To have a young offender named has a rehabilitative effect on victims as well.

CHAIR: Do you have anything to say that we have not asked you?

Mr BROWN: There is just one small anomaly that I would like to draw your attention to

and one of the main things that has inspired me to do that is listening to David Berrett as he spoke with you earlier as a Committee. David was probably a little too polite. I mentioned to you that I have a parole matter coming up shortly. I actually have another parole matter coming up shortly involving a prisoner, a prisoner who was responsible for the death of another person totally unrelated to Mr Berrett's case. However, the person responsible for Mr Berrett's son's death is the brother of the person responsible for the matter that I will be appearing at the parole authority on. The parole authority has no idea that my offender is the brother of the offender who killed David Berrett's son, because he was never named and so when this person is released to parole, one of the standard conditions of release to parole is that you are not to associate with people with a criminal background. This guy's brother has a criminal conviction. Because we do not name him no-one knows that. I obviously know that and I have to find some way of getting around that problem to bring it to the attention of the parole authority. That is a huge dysfunction with the non-naming provisions under the provisions of these acts.

Mr MARSLEW: If I may finish off by saying one of the questions asked here, are you aware of any programs that involve shaming that produce positive outcomes?

Mr BROWN: This advertisement is brought to you by Enough is Enough.

Mr MARSLEW: Yes, this advertisement is brought to you by the Enough is Enough anti-violence movement. We run a program for juvenile offenders and we have trialled it over an 18 month period and Juvenile Justice have just extended us additional fund to double the area of the program and it very much is about naming and about getting people to accept responsibility. Barbara Perry in Hansard several months ago now gave a glowing report. She came out and watched the program and saw the effect and is now supporting us to expand the program and is very much focussed on young offenders.

Ms SYLVIA HALE: Will that program be subject to any sort of independent analysis at some stage?

Mr MARSLEW: I hope so. Built into it is a lot of therapeutic models, solution focus, grief therapy, cognitive behaviour therapy, psycho drama. There is a lot of proven models that have been adapted into the program but it is delivered in a language that young people understand.

The Hon. JOHN AJAKA: Are you receiving any Government assistance or funding or facilities? I take that as a no.

Mr MARSLEW: There is a little bit.

The Hon. JOHN AJAKA: The tape recorder cannot pick up sign language.

Mr MARSLEW: A small amount. We would love to do train the trainer and develop it even further.

The Hon. JOHN AJAKA: Have you been seeking further Government assistance?

Mr MARSLEW: Yes we have.

(The witnesses withdrew)

(Short adjournment)

DUNCAN CHAPPELL, Professor, Centre for Transnational Crime Prevention, Faculty of Law, University of Wollongong, 20 Clifton Lane, Balmain East, and

DOROTHY MAREE BOTTRELL, Senior Research Associate in Child Youth Studies, Faculty of Education and Social Work, University of Sydney, affirmed and examined:

CHAIR: Would either of you like to start by making a short statement?

Prof CHAPPELL: I thought it might be a little helpful if I said something very briefly about the context in which I have personally become involved in this issue of naming. It is really on two fronts, firstly, I was asked to become an expert witness in the matter of John Fairfax Publishing v MMK and MRK and others which was dealt with in the New South Wales Court of Criminal Appeal and I imagine that the Committee is familiar with that case.

It was as a result of that involvement that I wrote with a colleague from Bond University, Professor Robyn Lincoln, a piece which appeared in Current Issues in Criminal Justice, which is the publication of the Institute of Criminology at the University of Sydney.

I don't know whether you have a copy of that article or not but I would be happy to table it if it would be of assistance.

CHAIR: We would be very grateful, thank you.

Prof CHAPPELL: The second linkage I suppose is looking at item 4 of your terms of reference, I realise that I have had some personal experience as well in my former role as the president of the Mental Health Review Tribunal of New South Wales in grappling with issues on the prohibition of the publication of names in the context of hearings by the Mental Health Tribunal involving both civil patients and forensic patients who, on occasions of course, are young people and fall under the age of eighteen.

I am not sure therefore whether that is something that is of interest to you but I thought I should mention that I have had that experience and certainly found considerable difficulty and problems involved with the provisions of the Mental Health Act and the Mental Health Criminal Procedure Act which also has prohibitions on the naming of not just juveniles but information about any mental health patient.

Dr BOTTRELL: I have not prepared an additional statement, just to reiterate that I am drawing on my experience of working with young people as a secondary teacher and having worked in juvenile justice and community based youth work, and more recently from research that I have done and within my work at the University of Sydney as a senior research associate.

CHAIR: This question is on notice, but juveniles are treated differently from adults in our criminal justice system, in part in recognition of the fact they have not yet developed many of the abilities they will in adulthood. I would just like you to outline what some of those abilities are and how relevant they are in your minds to offending and re-offending. With these questions, either of you can answer or both of you can answer.

Prof CHAPPELL: Well, I think the first response is that for a number of centuries the common law and more recently statutory law has sought to differentiate the way in which the criminal justice system functions in regard to children and adults, at the age of criminal responsibility, the age at which a person is deemed capable of consenting to such things as sexual intercourse and so on. So this is not a new matter for the legal system to grapple with.

Now that we know much more about the way young people develop and mature in a physiological sense, especially through a much better understanding of the development of the brain, it is clear that the medical and the related knowledge is able to inform us much more than it was in the

past.

Some of the limitations that were put on various aspects of young people being able to be dealt with as adults or not, now has the backing of some good scientific research.

I am not a developmental child psychologist or psychiatrist and I do not, therefore, profess to know great detail of the current research. I suspect the Committee has probably already heard some of that about the development of the brain.

There is obviously a big difference between the cognitive capacities of adolescents and adults and brain development which continues until an average of twenty five with the frontal lobes and their connections to other areas of the brain being the last to come to maturity. The frontal lobes and their connections are responsible for higher or thinking, for extraction, hypothesising, juggling different ideas and possible solutions, forward planning and associated voluntary delay of gratification for a future desired goal.

It is true that some adults never fully develop these functions, but it is also undoubtedly true that most twenty year olds are much better at thinking through the potential consequences of an action and weighing the possible outcomes, making a considered choice and controlling their impulses in the process than are adolescents.

Basically it is problem solving and humans start learning it from birth, but they generally do not become proficient at it as they can be until their twenties, so that the limitations which exist in relation to young people and the naming and other aspects, when they become adults at eighteen as far as the criminal justice system is concerned, it is now realised that they are probably not completely adults in all cases because it may be as old as twenty five before that is established.

I heard, as I sat here, you have already had mentioned to you the now, I might say infamous case, that occurred in Melbourne in January of the young person, sixteen year old who was named, and not just named but has become internationally known, including when I searched the BBC, has named him, among others, but I thought it was interesting that in commenting on that matter the chief commissioner of police in Victoria said that she was thinking of sending the family this young person the bill for the use of police resources and the use of a helicopter and police property and so on that had taken place. She said – and I thought this was very significant – "I understand he's sixteen years old and many young people at sixteen don't quite deal with the implications of their actions well enough." I think that was very fine insight on the part of the commissioner recognising that a young person of sixteen is not as fully developed and able to reason in a way that we would hope for.

The knowledge we now have now about the brain functioning, the knowledge that we have about the way in which people mature or do not mature, I think all affects the issue of their ability to understand whether or not they are doing something that is of a criminal nature and it affects obviously their rehabilitation, as I know there were some other questions about that.

Dr BOTTRELL: I think the main point is the distinction is made in terms of assuming young people's immaturity in terms of their cognitive development in particular and referring to what is common amongst young people, their impulsivity, that social skills are still developing and likewise, moral reasoning, so that as young people are not adults, they are not in a position to make the sort of decisions and judgments that adults might make.

There is a sense of social responsibility for the care and protection of children and young people which recognises that they are growing up, that they are developing and learning and that making mistakes can be part of that growing up and developing and learning.

Certain rights, enshrined for example in the UN declaration of the rights of a child, acknowledge our social responsibility to make that distinction, to maintain that distinction and translate it into the care and protection of children until they are adults.

The Hon. GREG DONNELLY: Dr Bottrell this is not one of the questions on notice but

referring to the comment you just made about moral reasoning. Can you give us some insights into either the work that you have done or that you are familiar with academically about the process of moral reasoning of young people these days.

Dr BOTTRELL: I am not a psychologist either so I am no expert on developmental theories, but amongst the many developmental theories, Kolhberg's theory of moral reasoning, as distinct from other cognitive processes, is based on a model that suggests that young people develop this ability incrementally as they grow up and that the experiences that they have, their greater knowledge and understanding of the world, their understanding of social norms and expectations and so on help to inform the development of ethical position, but it is intertwined with cognitive development, in that moral reasoning also requires a certain level of cognitive skills, so the two go together.

The Hon. GREG DONNELLY: Returning then to the questions on notice, do you believe that there should be a distinction between the way juveniles under sixteen years and juveniles sixteen to eighteen years are treated in terms of being named? This is related to this whole debate of the presumptuous question about whether or not naming should take place. Is there any view about the differential treatment of ages of juveniles?

Dr BOTTRELL: I actually do not think that there should be any distinction made for that particular age group. I think that it is more important to maintain that young person/adult distinction.

The Hon. GREG DONNELLY: Adult being eighteen?

Dr BOTTRELL: Well, yes, and I think to have a cut off there at age sixteen could be detrimental to, particularly young offenders who come into the system at sixteen or over sixteen for the first time. So that if we are assuming that young people are more likely to disappear out of the justice system after a first appearance, say in Children's Court, which is the trend I believe, that the majority do not reappear, then to add a further process which may interfere with their moving out of the system and in fact may in some ways be precipitous to their continuing in the system, I think would be something that we would not want to create at all.

Prof CHAPPELL: I would agree with that. I do not think that we should have a two tier system for people within those age categories. I think when we talk about developing capacities in human beings as they grow up, we always talk about an age range, by which time most people have fulfilled particular cognitive capacities. Some fifteen year olds will be as cognitively well developed as some eighteen year olds, and of course, some eighteen year olds will still be functioning as a fifteen year old.

I think if we are going to have a distinction between adults and young people and we set it at 18, there should not then be tiers of individual accountability within that system below 18.

CHAIR: So this issue of young persons from the age of 16 to 18 being entitled to give permission themselves for their name to become public, can you give us some feedback on what you think about that?

Prof CHAPPELL: I sat and heard the evidence given earlier by three of your witnesses on this issue and I think I would concur that it is a very rare occurrence that a young person exercises that right and that if you were appearing for them you would almost certainly advise them strongly against it, and that likelihood that they would be able to make a rational decision as to whether they should or should not be named is, I think, quite remote.

Again, getting back to the young lad with yellow glasses, he clearly exercised that right that he had at that stage, since he was not even charged at that point and with the results that we are aware of now, but it is interesting that as soon as he was charged, as I understand it at least, I do not think he has been making statements since that time and I am sure he has been well advised not to, and probably will regret in the future what did happen to him.

The Hon. JOHN AJAKA: Would you consider that if the requirement for 16 to 18 year olds was to remain in regard to them providing their consent, that there should be some protection mechanism where they must also obtain first prior independent legal advice before they are asked? My concern of course is the 16 year olds who are not represented in any way who are suddenly approached and give the consent without knowledge of what they are doing, without independent legal advice.

Prof CHAPPELL: I think that would make sense and also if the youngster has a functioning family and good parental advice, I think it would be the parents as well who ought to have a say of some sort in this matter. In the case of this young man, I guess his parents were away and that is how he got into the trouble in the first place. A rapacious media is most likely to want to get to one of these young people as quickly as they can before any constraints come into place so perhaps we should put a protective mechanism in place for them.

The Hon. JOHN AJAKA: At least by having a protective mechanism in place, whether it be independent legal advice or parental consent, at least there is prevention of the media being, if I can use the word, clever enough to be the first one in to coerce or convince a young person to provide their consent.

Prof CHAPPELL: I think that would be a salutary protection to have in place. I would perhaps add that one of the unfortunate things is we have so little research in this area and one of the things that I would hope to do in fact is to look in more detail into how each of the jurisdictions in Australia handle these sorts of matters since this is obviously a matter which is of very great concern not just in New South Wales but in other jurisdictions as well and there is really at the moment no independent assessment of the extent to which naming occurs in other jurisdictions, and indeed I am not aware of any study here in New South Wales which has looked at how often section 11 exception has been utilised by the courts to allow publication.

The MMK matter is, as far as I am aware, the first occasion which has actually surfaced in the legal system which suggests that the courts do not allow naming even when they have the opportunity to do so.

The Hon. GREG DONNELLY: What are the main factors affecting a juvenile offender's rehabilitation? That is a general question by its nature, but I would like either or both of you to make some comment on that.

Dr BOTTRELL: You might be able talk more as a criminologist. I guess from my experience in working with young people I would initially want to question that whole concept of rehabilitation, what does it actually mean, what is it about, because it depends on how we think about the young person and crime, and their relationship with crime and offending, and the offence and the consequences. If we assume that offending is caused by individual personal deficits and that rehabilitation would mean changing the individual, then that is one way to think about it, one way to look at it.

Another way to look at it is in consideration of the circumstances in which the offending occurred, in which the young person has grown up, and all of that context surrounding offending, and so what does rehabilitation mean from that perspective. You could argue it is more relevant to look at changing the circumstances and the conditions in which young people are growing up in which offending is taking place and to actually address those as underlying causes or conditions.

I think there is probably a need to think about it both in terms of work with individual young people and within that bigger context of looking at changing circumstances that accompany disadvantage and marginalisation, because that is where most young offenders are coming from, that kind of background. I think for long-term positive change community based services that are well

resourced and that operate in the communities where young people live and grow up and that have the resources to support them, to provide the sorts of connections and reconnections that are needed, are important for want of a better word, rehabilitative functions.

I think a lot of young people whom I have met, who have been young offenders, have not always had the best access to conventional pathways, so we can say that it is all their fault but we might also need to look at what else is going on and to try to ensure that they are connected into and given access to, for example, work and employment and all of the things that we expect in a conventional pathway because those things cannot be assumed in all communities for all young people.

Prof CHAPPELL: I would not disagree with any of that and, indeed, I think family support, attachment to school, involvement in education, involvement in community activities, they have all been shown consistently to have a positive effect on rehabilitation and lowering rates of recidivism, but if you add to that the naming of those young people, those types of support and other activities are likely to be negatively impacted by that publicity.

We also know that regrettably a very significant proportion of the young people who do come into the criminal justice process and system, and are in trouble with the law, have highly dysfunctional families and really the rehabilitation prospects are so much involved and linked with how those dysfunctions can be dealt with as well, that is drug abuse, violence, lack of consistent parenting, and then of course the individual factors including intellectual disability and mental illness that can also impact on the prospects of a young person being able to be rehabilitated.

It is a huge challenge and I am afraid that it is not one that is going to be resolved, at least from a personal view and from the research available, by naming young people and expecting through the shaming process that somehow all of this will miraculously go away and we will be left with a law abiding young person.

Ms SYLVIA HALE: Professor Chappell, you have just touched upon one aspect on which I was about to ask you a question. I assume you heard the evidence that was given earlier this afternoon and it seemed to be a very strongly held conviction that a precondition to an admission of guilt by a young offender and the ultimate ability to accept responsibility for their actions, a precondition of that was the publicly naming of that offender. Would you like to comment on that view?

Prof CHAPPELL: I am afraid that I thought it was ill-informed and the whole concept of circle sentencing which was mentioned, the whole concept of family group conferences, youth conferences and so on, all depended on a very carefully nurtured and controlled meeting between the young person, the young person's family, the victims, the justice system representatives and so on. The last thing that is required is for that to be given the full blast of publicity, which would be associated with the naming of the young person there.

The conferencing process as well does require that the young person also does acknowledge responsibility for their actions and it was suggested, from what I heard at least of the evidence given, that this was not a sincere expression, presumably of responsibility, but the evaluations that have been conducted of these programs do show better outcomes consistently for this type of, one might say, circumscribed and carefully managed and nurtured way of dealing with young people, as distinct from the system of putting them through the degradation process of the Children's Court which, with all of its many benefits, is just that and does require a very different and much more formal process which was described in some of the evidence which you heard this afternoon.

Ms SYLVIA HALE: There have been two conflicting contentions today. One was a view expressed this afternoon that many young offenders, particularly in the western suburbs I think the experience was drawn from, utilised anonymity in order to avoid responsibility and then another view

that we heard from Marrickville Legal Centre was that in their experience no, adolescents did not show sufficient forethought to think of the benefits of remaining anonymous. What is your view on the role of anonymity in terms of encouraging crime or discouraging it?

Prof CHAPPELL: I can only go on the programs that have been put in place to try to have these outcomes taking place through conferencing where there is no publicity so they seem to work better than the other system. I am not involved in working with young people, so I cannot give anecdotes of that nature, but my sense is that the impulsivity and the lack of foresight and the lack of planning that goes into most young people's offending would suggest that they are not hiding behind any form of anonymity at all, they just do not think enough about what they are doing when they get involved with often their peer group in offending and that may of course be linked into drug and alcohol use as well, so the combination is a fairly destructive one when it comes to any sort of rational decisions, including those where they think they might remain anonymous if they get caught, simply because they are young people.

Dr BOTTRELL: I think it is a complicated issue, I do not think it is very clear cut. It depends on the individual young person, their relationships and their circumstances. I think that, for example, some of the young men that I have worked with who may be involved in certain kinds of offending, such as stealing cars and joyriding and who would explain that their involvement in offending was, in part, a matter of having fun, that in a sense they enjoy notoriety to a certain degree. It is a way of getting status and power when those things are not necessarily available in other ways for them.

It could actually have a very unanticipated detrimental effect in reinforcing that, rather than challenging it. Whereas for other young people I would agree, that I think young people sometimes run off at the mouth – to coin a phrase from one of the girls who explained this to me – and live to regret it. Even amongst their friends and their immediate community, in a sense there is no anonymity because young people are the way they are and they talk, and the word gets around.

I was going to talk about that later, but I think in a sense that that kind of shaming already happens in communities because people are known, not to everyone though, so I guess there is a distinction there to what degree it is in the public realm and what are the consequences of having some privacy around it still.

Ms SYLVIA HALE: Dr Bottrell, I found your submission really interesting because of the way in which it approached the notion of shame and you saying that these young people, presumably from disadvantaged backgrounds, whether or not they offended were already shamed by virtue of growing up in an area where crime and social problems had a long history, support resources were inadequate to needs and a bad reputation meant that even if you were not in trouble, you still got targeted anyway.

Dr BOTTRELL: When I talked about the social construction of shame, I was thinking about what happened in that community and how it was more than what happened in interpersonal relationships between young people, say at school, in the school yard but that it was constructed or linked into much broader social discourses around youth and problem youth.

In the youth studies literature and people were referring to this in other submissions, that the representations of young people in the media and in some approaches to policy and research themselves, often create and perpetuate dichotomies of good and bad kids, and normal and problem youth. At the level of the school yard and what goes on, what people say to each on the streets, or what young people said to me in the research, the looks you get, the way that you are looked down in the community. They said, people look at us kids like we're scum and they said they were more critical of things that were said to them at school.

This is not just about personal opinions but that the meanings of behaviour are formulated with the knowledge of what those broader social discourses are. For example, when I started teaching here in the early eighties out at Auburn, there were students who came from the western suburbs and

young people from Mt Druitt who used to say, we never put our address on a job application because we don't want to disadvantage ourselves further because Mt Druitt's a bad place.

If you went back and did a media search at the time you would see that there was a lot of beat up around alleged riots in that area in the schools at that time. What I observed was over time in the five years I was at that particular school, because we had young people that went there from all over Sydney, there were others who came from Campbelltown and the postcode stigma had shifted from the west to the newer public housing estates in that area.

In more recent years we have seen the some kind of negative pejorative re representations of communities like Macquarie Fields, Redfern and Waterloo and from time to time Glebe, so that young people who are growing up in these areas and know what goes on in the area, if they are areas where there is a fair bit of crime and a lot of social problems, young people themselves are personally aware of it because they are growing up in the middle up of it.

They are also aware of it in another way through other people's attitudes and reactions to them in that interpersonal way, but then there is this layer of social recognition or rather social discrediting of certain suburbs and particular kinds of people that also becomes part of how young people begin to think about themselves because they are that kind of people, they come from a particular social group and they grow up in that particular place.

I think what struck me in that research that I did was how significant that formulation of identity is and that it is not just a personal construction, but it is social identity as well. When it goes to the heart of who young people think they are, then it becomes a very difficult thing to address, because it involves actually shifting other people's attitudes, not just the young people.

I guess in a way that is the basis of what I was saying before too about needing to work with both the individual young people and to look at what else forms the context of their involvement in offending, and more than that, their relation to crime, because the young people in these communities, as one of the girls said in my research, whether or not they are involved, they will get targeted. In a sense, within their logic, it provides a rationale for getting involved. You might as well go down on Friday night and drink and smoke bongs with everyone else in the park because if you are going to be labelled as one as those kids from that housing estate or from that mob or whatever, if you can't beat 'em, join 'em.

The Hon. JOHN AJAKA: It almost sounds like the old concept that if you are going to be convicted of a crime you haven't committed, you might as well go and commit the crime and obtain the benefits of it, if you are going to be punished for it.

Doctor, following on from Ms Sylvia Hale, again going back to your report, reading it can I take it as correct that your view, and that of yours Professor is that not only is it detrimental to a young person to have the young person named, but you even see an on-flowing detriment to that young person's immediate community, where they are suddenly branded and shamed to every young person within that community. Would that be a fair summary of it?

Dr BOTTRELL: That is definitely one of the issues raised by the young people that I interviewed. They all that that who you hung around with determined how other people saw you and named you.

The Hon. JOHN AJAKA: So negative shaming, if I can use that terminology, not only would adversely affect the young offender but would also have adverse effects upon other young persons within that immediate group?

Dr BOTTRELL: I think it makes it harder for young people to avoid it, yes.

The Hon. JOHN AJAKA: You go on in your report to say, "I would like to see the present protections for the children involved in criminal proceedings maintained and consideration given to how further protections may support and strengthen young people's resilience in positive directions."

Can I take it from that, are you aware of how in this State certain Government departments or agencies, such as the police agency, use ethnic descriptors when describing certain offenders such as middle eastern appearance or the crime squad is set up, for example, Middle Eastern Crime Squad. Do you see that as a negative impact on young people within the middle eastern community, the Lebanese community? Would that follow on from what you are saying?

Dr BOTTRELL: Well, I do not know a lot about the particular experiences of middle eastern young people, but I have read a little bit around it and I am sure that that is experienced as stigma for many young people, whether or not they are involved in offending. Of course, that is linked into a much bigger set of issues around the stereotyping of particular cultural groups.

The Hon. JOHN AJAKA: Do you see a distinction between serious indictable matters and in particular cases of murder or manslaughter, where there is an argument for young offenders between the ages of sixteen to eighteen if convicted should be named in those circumstances or the presumption should be that they should be named, as opposed to the summary minor matters?

Prof CHAPPELL: My own view is that there should not be any such distinction and the existing provisions if they are to be retained are sufficient to give a court discretion if it does feel that naming should occur, to do so. I would have thought it would be clear from some of the statements made in the Court of Criminal Appeal in the matter that I referred to, that the Court would only do so in exceptional circumstances and if it felt that there was some deterrent or other value that was attached to the publicity.

I have to say, I think it is unfortunate that there is even any exception to section 11. I prefer that there be no exception. It is intriguing to look around the country and see what different provisions there are in place. As I think you have already been told, the Northern Territory has the presumption the other way, in that anything is available to the media and to the public about a young person's offending unless an application is made to have that limited in some way.

Again, we know very little about any of the interventions made in the Northern Territory to prohibit publication, but from a very brief visit I made there a few months ago and talking to, particularly the Aboriginal legal aid groups, they say that it is very rare indeed that any provision is made via the court to stop publicity and that it is quite common for young people's photographs, names and other details to appear on the front page of what is the only newspaper in the Territory and it has an devastating impact. That is anecdotal, it is not something I have been able to establish by any research.

As far as I can determine, it is only in the ACT at the present time that there is a total prohibition. I think in all other jurisdictions of the country there is some exception given to the courts to allow publicity, but again how often that happens, I cannot tell you.

The Hon. JOHN AJAKA: Professor, could you express your views in relation to the ethnic descriptors concept from your personal experience, Middle Eastern Crime Squad, Middle Eastern appearance?

Prof CHAPPELL: I think I will have to pass on that one. I do not really think I have the adequate knowledge or information to give an informed view.

Ms SYLVIA HALE: We have had evidence, particularly this morning, from the media groups and the Press Council of the importance of an open court system and the media, about the right to know what is happening as a means of preventing miscarriages of justice and also that in many instances, and it is not just prurience or voyeurism but there is a genuine public interest in a case that involves a juvenile against that and, of course, the anomaly has also been pointed out that the media are free to name children up to the point that charges are laid, in which case they cannot name children who may be involved, do you believe that the provisions of section 11 should be widened to prevent publication of children's names where there is a reasonable likelihood of charges being laid?

Prof CHAPPELL: Yes, very much so. I think it is a weakness in the present legislation and by the time that charges are laid the damage is overwhelmingly done. I think it would be preferable to have a wider prohibition than exists at the present time.

CHAIR: You are a criminologist. If the Committee were to work through a recommendation in relation to this, do you perceive it would have an effect on policing?

Prof CHAPPELL: I do not believe it would, but certainly that would be, I think, something that should be asked before a reform, if that is what it is called, a reform, took place.

CHAIR: I like the word change.

Prof CHAPPELL: Change, and I would like to hear more about that aspect but at the moment I think it is a weakness and I do not have any evidence as to whether or not it would hinder police investigations or not, not to be able to publish details of that nature. Certainly I heard the evidence from certain of the victim representatives who were here today, and they felt it would hinder the police, but I think I would want to see what the evidence was for that.

I should just mention too in relation to other jurisdictions, the Bulger case was mentioned. That is a notorious matter in the United Kingdom where two 10 year olds were named under the British law and in fact that naming occurred right after their conviction. It was not at a later point, as was suggested to you in the evidence, and equally the measures that have now had to be taken to protect those two young people once they have been released have been extreme. They have had to give them new identities and put them under what will probably need to be lifetime protection because of the threats made against them.

The Hon. JOHN AJAKA: The reality is even if you were to name a person who then serves 10 or 15 years in gaol, there nothing to prevent that person from coming out of gaol and simply changing his identity by way of deed poll or other legal measure.

Prof CHAPPELL: I think there have been some attempts to do that on the part of some notorious offenders with limited luck because the media are usually waiting at the gate when they come out and they reveal all the details of where they are living and so on. I think that would probably happen in most instances, regardless of what they tried to do about changing their name.

CHAIR: One of the questions we sent you on notice which we would really appreciate you spending some time on, because it has been one of the issues that has come forward in different ways from different pieces of evidence we have received during this inquiry, that is the distinction between re-integrative shaming and stigmatic shaming. We have certainly had from you quite a bit of information but some very precise opinions from both of you on those two would be useful.

The Hon. JOHN AJAKA: On notice?

CHAIR: It is one of the on notice questions but if you would prefer we can ask you to take that specific question on notice and feed back to us or answer it now.

Prof CHAPPELL: I can perhaps provide some brief information and I would be happy to elaborate more if that would assist the Committee.

CHAIR: It has during the inquiry become more important as a question.

Prof CHAPPELL: Re-integrative shaming, as I understand it, is really the restorative justice ideas of John Braithwaite and I am sure his name and work has been mentioned to you quite a deal. It forms the backdrop to the family conferences, to circle sentencing. Just about all of those developments link back to Braithwaite's theories that shaming can be used as a device not to

stigmatise people but to make them aware of what they have done and through then a carefully nurtured process, as I described earlier, to bring the person back into the fold of the family and of the community, rather than holding them out to degradation and ejection from the community, which is what stigmatised shaming really is about.

Braithwaite says that the traditional criminal court or criminal trial process is one which is really a stigmatising shaming. It is a very elaborate formal process and the alleged offender is brought into the courtroom, goes through a lengthy process and if found guilty is punished accordingly and is really then from thereon labelled as a person who is a delinquent and someone who is for that reason alone to be rejected, in contrast to the idea that through dealing with that person in a family conference or other type of setting like that, the victim is present, the offender's family is present, all of those relevant people are present. They are made aware in that context of the nature of the offending. They have to explain it and they have to acknowledge it and through that it is possible to begin to build up new ideas and new ways of those people becoming rehabilitated and reintegrated into society.

There is an article which I found quite helpful and I have very poorly summarised what is in it. It is called Conditions of Successful Reintegration Ceremonies, dealing with juvenile offenders, written by John Braithwaite and Steven Mugford. It describes in some detail what the nature of that theory is and how the two systems differ from one another. I think you have been using the terms stigmatic shaming and on the other hand re-integrative shaming. There is much more than that but I think that it is one article which has all of that in it and I found it quite helpful to look at. I would be happy to table that.

CHAIR: Did you want to answer that Dr Bottrell.

Dr BOTTRELL: I have one or two little points that I would add based on Braithwaite's theory. I think something that is important in terms of people's concern about young people taking responsibility is that Braithwaite's theory of re-integrative shaming says that the disapproval that young people experience in that kind of setting helps to shape conscience and helps the individual to learn to be self-regulating, that they are actually internalising the social disapproval and using it as a guide to future behaviour and choices because it is coming from people that matter, so he talks about this kind of shaming as in part of socialisation that children learn as they are growing up but in this particular context of conferencing the people that matter are the people that were involved, not just family but the victim and the victim's support and so on.

I think in terms of that issue of young people taking responsibility and learning from this experience, has probably got a lot to be said for it but I think the important part of it that needs to be emphasised in the conferencing process is that the theory assumes that going through the shaming and the reparation, or plans for reparation, at the end point there is forgiveness and restoration of the individual's good name and place in the community and I think that is a really important part of the process too.

So that the conferencing is based on respect for both the young offender and the victim and all those involved, and the emphasis is placed on disapproval of that offence or behaviour, not the whole person.

CHAIR: The evidence we have received has opposing requests about naming and whether or not a young person should be named through the criminal system. I am wondering if, from an observation perspective, you could both let us know whether this issue of naming is about reinforcing social norms or reinforcing social deviants?

Prof CHAPPELL: If I understand what they are asking for, they would see it as reinforcing social norms rather than reinforcing deviants, but there does seem to be some evidence if you do name people, it may push those very people into continuing deviant behaviour because of the way in

which they feel defiant and excluded from the broader community.

There is a research study that I did not mention, it is a Queensland study which looked at longitudinal approach of young people in touch with the criminal justice system in Queensland and they found that certain groups of young people, particularly indigenous young people and people at high risk, that stigmatisation, that is by bringing them into the court process, did not work in the way that might be expected.

In fact, there was a more defiant attitude where the young person was attracted to greater levels of offending because of the attention that they had received from the criminal justice agencies, so that there is real possibility that by the naming of young people it could, as I say, have the counter effect than perhaps those who would like to see naming occur, would like to have, which I think would be to exacerbate the social deviance rather than getting people to conform with particular types of behaviour.

CHAIR: Could we have a reference for that?

Prof CHAPPELL: It is an article by Lynch and others published in 2003 titled Urban Indigenous Young People: Criminality Accommodation or Resistance. It is in an edited volume Understanding Youth Crime: An Australian Study published by Ashgate Publishing in the United Kingdom. It is the only study that I am aware of that was set in Australia which shows that particular finding.

Dr BOTTRELL: I would just say that I think the reinforcement of social norms would be better served by ensuring that those young offenders are reconnected into school and training and work and so on, that it remains as private as possible, in a sense that is what norms and normalising is all about. The young people who are outside of that kind of mainstream system need support to be re-integrated there. I do not think that naming them is going to help in any way.

Prof CHAPPELL: Reinforcing those norms, I have to say, through the media is a somewhat bold idea. Our experience with the media suggests that they would not be responsible in that process, or at least certain elements of it, not be there to benefit the young person, but I am sure to benefit the feelings that they probably would attribute that society would wish to enhance.

(The witnesses withdrew)

(The Committee adjourned at 4.30 p.m.)