



13 December 2007

The Director
Standing Committee on Law and Justice
Legislative Council
Parliament House
Macquarie Street
Sydney NSW 2000

BY FAX: 9230 3371

Dear Ms Callinan

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

About the Public Interest Advocacy Centre (PIAC)

PIAC is an independent, non-profit law and policy organisation that identifies public interest issues and works co-operatively with other organisations to advocate for individuals and groups affected. PIAC seeks to promote a just and democratic society by making strategic interventions on public interest issues.

In 2005, PIAC, the Public Interest Law Clearing House (**PILCH**) and Legal Aid NSW (**Legal Aid**) launched a project with the aim of challenging the unlawful and unnecessary detention of minors and related issues concerning children and the criminal justice system.

The Children in Detention Advocacy Project (**the Project**) provides legal representation on a *pro bono* or legal aid grant basis to minors who may have a cause of action arising from false arrest, unlawful detention, malicious prosecution and/or the use of excessive force by the police, transit authorities and private security companies. It also conducts policy and advocacy work aimed at addressing the systemic practices identified as causing the unlawful and unnecessary detention of minors.

The project partners, as well as other organisations that meet regularly to guide the work of the Project, have discussed the issue of the publication of the names of children involved in criminal proceedings and it is the context of PIAC's experience in this Project and our work on privacy rights that we make this submission.

Public policy reasons for non-disclosure remain valid

The treatment of children in the justice system involves balancing a number of competing public interests: an interest in open justice, an interest in the protection of children, and an interest in the rehabilitation of offenders.

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A commitment to open justice is critical to the rule of law. However, open justice need not conflict with a commitment to protecting the rights of children.

Section 11 of the *Children (Criminal Proceedings) Act 1987* (the **Act**) was introduced to protect the rights of children and young people involved in the criminal justice system. Section 11 is an important and valid exception to the principle of open justice based on the clear public interest in the primacy of rehabilitation for children and young people. The primacy of the principle of rehabilitation is enshrined in all legislation comprising the statutory framework for dealing with children and young people in the criminal justice system.¹

The Act, in combination with a number of other laws in NSW, seeks to give effect to the principles of the United Nations *Convention on the Rights of the Child* (the **Convention**) by balancing the public interest in open justice with the protection of children and the rehabilitation of young offenders. The Convention recognises that children, 'by reason of [their] physical and mental immaturity, [need] special safeguards and care, including appropriate legal protection'.² It mandates the rights of children participating in the justice system, including a requirement that justice will be administered in a manner consistent with the child's human dignity. Australia ratified the Convention in December 1990. The Convention is incorporated in Federal law as part of the human rights responsibilities of the Human Rights and Equal Opportunity Commission (**HREOC**).

Article 16 of the Convention protects children from arbitrary or unlawful interference with their privacy, while Article 40 states that children accused of a criminal offence must be treated in a manner 'which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society'. It is clear that the prohibition contained in section 11 of the Act is consistent with Australia's international obligations pursuant to the Convention.

PIAC submits that the public policy objectives of the Act remain valid. There is no case for a eroding child offender's privacy rights. In fact to do so would jeopardise the interests of society as a whole. Allowing more "naming" and "shaming" of child offenders than is currently allowed may feed public curiosity but does not equate with the public interest. It has long been accepted that children who commit crimes must be given the best possible chance of rehabilitation. Children deserve a second chance, and section 11 of the Act goes some way towards recognising this.

The public policy objectives of the act vis-à-vis protecting victims and reducing the stigma for siblings of the offender and victim also remain valid and should be retained. There is even less justification for any amendment to these objectives, as they involve the protection of children who have not committed and are not accused of committing offences.

Extent to which section 11 of the Act is achieving objectives

While the prohibition in section 11 is unambiguous, in PIAC's view it is an ineffective deterrent to the illegal identification of children and young people as it is not vigorously enforced. Criminal proceedings are rarely initiated where an offence pursuant to section 11 of the Act has been committed.

¹ See for example, section 6 of the Act and section 7 of the *Young Offenders Act 1997* (NSW).

² Preamble, *Convention on the Rights of the Child*, General Assembly Resolution 44/25, of 20 November 1989; see also *Declaration on the Rights of the Child*.

Whether the prohibition should cover children who have been arrested, but who have not yet been charged and children, other than the accused, who are reasonably likely to be involved in proceedings

PIAC submits that the prohibition does in fact cover and should continue to cover these categories of children, because of the principles discussed above. In addition, in relation to children who have been arrested but not yet charged, the prospect of stigmatising children who have not been proven guilty of a crime is abhorrent and would seriously undermine the public policy objectives of the Act. The same applies to children other than the accused who are reasonably likely to be involved in the proceedings. Identification of these categories of children may also lead to identification of a child offender or offenders.

Please do not hesitate to contact PIAC's Principal Solicitor, Alexis Goodstone, on 8898 5416 or by e-mail to alexis@piac.asn.au if PIAC can be of any further assistance to the Inquiry.

Yours sincerely
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