

16 April 2019

Ms Julia Knight  
Secretary to the Social Policy Scrutiny Committee  
GPO Box 3721  
DARWIN NT 0801

*Via email: SPCS@nt.gov.au*

Dear Ms Knight

**RE: YOUTH JUSTICE AND RELATED LEGISLATION AMENDMENT BILL 2019**

I write to support the general thrust of the Bill but specifically in relation to issues concerning attendance at, and reporting on, court proceedings (proposed new sections 49 and 50 of the *Youth Justice Act*).

Finding the right approach to these issues must involve consideration of:

- the need to protect the privacy and future prospects of individual youths;
- the need to ensure the efficacy of proceedings; and
- the importance of maintaining public confidence in the youth justice system.

**Privacy and the future**

The imperative to protect individual children involved with the youth justice system is well recognised throughout Australia. We live in an age when any disclosure of identifiable information can instantly be disseminated across the Territory and the World and then live on permanently in the ether to be discoverable many years in the future by a neighbour, prospective employer or busybody.

The NT Parliament has recognised that there should be limitations on the lifespan of criminal records (*Criminal Records (Spent Convictions) Act 1992*) but the internet does not accommodate such a notion.

In September 2017, the NT Children's Commissioner stated *"The research is clear that naming and shaming can have the opposite effect with child offenders, and children acting like they need to live up to these kinds of reputations. [Most] young people who commit crimes don't go on to be adult offenders, it's an adolescent thing where as they mature, they grow out of it".*<sup>1</sup>

The Children's' Commissioner said it was dangerous to create a situation where a child could be put on trial by social media: *"You realise that this sort of response — and this is trial by social media — it doesn't work, it's never worked in any country in the world and that's why jurisdictions have put legislation in place to ensure you just can't name and shame because it actually has the opposite effect".*

The peer reviewed journal *Current Issues in Criminal Justice*<sup>2</sup> reported in 2009 a number of detrimental outcomes arising from disclosure of the identity of young offenders. These include: a misuse of the concept of shaming, the potential for vigilante action, a false sense of community protection, and the possibility of interfering with any rehabilitative efforts.

A multi-party Law and Justice Standing Committee of the NSW Legislative Council found in 2008 that a number of detrimental outcomes arise from any disclosure of the identity of young offenders. The Committee's principal recommendation was *'that the NSW Attorney General seek cooperation from the Attorneys General in other states and territories in implementing a consistent prohibition relating to the publication of names of children involved in criminal proceedings regardless of in which state those criminal proceedings occur'* (NSWLC 2008:61).

An essential goal of the youth justice system is to reduce the potential for crime in the future by the rehabilitation of individual youths. Disclosure of identifiable information about them not only creates an ongoing interference with their privacy, it is highly likely to be counterproductive to this aim.

## **Justice done**

As can be discerned from some of the comments above, there are also real issues as to whether allowing broader access and reporting may have a negative impact on the proceedings themselves. Courts have a very limited time in which to focus on a particular case and do justice to victims and alleged offenders.

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<sup>1</sup> ABC News.

<sup>2</sup> Ref: Chappell, Duncan and Lincoln, Robyn. 'Shhh ... We Can't Tell You': An Update on the Naming Prohibition of Young Offenders [online]. *Current Issues in Criminal Justice*, Vol. 20, No. 3, Mar 2009: [476]-484. Availability: <<https://search-informit-com-au.ezproxy.cdu.edu.au/documentSummary;dn=761467356966229;res=IELAPA>> ISSN: 1034-5329. [cited 08 Apr 19].



There is potential for youths and others involved in proceedings to be distracted from core purposes by the presence of 'outside' parties and the potential for reporting, in identifiable form or otherwise. This is not necessarily the result of anything done by an outsider. Their mere presence and the knowledge of potential reporting (identifiable or not) may be enough to effect the behaviour of a youth and prejudice the efficient conduct and intended outcomes of the court process.

An individual youth may either be mortified at the prospect of being 'named and shamed' or glory in the prospect of notoriety among friends and associates. In either case, their behaviour in court and the proceedings themselves may be negatively influenced by the outside presence.

### **Justice seen to be done**

It is also important for members of the community to have confidence in youth justice processes. Appropriate reporting on the work of the Court and the substance of individual cases is a significant aspect of accountability to the public.

### **Finding an appropriate balance**

It is important to find a balance that addresses each of these imperatives.

In doing so, it is vital that, from a reporting perspective, the identity of individual youths remains protected other than in exceptional circumstances, for example, to the extent that disclosure of information that might identify an absconding youth charged with a serious offence is necessary to locate the youth.

With regard to proceedings in court, it is submitted that such proceedings should not be generally open to the public. A number of Australian jurisdictions operate on the basis of closed youth courts.

To meet the *Justice seen to be done* imperative, there are various options that might be adopted, including:

- Maintaining a closed court but providing regular and reasonably detailed official reporting on court processes and outcomes (ensuring that no identifiable information is included);
- Allowing accredited journalist attendance, unless the Court determines otherwise;
- Allowing accredited journalist attendance (but with limited numbers, say a maximum of one or two, operating on a pool system if necessary), unless the Court determines otherwise. The Court could be given a discretion to implement such a system if it proved necessary.

The potential positive and negative impacts of allowing 'outside' attendance at court proceedings requires careful consideration.

Thank you for the opportunity to comment.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'P. Shoyer', with a long horizontal flourish extending to the right.

**Peter Shoyer**  
**Information Commissioner**