



ALS

Aboriginal Legal Service (NSW/ACT) Limited

ABN: 93 118 431 066

OPEN JUSTICE REVIEW

The Aboriginal Legal Service NSW/ACT (ALS) seeks to comment specifically on:

PART 7 of The Consultation Paper Concerning Protections for Children and Young People.

Question 7.1: Criminal proceedings – prohibition on the publication and disclosure of identifying information

(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?

The ALS strongly supports the retention of the general prohibition on publishing or broadcasting the identities of children involved in criminal proceedings. The ALS agrees with the arguments outlined in 7.17 at page 163 of the Consultation Paper in support of the prohibition. In particular, we note that naming children is contrary to their rehabilitation, the primary focus of the children's Court jurisdiction. Rehabilitation is in the interests of both the child and the community. Further, we note that such protections rightly recognise that children do not have the psychological, intellectual, or social maturity of adults and should be treated differently.

(2) What changes, if any, should be made to the existing prohibition and the exceptions to it?

The ALS supports the recommendations of the Standing Committee on Law & Justice Report¹, *The prohibition on the publication of names of children involved in criminal proceedings*, to strengthen the provisions relating to the non-publication of the names of children and other such recommendations as outlined in the submission of Legal Aid NSW²:

- that section 11 of the CCPA be amended to extend the non-publication provisions to juveniles who are reasonably likely to be involved in criminal proceedings; and
- that the NSW Police Force establish an office in charge of investigating breaches of section 11 of the CCP Act.

Question 7.2: Criminal proceedings – closed court orders

(1) Should criminal proceedings involving children continue to be held in closed court as a rule? Why or why not?

¹ New South Wales Parliament. Legislative Council Standing Committee on Law and Justice. 'The prohibition on the publication of names of children involved in criminal proceedings.' Report 35 – April 2008; pp ix.

² Open Justice Review Legal Aid NSW submission to the NSW Law Reform Commission Terms of Reference June 2019, p11.

The ALS strongly supports the continuation of closed court proceedings for children.

Question 7.3: Criminal diversion processes

(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?

The ALS strongly supports the retention of the prohibition on broadcasting the identities of young offenders who have participated in diversionary processes for the reasons outlined in response to question 7.1. It is further noted that the identification of such young people would be contrary to the rationale for diverting young people from the criminal justice system and the objects of the *Young Offenders Act* (YOA). Children and young people who are diverted under the YOA have not plead guilty to the offence or had the evidence tested in court.

Question 7.4: Proceedings for apprehended domestic violence orders

(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?

The ALS is strongly of the view that the prohibition on publishing the identities of children involved in Apprehended Domestic Violence (ADVO) proceedings is appropriate. This is for the reasons outlined in the response to 7.1. Further, we note that the power dynamic between children and PINOPs in apprehended domestic violence order proceedings is often very different to that which exists between adults in such proceedings.

Thank you for the opportunity to contribute to this review.

The Aboriginal Legal Service (NSW/ACT)
5 March 2021