

NSW Law Reform Commission Consultation Paper

Open Justice: Court and tribunal information: access, disclosure and publication

Chapter 7 – Protections for children and young people – general comment

Chapter 7 considers exceptions to open justice in proceedings involving children and young people, including prohibitions on the publication or disclosure of information and closed court orders. These protections exist across a range of different types of proceedings, including criminal, domestic violence, care and protection, adoption and parentage proceedings. The Law Reform Commission (LRC) also considers whether further protections for children and young people are needed, for example, in civil proceedings.

The overarching purpose of Youth Justice NSW (YJNSW) is to empower young people to fulfil their potential without offending. To achieve this YJNSW has invested significantly in reducing the numbers of young people held in Youth Justice Centres; through early intervention, diversion and community supervision and support. This investment is demonstrating concrete results. YJNSW recognises not only that young people are more vulnerable than adults given their impulsivity, and cognitive and emotional immaturity, but also that the system must provide young people with every opportunity to fulfil their potential without offending. This can only be achieved in circumstances where young offenders are protected from being publicly named; from the stigma and prejudice that would arise as a consequence, in addition to the risk of negative self-identity by the young people themselves. YJNSW believes that the general prohibition on publishing or broadcasting the names of children and young people in criminal proceedings must be maintained and that if there were any diminution of those protections this would significantly undermine YJNSW' key initiatives focused on early intervention, diversion, supervision and support for young people to prevent offending and facilitate rehabilitation. It would also not be consistent with Australia's international obligations.

The table below sets out YJNSW feedback to the specific questions posed in Chapter 7 of the Consultation Paper:

Subsection	Specific reference	LRC Questions	YJNSW Feedback
Protections in criminal proceedings where the child is a defendant – Prohibition on the publication and disclosure of identifying information	pp162-171, paras 7.6-7.37 'In NSW, if the defendant in a criminal proceeding is a child, several special arrangements protect the identities of children involved in those proceedings. These are in the <i>Children (Criminal Proceedings) Act 1987 (NSW)</i> (" <i>Children (Criminal Proceedings) Act</i> "). The <i>Children (Criminal Proceedings) Act</i> applies to any court that exercises	Question 7.1 (1) Should there continue to be a general prohibition on publishing or broadcasting the identities of children involved in criminal proceedings in NSW? Why or why not?	(1) Yes, there should continue to be a general prohibition (see YJNSW general comment above) <ul style="list-style-type: none"> • to protect the privacy and safety of children and young people • The current position in NSW reflects Australia's endorsement of United Nations instruments including: <ul style="list-style-type: none"> ○ the United Nations Declaration on the Rights of the Child 1959;

Subsection	Specific reference	LRC Questions	YJNSW Feedback
	<p>criminal jurisdiction.¹ This includes the Children’s Court, where most criminal proceedings involving child defendants are heard,² as well as the Local, District and Supreme Courts, where some of the more serious proceedings involving child defendants are held.³</p>		<ul style="list-style-type: none"> ○ the United Nations Convention on the Rights of the Child 1989; ○ the United Nations International Covenant on Civil and Political Rights; ○ the United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985 (Beijing Rules), and ○ the United Guidelines for the Prevention of Juvenile Delinquency 1990 (Riyadh Guidelines). <ul style="list-style-type: none"> ● Young offenders are generally less culpable than adult offenders, and it is YJNSW’s intention to provide every opportunity for rehabilitation and to prevent offending, which is facilitated through the protection of young peoples’ identities.
	<p>Pp 164-165, paras 7.12-7.16</p> <p>Under the <i>Children (Criminal Proceedings) Act</i>, the names of certain people, or “any information, picture or other material that identifies the person or is likely to lead to the identification of the person”,⁴ must not be published or broadcast in a way that connects them with criminal proceedings involving a child defendant.</p> <p>That (the above) the prohibition extends to <i>any</i> identifying information, including</p>	<p>Question 7.1</p> <p>(2) What changes, if any, should be made to the existing prohibition and the exceptions to it?</p>	<p>YJNSW supports:</p> <ul style="list-style-type: none"> ● improving awareness about ‘<i>any identifying information</i>’ and what this might include under the circumstances ● amending the section to include a similar non-exhaustive list of matters likely to lead to identification similar to Victoria’s Family Violence Protection Act 2008 s 168 to provide additional guidance.

¹. *Children (Criminal Proceedings) Act 1987 (NSW)* s 4.

². *Children (Criminal Proceedings) Act 1987 (NSW)* s 28.

³. This includes “serious children’s indictable offences” and some traffic offences: *Children (Criminal Proceedings) Act 1987 (NSW)* s 28(1)(a), s 28(2).

⁴. *Children (Criminal Proceedings) Act 1987 (NSW)* s 15A(5).

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	<p>the child's school, location or the names of friends, is not always well understood.⁵ One suggestion to improve awareness about this is to give the provision greater prominence in the Act.⁶ Another idea is to amend the Act to include a non-exhaustive list of matters likely to lead to identification.⁷ This could be done in the way of the <i>Family Violence Protection Act 2008</i> (Vic), which contains a list of "identifying particulars".⁸</p>		
<p>Closed court orders</p>	<p>pp171-172, paras 7.38 - 7.43</p> <p>In all criminal proceedings under the <i>Children (Criminal Proceedings) Act</i> to which a child is a party, the court is closed to anyone not "directly interested" in the proceedings.⁹ However, this does not apply if the proceedings are for a traffic offence heard in a court other than the Children's Court.¹⁰</p>	<p>Question 7.2</p> <p>(1) Should criminal proceedings involving children continue to be held in closed court as a rule? Why or why not?</p> <p>(2) Are the current exceptions to the rule appropriate? If not, what changes should be made?</p>	<p>(1) Yes, for same reasons as provided in the general comment and question 7.1 above, criminal proceedings should continue to be held in closed court to protect children and young people.</p> <p>(2) Yes, YJNSW agrees that the categories of people that the Children's Court generally permits to attend proceedings is appropriate and that the magistrate should continue to be in a position to decide whether a person may attend on a case by case basis, at the time of proceedings and that child's views be considered.</p>

⁵. Children's Court of NSW, *Preliminary Consultation PCI08*.

⁶. Children's Court of NSW, *Preliminary Consultation PCI08*.

⁷. Children's Court of NSW, *Preliminary Consultation PCI08*.

⁸. *Family Violence Protection Act 2008* (Vic) s 168.

⁹. *Children (Criminal Proceedings) Act 1987* (NSW) s 10(1)(a).

¹⁰. *Children (Criminal Proceedings) Act 1987* (NSW) s 10(3).

Subsection	Specific reference	LRC Questions	YJNSW Feedback
Criminal diversion processes 7.46 and 7.47	P173, paras 7.46-7.47 The name or identifying information of any child dealt with under the Young Offenders Act must not be published or broadcast. Most other states and territories have similar provisions.	Question 7.3 (1) Is the prohibition on publishing or broadcasting the identities of young offenders who take part in criminal diversion processes appropriate? Why or why not? (2) What changes, if any, should be made to the existing prohibition?	(1) Yes, the prohibition on the publication of the identities of young offenders being dealt with under the Young Offenders Act is foundational to the efficacy of the Act. Publication of identifying information would undermine the potential success of the diversionary scheme by its potential to stigmatise, result in prejudice and increase the likelihood of negative self-identification. (2) Nil
Proceedings for apprehended domestic violence orders	P174, paras 7.48 - 7.50 The <i>Crimes (Domestic and Personal Violence) Act 2007</i> (NSW), sets out the scheme for apprehended domestic violence orders (“ADVOs”). Under this Act, the name or identifying details of a child involved in proceedings for an ADVO must not be published. This applies regardless of whether the child is seeking protection, is the person against whom protection is sought, or is a witness. ¹¹ Also, proceedings involving children and young people (including where the young person is the protected person, a witness, or the defendant) are to be heard in the absence of the public, unless the court directs otherwise. ¹²	Question 7.4 (1) Is the prohibition on publishing the identities of children involved in apprehended domestic violence order proceedings appropriate? Why or why not? (2) What changes, if any, should be made to the existing protections?	(1) Yes, this prohibition is appropriate, particularly in the light of the fact that young people who use violence in the home are often both offenders and victims and similarly need to be provided with every opportunity to rehabilitate and not to offend free from public scrutiny and stigma. (2) None

^{11.} *Crimes (Domestic and Personal Violence) Act 2007* (NSW) s 45(1).

^{12.} *Crimes (Domestic and Personal Violence) Act 2007* (NSW) s 41(2), s 41AA(1), s 58(1)(a).

Subsection	Specific reference	LRC Questions	YJNSW Feedback
Care and Protection Proceedings	<p>Pp174-176, paras 7.51-7.59</p> <p>The <i>Care and Protection Act</i> provides that a person must not publish or broadcast the name of certain children or young people who are involved in court and non-court proceedings under the Act.¹³ Non-court proceedings include counselling, dispute resolution conferences and alternative dispute resolution processes.¹⁴</p>	<p>Question 7.5</p> <p>(1) Is the prohibition on publishing and broadcasting the identities of children involved in care and protection proceedings appropriate? Why or why not?</p> <p>(2) What changes if any should be made to the existing prohibition and exceptions?</p>	<p>(1) YJNSW notes that advice in relation to this issue rests in the domain of the Department of Communities and Justice Child Protection area to respond to. However, given the significant crossover between young people involved with YJNSW with those in the child care and protection system, YJNSW would support the continued prohibition on publication and broadcasting of the young peoples' identities as a way of protecting the young people and avoiding them being stigmatised.</p> <p>(2) Official reports of proceedings could be required to be de-identified.</p>
Care and Protection Proceedings – closed court orders	<p>P177, paras 7.60 – 7.63</p> <p>Under the <i>Care and Protection Act</i>, at any time while the Children's Court is hearing proceedings about a child or young person, any person who is not directly interested in the proceedings must be excluded from the court (unless the Court directs otherwise).¹⁵</p>	<p>Question 7.6</p> <p>(1) Are there existing provisions relating to the exclusion of people (including the child or young person themselves) from court and non-court proceedings under the <i>Children and Young Persons (care and Protection) Act 1998 (NSW)</i> appropriate? Why or why not?</p> <p>(2) What changes, if any, should be made to these provisions?</p>	<p>No comment from YJNSW</p>

¹³. *Children and Young Persons (Care and Protection) Act 1998 (NSW)* s 105(6).

¹⁴. *Children and Young Persons (Care and Protection) Act 1998 (NSW)* s 3(1).

¹⁵. *Children and Young Persons (Care and Protection) Act 1998 (NSW)* s 104B.

Subsection	Specific reference	LRC Questions	YJNSW Feedback
Adoption Proceedings	Pp177179- paras 7.64 -73	Question 7.7	No comment from YJNSW
Parentage & Surrogacy Proceedings	Pp179 – 180, paras 7.74-7.80	Question 7.8	No comment from YJNSW
Other proceedings?	<p data-bbox="483 360 954 384">p181, Paras 7.81 - 7.84</p> <p data-bbox="483 424 954 1102">There are other types of legal proceedings that involve children, apart from those discussed above. Civil proceedings (where a child may be a plaintiff, defendant or witness) are one example where protections could be introduced, if appropriate. Some submissions indicate support for protections in this area, arguing that naming children in civil proceedings can have “irreversible, detrimental effects” and is a practice inconsistent with Australia’s international law obligations. The Standing Committee Report considered the question of extending protections to civil proceedings, ultimately recommending that the government consider the feasibility of this proposal. The government has not acted on this recommendation.</p>	Question 7.9	YJNSW would support consideration of extending protections to civil proceedings.