

19 February 2021



Erin Gough
Policy Manager
Law Reform and Sentencing Council Secretariat
Department of Communities and Justice

By email: nsw-lrc@justice.nsw.gov.au

Dear Ms Gough

Submission to review of *Open justice, Court and tribunal information: access, disclosure and publication*

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit legal centre based in Sydney. Established in 1982, PIAC tackles barriers to justice and fairness experienced by people who are vulnerable or facing disadvantage. We ensure basic rights are enjoyed across the community through legal assistance and strategic litigation, public policy development, communication and training.

Our work addresses issues such as:

- Reducing homelessness, through the Homeless Persons' Legal Service
- Access for people with disability to basic services like public transport, financial services, media and digital technologies
- Justice for Aboriginal and Torres Strait Islander people
- Access to affordable energy and water (the Energy and Water Consumers Advocacy Program)
- Fair use of police powers
- Rights of people in detention, including equal access to health care for asylum seekers (the Asylum Seeker Health Rights Project)
- Transitional justice
- Government accountability.

PIAC welcomes the opportunity to respond to the NSW Law Reform Commission's consultation paper *Open Justice, Court and tribunal information: access, disclosure and publication* (**the Open Justice Paper**). Our response is limited to the questions relevant to our experience assisting children and young people in civil proceedings, and in connection with criminal and care and protection proceedings.

Prohibition on the publication and disclosure of identifying information - children

It is appropriate that there are protections to prohibit the identification of children involved in certain types of proceedings. Association with court proceedings can be stigmatising for children and their families. Young people should be given

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particular protections from such harm because of their state of dependency and immaturity, and to assist with their integration into the community.¹

Criminal Proceedings

The *Children (Criminal Proceedings) Act 1987* (NSW) protects children involved in criminal proceedings by prohibiting the broadcast or publication of information that would connect them with criminal proceedings involving a child defendant,² and by requiring proceedings to be held in private.³ Children dealt with under the *Young Offenders Act 1997* (NSW) are afforded the same protection.⁴

We agree with the arguments in support of these protections, discussed at 7.17 of the Open Justice Paper. Prohibiting the identification of children involved in criminal proceedings appropriately assists with the child's prospects of rehabilitation and reintegration to community. In order for this to be effective, this protection must continue after the child turns 18, for proceedings that occurred before they turned 18.

PIAC supports the proposal that the publication prohibition extend to apply before criminal proceedings commence, for example, when a child is being investigated by police.

Care and Protection Proceedings

We support the continuation of the current protections provided for children under the *Children and Young Persons (Care and Protection) Act 1998* (NSW).

Civil Proceedings

Civil proceedings may arise in connection with criminal proceedings. For example, when a child is arrested by police in connection with criminal proceedings, the child may subsequently commence civil proceedings against the police for unlawful conduct by the police that occurred during the arrest.

In order to ensure that children's identities are being appropriately protected in such civil proceedings, we suggest that court registries require the filing party to confirm upon the commencement of proceedings whether the proceedings will involve publication of material likely to lead to the identification of a child involved in criminal proceedings. This proposal may assist to reduce inadvertent breaches of the existing prohibitions relating to criminal or care and protection proceedings by the courts.

If it would be of assistance to the Commission, PIAC would welcome the opportunity to discuss these issues further.

¹ See, for example, principles contained in *Children (Criminal Proceedings) Act 1987* (NSW) ss6(b),(f).

² *Children (Criminal Proceedings) Act 1987* (NSW) s 15A.

³ *Children (Criminal Proceedings) Act 1987* (NSW) s 10(1).

⁴ *Young Offenders Act 1997* (NSW) s 65(1).

Yours sincerely



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