

# Balanced Justice

## ‘Naming and shaming’ young offenders

### Laws preventing the identification of young people

In most parts of Australia there are laws that prevent people publishing information which might identify a child involved in court proceedings.<sup>1</sup> It is generally understood that because of the very fact that children and young people are young, they make poor decisions or choices because of their lack of experience and, with appropriate guidance and support, they can make better choices and change their behaviour – rehabilitation. This is more likely to happen with children and young people than adults.<sup>2</sup>

We know that offending behaviour in relation to young people must be considered in the context of child and youth development. Early adolescence through to early adulthood is a peak period for brain development and consequently a period of increased risk in decision making and behaviour.

In Queensland information identifying young people aged 10-16 years<sup>3</sup> charged with offences cannot be published unless the Court allows this<sup>4</sup> and it may only do so in very specific circumstances:

- the child is sentenced for an offence for which, if the child was an adult, the maximum sentence would be life imprisonment;
- the offence involved the violence against another person; and
- the court considers the offence to be particularly dreadful (heinous).<sup>5</sup>

When deciding whether to allow identifying information about a child to be published, the Court must consider:

- the need to protect the community;
- the safety or wellbeing of a person other than the child;
- the impact on the child’s rehabilitation; and
- any other relevant matter.<sup>6</sup>

### Why are these protections so important?

Most young people who come into contact with the police before 18 will not go on to be “career criminals” – their

contact will be shortly lived and relatively minor and they will “grow out” of offending from late adolescence. Many will never come to court, their offending being addressed by a police caution. A significant proportion of those brought to court will appear once, maybe twice. There can be no sensible reason to name these offenders.

The group of repeat offenders is very small. These young people tend to have low socioeconomic status, low educational attainment, significant physical and mental health needs, substance abuse and a history of childhood abuse and neglect. Young people in detention in Queensland have reported experiencing multiple social and health problems during the previous year. Most often these problems related to school (69%), peers (62%), family (50%), and drugs or alcohol (43%). It is unclear how naming such young people could be useful.

Publicly identifying a child offender has the potential to jeopardise the rehabilitation of that child.<sup>7</sup> It may give them a bad name which they cannot rid themselves of – irrespective of whether they are trying to “turn over a new leaf” - so that people exclude them and make assumptions about how they will behave in the future. This can affect, for example, their job prospects and ability to positively engage with their community generally.<sup>8</sup> Inability to get a job or otherwise be involved in positive activities is a risk factor for further offending, which does not make the community safer or reduce crime. Consequently, it is widely recognised that young people who offend should not be stigmatised and labelled by publicly naming them.<sup>9</sup>

Research has shown significant detrimental effects resulting from young people being labelled as ‘delinquent’ or ‘criminal’.<sup>10</sup> These detrimental effects can continue far beyond the time when the information about the young person is first published, particularly in a world where it can be published online.<sup>11</sup>

There is also very little evidence to demonstrate that the naming of young people prevents re-offending which could be the only real justification for taking such action.<sup>12</sup> Recent research conducted in the Northern Territory (the only jurisdiction in Australia where the naming of child offenders is permitted) presents evidence that ‘naming and shaming’ can have the opposite effect with child offenders, with

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children acting as though they need to live up to their tarnished reputations.<sup>13</sup> Children and young people are unlikely to understand the consequences that may result from being publicly named for criminal offending.<sup>14</sup> Some children may even welcome the publicity as a 'badge of honour' and value the immediate gratification of belonging to an 'outside group', cementing the anti-social behaviour rather than helping the child move away from such behaviour.<sup>15</sup>

In Britain, since 2003, local authorities and police have been permitted to 'name and shame' children who have been placed on an 'anti-social behaviour order' (**ASB Order**).<sup>16</sup> As a result, personal details of young offenders, such as their portraits, names and the requirements of their ASB Order have been published.<sup>17</sup> The rationales behind this approach appear to be:

- deterring the young person from further antisocial behaviour through public humiliation;
- increased community control by involving citizens in the surveillance of the offender; and
- reassuring citizens that something is "being done" about young people,

none of which focus on preventing crime.<sup>18</sup>

The United Kingdom Government has now announced it will abandon ASB Orders as they have been found to be ineffective in addressing the behaviour complained of and actually contribute to the criminalising of young people<sup>19</sup> - not least because the high breach rate of ASB Orders has led to a sharp increase in prison sentences for antisocial behaviour offences. Imprisonment is very costly and generally does not prevent re-offending.

## International obligations to protect the interests of children

The *United Nations Convention on the Rights of the Child* (the **UNCRC**) and the *United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985* (the **Beijing Rules**) refer specifically to a young person's right to privacy at all stages of juvenile justice proceedings.<sup>20</sup> Rule 8.1 of the Beijing Rules notes that this is 'in order to avoid harm being caused to her or him by undue publicity or by the process of labelling'.<sup>21</sup>

The *UNCRC* was ratified by Australia in December 1990: consequently, any federal, state or territory legislation, policy or practice that is inconsistent with the *UNCRC* places Australia in breach of its international obligations and could have consequences at the international level.<sup>22</sup> In addition, the Beijing Rules represent internationally accepted minimum standards, and although these are not necessarily binding on Australia at international law, failure by Australia to adhere to these rules may result in international scrutiny.<sup>23</sup>

## Balanced Justice view

Naming and shaming young people involved in the justice system is likely to undermine their chances of rehabilitation. It ignores fundamental, widely accepted principles contained in international law, and the evidence which shows that it can actually lead to increased levels of offending.

The existing protections in the *Youth Justice Act 1992* provide an appropriate balance of holding offenders to account for their actions, while protecting vulnerable young people and encouraging rehabilitation. These laws should not be changed.

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## References

- <sup>1</sup> Australian Law Reform Commission, 'Particular Privacy Issues Affecting Children and Young People – Identification in criminal matters and in court records', *Australian Privacy Law and Practice (ALRC Report 108)* (2008) (Vol.3) at 2321 published at <<http://www.alrc.gov.au/publications/report-108>> (2 April 2013)
- <sup>2</sup> Kyriacou, K 'Name and shame all child offenders, says Attorney-General Jarrod Bleijie', *The Courier Mail*, 14 July 2012 <<http://www.couriermail.com.au/news/queensland/getting-kids-back-on-track/story-e6freoof-1226425740039>> (2 April 2013)
- <sup>3</sup> Importantly in Queensland, unlike all other Australian States and Territories, for the purposes of the criminal law, a child is a person who has not yet turned 17 years. Everywhere else, it is a person who is not yet 18.
- <sup>4</sup> *Youth Justice Act 1992* (Qld), sections 301(1) and 234
- <sup>5</sup> *Youth Justice Act 1992* (Qld), sections 234 and 176(3)(b)
- <sup>6</sup> *Youth Justice Act 1992* (Qld), section 234
- <sup>7</sup> 'Qld wants to name and shame young offenders', *ABC News*, 14 July 2012 <<http://www.abc.net.au/news/2012-07-14/qld-name-and-shame-proposal/4130614>>; Kyriacou, K 'Name and shame all child offenders, says Attorney-General Jarrod Bleijie', *The Courier Mail*, 14 July 2012 <<http://www.couriermail.com.au/news/queensland/getting-kids-back-on-track/story-e6freoof-1226425740039>> (2 April 2013)
- <sup>8</sup> Naylor B, 'Do not pass go: The impact of criminal record checks on employment in Australia' (2005) 30 *Alternative Law Journal* 174 at 174-175, cited in Crofts, T and Witzleb, N, "Naming and shaming" in Western Australia: Prohibited behaviour orders, publicity and decline of youth anonymity' (2011) 35 *Criminal Law Journal* 34 at 35
- <sup>9</sup> Crofts, T and Witzleb, N, "Naming and shaming" in Western Australia: Prohibited behaviour orders, publicity and decline of youth anonymity' (2011) 35 *Criminal Law Journal* 34 at 34
- <sup>10</sup> 'Particular Privacy Issues Affecting Children and Young People – Identification in criminal matters and in court records', *Australian Privacy Law and Practice (ALRC Report 108)* (2008) (Vol.3) at 2320 <<http://www.alrc.gov.au/publications/report-108>> (2 April 2013)
- <sup>11</sup> Krause, M, 'Involving the Community in Youth Justice – "Naming and Shaming" and the Role of Local Citizen Courts in Britain and the Former GDR' (2011) 38(4) *Social Justice* 91 at 97
- <sup>12</sup> Lincoln, Robyn, 'Naming and shaming young offenders: reactionary politicians are missing the point', *The Conversation*, 22 August 2012 <<http://theconversation.com/naming-and-shaming-young-offenders-reactionary-politicians-are-missing-the-point-8690>> (2 April 2013)
- <sup>13</sup> As above
- <sup>14</sup> Crofts, T and Witzleb, N, "Naming and shaming" in Western Australia: Prohibited behaviour orders, publicity and decline of youth anonymity' (2011) 35 *Criminal Law Journal* 34 at 44
- <sup>15</sup> As above at 44-45
- <sup>16</sup> Krause, M, 'Involving the Community in Youth Justice – "Naming and Shaming" and the Role of Local Citizen Courts in Britain and the Former GDR' (2011) 38(4) *Social Justice* 91 at 91
- <sup>17</sup> As above at 91
- <sup>18</sup> As above at 93 and 97
- <sup>19</sup> 'Asbos to be abolished under new government plans', *Channel 4 News*, 7 February 2011 <<http://www.channel4.com/news/asbos-to-be-abolished-under-new-government-plans>> (3 April 2013); Theresa May (Home Secretary), 'Moving beyond the ASBO' speech delivered at the Coin Street Community Centre (28 July 2010), cited in Crofts, T and Witzleb, N, "Naming and shaming" in Western Australia: Prohibited behaviour orders, publicity and decline of youth anonymity' (2011) 35 *Criminal Law Journal* 34 at 37
- <sup>20</sup> *Convention on the Rights of the Child*, 20 November 1989 (1991) ATS 4, art 40(2)(b)(vii) and *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules)*, UN Doc A/RES/40/33 (1985), r 8.1, cited in Australian Law Reform Commission, 'Particular Privacy Issues Affecting Children and Young People – Identification in criminal matters and in court records', *Australian Privacy Law and Practice (ALRC Report 108)* (2008) (Vol.3) at 2320 published at <<http://www.alrc.gov.au/publications/report-108>> (2 April 2013)
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- <sup>22</sup> Australian Law Reform Commission, 'Decision Making by and for Individuals under the Age of 18 – Privacy rights of children and young people at international law', *Australian Privacy Law and Practice (ALRC Report 108)* (2008) (Vol.3) at 2256 published at <<http://www.alrc.gov.au/publications/report-108>> (2 April 2013)
- <sup>23</sup> As above

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