



FreeTV
Australia

**Submission by
Free TV Australia Limited**

New South Wales Attorney-General

*Review of the Young Offenders Act 1997
and the Children (Criminal Proceedings)
Act 1987*

9 December 2011



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1 Executive Summary

- Free TV Australia represents all of Australia's commercial free-to-air television broadcasters.
- In 2011 commercial free-to-air television is the most popular source of entertainment and information for Australians, with our members providing nine channels of content across a broad range of genres, as well as rich online and mobile offerings, all at no cost to the public.
- Free TV broadcasters play a key role in informing the public through news and current affairs, broadcasting 315 hours of such content every week.
- Free TV welcomes the opportunity to contribute to the New South Wales Attorney-General's review of the *Children (Criminal Proceedings) Act 1987* (the Act).
- Free TV's members are directly impacted by the Act, which places restrictions on their ability to provide the public with fulsome coverage of criminal proceedings.
- Free TV broadcasters seek to balance their role to inform the public and report news and current affairs accurately and fairly with requirements to exercise care and have appropriate regard for the welfare and sensitivities of children, relatives and viewers in reporting criminal proceedings involving children.
- In this submission, Free TV proposes a number of changes to address inconsistencies with other jurisdictions and to address overly onerous consent requirements.
- Section 15A should only apply to proceedings heard by the Childrens Court.
- The prohibition on the identification of children who are mentioned in criminal proceedings should not extend to deceased children.
- The consent of a child aged 16 or 17 alone should be sufficient for the purpose of obtaining permission to identify them under Act.
- Section 15A should not apply to deceased children negating the necessity for section 15E. However, if this is not accepted, the Act should be amended so as to simplify who can give consent and what that person must do prior to giving it.

2 Broad scope of application

Section 15A of the Act extends to any child who is mentioned in criminal proceedings heard in any court in NSW. The application of the prohibition goes well beyond the legislation in any other state that is designed to protect the identities of children who are connected with criminal proceedings by virtue of their being an accused, a witness or a victim.

Submission: Section 15A should only apply to proceedings heard by the Childrens Court.

3 Application to deceased children

Section 15A(4)(b) of the Act extends the application of the prohibition on identification to deceased children. In no other jurisdiction is there a statutory prohibition on identifying a deceased child upon commencement of criminal proceedings in any court.

This jurisdictional inconsistency has led to a situation where the media is prohibited from reporting similar fact stories in the same manner based on where criminal proceedings are commenced. Where criminal proceedings have been commenced in NSW, the media is prevented from informing the public in a fulsome and timely manner of that fact where a deceased child is involved.

Submission: The prohibition on the identification of children who are mentioned in criminal proceedings should not extend to deceased children.

4 Complexity of consent

Section 15D(1)(a) of the Act states that a child who is 16 or 17 who agrees to be identified must give consent in the presence of a legal practitioner of the child's own choosing. While it is appropriate that any given consent should be considered, the requirement that an independent lawyer be obtained to provide advice is not only costly for the child that is the subject of the restriction but may pose a significant delay in the fulsome reporting of criminal proceedings.

Example: By way of comparison, under s 578A(4)(b) of the Crimes Act 1900 (NSW), a complainant in proceedings for a prescribed sexual offence who is over the age of 14 at the time of publication can consent of their own accord to being identified. Even in the event that such a complainant gives consent, it is still not possible to identify them by virtue of the additional requirement of compliance with s 15D(1).

Submission: The consent of a child aged 16 or 17 alone should be sufficient for the purpose of obtaining permission to identify them under Act.

5 Deceased child exemption

The exemption at section 15E of the Act is overly complicated and procedurally difficult to comply with. While it is firmly the view of the media that the restriction on identifying children should only apply to proceedings heard by the Children's Court and further that the restriction on identification should not apply to deceased children, in the event that there is no move on the part of the government to amend those provisions, the process for obtaining consent should be simplified.

Currently, in order to meet the requirements of the exemption, each individual media organisation that seeks to report that criminal proceedings have commenced is required to approach the family of the deceased child to obtain permission to identify the child. The consent can only be given after a grieving person (that meets the definition of a "Senior Available Next of Kin") has made enquiries to ensure that there is no other relevant person who objects to the identification of the deceased child.

It is important to note that in some circumstances no person meets the definition of a "Senior Available Next of Kin", preventing the media from reporting the commencement of criminal proceedings. This was the scenario the media was presented with when reporting the death of "Ebony", a 7 year old girl whose mother and father were charged and convicted of murder and manslaughter respectively after she starved to death. In reality, the law that was designed to restrict identifying a dead child acted to protect the identity of the accused.

Further, it must be noted that the Act makes no provision for circumstances where consent is given and then retracted.

Submission: Section 15A should not apply to deceased children negating the necessity for section 15E. If this is not accepted, any alternative solution must aim to simplify who can grant consent and what that person must do prior to giving it.