



New South Wales

# **Children (Criminal Proceedings) Amendment (Naming of Children) Bill 2009**

## **Explanatory note**

This explanatory note relates to this Bill as introduced into Parliament.

### **Overview of Bill**

The object of this Bill is to amend the *Children (Criminal Proceedings) Act 1987* to rewrite the existing offence of publishing or broadcasting a person's name in a way that connects the person with criminal proceedings involving children, with the following changes:

- (a) the offence will be limited to publication or broadcast to the public or a section of the public (which will make it clear that the offence does not extend to limited publication and broadcast, such as by the police radio),
- (b) a specific exemption will be included for the proper exercise of official functions by court staff,
- (c) a child who is over 16 will only be able to consent to the publication or broadcast of the child's name if the consent is given in the presence of a legal practitioner of the child's choosing,
- (d) a court deciding whether to authorise the publication or broadcast of the name of a person being sentenced for a serious children's indictable offence will be required to have regard to certain specified matters (instead of the existing requirement that the court be satisfied that the making of the order is in the

interests of justice and that prejudice to the offender does not outweigh those interests),

- (e) if there is no senior available next of kin who can consent to the publication or broadcast of the name of a deceased child, the court will be able to give that consent if the public interest so requires,
- (f) minor changes are made and provisions reorganised to aid understanding.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day to be appointed by proclamation.

## **Schedule 1      Amendment of Children (Criminal Proceedings) Act 1987 No 55**

**Schedule 1 [3]** inserts a new Division consisting of proposed sections 15A–15G which are a rewrite, with the changes referred to in the Overview, of the existing section that makes it an offence in certain circumstances to publish or broadcast a person’s name in a way that connects the person with criminal proceedings involving children.

Section 15A (2) provides for the limitation of the offence to publication and broadcast to the public or a section of the public, as referred to in paragraph (a) of the Overview.

Section 15G provides for court staff exercising official functions to be exempt from the offence, as referred to in paragraph (b) of the Overview.

Section 15D (3) provides for the new restrictions on when a 16 or 17 year old can consent to the publication or broadcast of their name, as referred to in paragraph (c) of the Overview.

Section 15C (3) provides for the matters to which a court is to have regard in deciding whether to authorise the publication or broadcast of the name of a person being sentenced for a serious children’s indictable offence, as referred to in paragraph (d) of the Overview.

Section 15E (5) provides for the court to consent to the publication or broadcast of the name of a deceased child if there is no senior available next of kin who can consent and the public interest so requires, as referred to in paragraph (e) of the Overview.

**Schedule 1 [1]** repeals the existing section that the new Division replaces.

**Schedule 1 [2] and [4]** make consequential amendments.

First print



New South Wales

# Children (Criminal Proceedings) Amendment (Naming of Children) Bill 2009

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New South Wales

# **Children (Criminal Proceedings) Amendment (Naming of Children) Bill 2009**

No. , 2009

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## **A Bill for**

An Act to amend the *Children (Criminal Proceedings) Act 1987* to make further provision for the naming of persons in connection with criminal proceedings involving children.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Children (Criminal Proceedings) Amendment (Naming of Children) Act 2009</i> .	3 4
<b>2 Commencement</b>	5
This Act commences on a day to be appointed by proclamation.	6

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<b>Schedule 1</b>	<b>Amendment of Children (Criminal Proceedings) Act 1987 No 55</b>	1
		2
<b>[1] Section 11</b>	<b>Publication and broadcasting of names</b>	3
	Omit the section.	4
<b>[2] Section 12A</b>		5
	Omit the section. Insert instead:	6
<b>12A</b>	<b>Bail applications</b>	7
	The provisions of section 10 and Division 3A apply to a child who appears or is brought before a court in relation to a bail application in the same way as those provisions apply to a child appearing or brought before a court in any criminal proceeding.	8 9 10 11
<b>[3] Part 2, Division 3A</b>		12
	Insert after Division 3 of Part 2:	13
<b>Division 3A</b>	<b>Publication and broadcasting of names</b>	14
<b>15A</b>	<b>Publishing and broadcasting of names prohibited</b>	15
(1)	The name of a person must not be published or broadcast in a way that connects the person with criminal proceedings if:	16 17
(a)	the proceedings relate to the person and the person was a child when the offence to which the proceedings relate was committed, or	18 19 20
(b)	the person appears as a witness in the proceedings and was a child when the offence to which the proceedings relate was committed (whether or not the person was a child when appearing as a witness), or	21 22 23 24
(c)	the person is mentioned in the proceedings in relation to something that occurred when the person was a child, or	25 26
(d)	the person is otherwise involved in the proceedings and was a child when so involved, or	27 28
(e)	the person is a brother or sister of a victim of the offence to which the proceedings relate, and that person and the victim were both children when the offence was committed.	29 30 31 32

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(2)	This section applies only to the publication or broadcast of a person's name to the public, or a section of the public, by publication in a newspaper or periodical publication, by radio or television broadcast or other electronic broadcast, by the Internet, or by any other means of dissemination.	1 2 3 4 5
(3)	The publication of information to an Internet website that provides the opportunity for, or facilitates or enables, dissemination of information to the public or a section of the public (whether or not the particular publication results in the dissemination of information to the public or a section of the public) constitutes the publication of information to the public or a section of the public for the purposes of this section.	6 7 8 9 10 11 12
(4)	This section applies to the publication or broadcast of the name of a person:	13 14
(a)	whether the publication or broadcast occurs before or after the proceedings concerned are disposed of, and	15 16
(b)	even if the person is no longer a child, or is deceased, at the time of the publication or broadcast.	17 18
(5)	A reference in this Division to the name of a person includes a reference to any information, picture or other material that identifies the person or is likely to lead to the identification of the person.	19 20 21 22
(6)	A reference in this Division to a person who appears as a witness before a court in any criminal proceedings includes a reference to a child who gives evidence in the form of a recording in proceedings in accordance with Division 3 of Part 6 of Chapter 6 of the <i>Criminal Procedure Act 1986</i> .	23 24 25 26 27
(7)	A person who publishes or broadcasts the name of any person the publication or broadcasting of which is prohibited by this section is guilty of an offence. Maximum penalty: 500 penalty units (in the case of a corporation) or 50 penalty units or imprisonment for 12 months, or both (in any other case).	28 29 30 31 32 33
<b>15B</b>	<b>Exception for official report of proceedings</b>	34
	This Division does not prohibit the publication or broadcasting of an official report of the proceedings of a court that includes the name of any person the publication or broadcasting of which would otherwise be prohibited by this Division.	35 36 37 38

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<b>15C</b>	<b>Exception for person convicted of serious children’s indictable offence</b>	1 2
(1)	This Division does not prohibit the publication or broadcasting of the name of a person who has been convicted of a serious children’s indictable offence if the publication or broadcasting is authorised by a court under this section.	3 4 5 6
(2)	A court that sentences a person on conviction for a serious children’s indictable offence may, by order made at the time of sentencing, authorise the publication or broadcasting of the name of the person (whether or not the person consents or concurs).	7 8 9 10
(3)	In determining whether to make such an order, a court is to have regard to the following matters:	11 12
(a)	the level of seriousness of the offence concerned,	13
(b)	the effect of the offence on any victim of the offence and (in the case of an offence that resulted in the death of the victim) the effect of the offence on the victim’s family,	14 15 16
(c)	the weight to be given to general deterrence,	17
(d)	the subjective features of the offender,	18
(e)	the offender’s prospects of rehabilitation,	19
(f)	such other matters as the court considers relevant having regard to the interests of justice.	20 21
(4)	A court that makes an order under this section must indicate to the person, and make a record of, its reasons for doing so.	22 23
<b>15D</b>	<b>Exception for publication or broadcasting with consent</b>	24
(1)	This Division does not prohibit the publication or broadcasting of the name of a person:	25 26
(a)	in the case of a person who is under the age of 16 years at the time of publication or broadcasting—with the consent of the court concerned, or	27 28 29
(b)	in the case of a person who is of or above the age of 16 years at the time of publication or broadcasting—with the consent of the person.	30 31 32
(2)	A court is not to give consent under this section except with the concurrence of the child or (if the child is incapable of giving concurrence) unless the court is of the opinion that it is in the public interest that consent be given.	33 34 35 36

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(3)	A child who is of or above the age of 16 years cannot give consent for the purposes of this section unless the consent is given in the presence of an Australian legal practitioner of the child's own choosing.	1 2 3 4
<b>15E</b>	<b>Exception where child deceased</b>	5
(1)	This Division does not prohibit the publication or broadcasting of the name of a deceased child with the consent of a senior available next of kin of the child.	6 7 8
(2)	A person must not, as a senior available next of kin, give consent to the publication or broadcasting of the name of a deceased child unless it appears to the person, after making such inquiries as are reasonable in the circumstances, that no other senior available next of kin objects to the publication or broadcasting of the name.	9 10 11 12 13
(3)	In addition, in considering whether to give consent to the publication or broadcasting of the name of a deceased child when the publication or broadcasting of the name of a brother or sister of the deceased child is prohibited under section 15A (1) (e), a senior available next of kin must:	14 15 16 17 18
(a)	make such inquiries as are reasonable in the circumstances to obtain the views of that brother or sister regarding the publication or broadcasting of the name of the deceased child, and	19 20 21 22
(b)	take into account the impact of such a publication or broadcasting on that brother or sister.	23 24
(4)	A senior available next of kin who is charged with, or is convicted of, an offence to which the criminal proceedings concerned relate cannot give consent, or object, to the publication or broadcasting of the name of a deceased child as referred to in this section.	25 26 27 28 29
(5)	If there is no senior available next of kin who can give consent to the publication or broadcasting of a deceased child's name (whether or not as a result of subsection (4)), the court concerned can give that consent if satisfied that the public interest so requires.	30 31 32 33 34
(6)	In this section, <i>senior available next of kin</i> of a deceased child means:	35 36
(a)	a parent of the child, or	37

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(b)	if the parents of the child are dead, cannot be found, or for some other reason cannot exercise their parental responsibilities to the child:	1
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		3
(i)	a person who, immediately before the death of the child, had parental responsibility (within the meaning of the <i>Children and Young Persons (Care and Protection) Act 1998</i> ) for the child, or	4
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(ii)	in the case of a child who was in the care of the Director-General of the Department of Human Services immediately before his or her death—the Director-General.	8
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<b>15F</b>	<b>Exception for traffic offences not dealt with by Children’s Court</b>	12
	This Division does not apply to criminal proceedings in respect of a traffic offence if the proceedings are held before a court other than the Children’s Court.	13
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<b>15G</b>	<b>Functions of court officials not affected</b>	16
	This Division does not apply to anything done by a person in the proper exercise of official functions as a member of staff of a registry or other office of a court in connection with the conduct and determination of criminal proceedings.	17
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<b>[4]</b>	<b>Section 49 Proceedings for offences</b>	21
	Omit “section 11” wherever occurring. Insert instead “section 15A”.	22