

Mr Alan Cameron AO
Chairperson
NSW Law Reform Commission
GPO Box 31
SYDNEY NSW 2001
By Email: nsw-lrc@justice.nsw.gov.au

16 February 2021

Dear Commissioners,

Re: *Open justice review*

Thank-you for inviting the NSW Advocate for Children and Young People (ACYP) to provide feedback to the NSW Law Reform Commission's (NSWLRC) Open Justice Review and comment on your December 2020 Consultation Paper, 'Court and tribunal information: access, disclosure and publication'.

ACYP is an independent statutory office overseen by the Parliamentary Joint Committee on Children and Young People. ACYP advocates for and promotes the safety, welfare, wellbeing and voice of all children and young people aged 0-24 years, with a focus on the needs of those who are vulnerable or disadvantaged. Since 2015, ACYP has consulted with over 32,000 children and young people across NSW on a wide range of issues including: education, mental health, wellbeing, homelessness, employment, rights, safety, violence, diversity, discrimination, life skills and digital usage. As a result, ACYP's comments are focused on term of reference (*d*), relating to the appropriateness of existing legislative provisions regarding the identification of children and young people in court proceedings.

At the outset, ACYP wishes to emphasise the importance of maintaining existing legislative protections for children and young people in NSW and ensuring that any future provisions or amendments are focused on promoting the safety, welfare and wellbeing of all children and young people.

Within NSW there are currently several statutory provisions that operate to protect the identities of children in legal proceedings.¹ ACYP is supportive of these provisions as they

¹ *Children (Criminal Proceedings) Act 1987 (NSW); Crimes (Domestic and Personal Violence) Act 2007 (NSW); Children and Young Persons (Care and Protection) Act 1998 (NSW); Young Offenders Act 1997 (NSW); Adoption Act 2000 (NSW).*

reflect principles enshrined in the United Nations Convention of the Rights of the Child (CRC) and the International Covenant on Civil and Political Rights (ICCPR). This includes that children and young people have a right to privacy and should be “treated in a manner consistent with the promotion of the child’s sense of dignity and worth, which reinforces the child’s respect for the human rights and fundamental freedoms of others and 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.”² ACYP is of the view that protections should apply for all children under 18 years of age regardless of whether they are child defendants, complainants or witnesses. These protections should apply in all types of proceedings and be extended to cover the period prior to legal proceedings, when police investigations are being carried out.

We note that there has been a recent push towards the ‘naming and shaming’ of children and young people who have been charged or convicted with an offence (including removal of publication restrictions once the young person reaches adulthood). In 2008 the NSW Standing Committee on Law and Justice held an inquiry to examine this issue, ultimately concluding that the “naming of juvenile offenders would stigmatise them and have a negative impact on their rehabilitation, potentially leading to increased recidivism...and undermining attempts to address the underlying causes of offending”.³ ACYP is of the view that the current prohibition is appropriate, and that any amendment would be contrary to child rights principles and counterproductive to rehabilitation efforts, including putting children and young people at risk of being targeted for vigilantism.⁴

In the case of a child complainant in a sexual abuse case, ACYP is of the view that there should be an option for a court suppression order to be lifted in the event the survivor provides informed consent after they reach 18 years of age. This would ensure that the focus is on the welfare and safety of the child victim, including their right to disclose sexual abuse and share their story at later point if they wish.⁵

At present the NSW prohibition on the identification of children in court proceedings extends to deceased child victims. ACYP notes that in the case of a deceased child there are less privacy issues at stake, and so consideration could be given to removing restrictions on the identity of deceased children where appropriate, however this must be balanced against the potential impact that identification may have on other children and young people (e.g. siblings of the deceased). We note that the current provision can negatively operate to

² UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <https://www.refworld.org/docid/3ae6b38f0.html> [accessed 13 February 2021]

³ NSW, Legislative Council Standing Committee on Law and Justice, The Prohibition on the Publication of Names of Children Involved in Criminal Proceedings, Report 35 (2008) ix

⁴ Fitzgibbon, K. & O’Brien, W. 2017. The Naming of Child Homicide Offenders in England and Wales: The need for a Change in Law and Practice. *The British Journal of Criminology*, Vol 57(5): September 2019, pp. 1061-1079.

⁵ Knowmore, Preliminary Submission no. PC135.

protect the privacy of the offender where the child's killer is a parent or a relative. This may be counter to promoting the safety and wellbeing of other children and young people.

Please do not hesitate to contact [REDACTED]
acyp@acyp.nsw.gov.au if we can be of any assistance as this project moves forward.

Yours Sincerely,

[REDACTED]

Zoe Robinson
Advocate
Office of the Advocate for Children and Young People