

REPORT OF PROCEEDINGS BEFORE

STANDING COMMITTEE ON LAW AND JUSTICE

**INQUIRY INTO THE PROHIBITION ON THE PUBLICATION
OF NAMES OF CHILDREN INVOLVED IN CRIMINAL
PROCEEDINGS**

Uncorrected Proof

At Sydney on Wednesday, 20 February 2008

The Committee met at 9.30 a.m.

PRESENT

The Hon. Christine Robertson (Chair)

The Hon. J.G. Ajaka
The Hon. D.J. Clarke
The Hon. G.J. Donnelly
The Hon. Amanda Fazio
Ms Sylvia Hale

BRETT ANTHONY COLLINS, Coordinator, Justice Action, PO box 386, Broadway, affirmed and examined:

CHAIR: In the Justice Action submission, page two, a number of negative effects of naming and shaming are listed. Would you be able to expand on these for the Committee please?

Mr COLLINS: If I could make a earlier statement beforehand.

CHAIR: Would you like to make an opening statement?

Mr COLLINS: What I would like first to do is refer to the three documents that I have handed out. One of them is the JA Mentoring handbook, which was published a year and a half or so ago and is the basis of the JA mentoring scheme, and gives a significant amount of history of the work we have been doing over the last 30 or 40 years and tracks that work, the accommodation, the counselling, the mentoring and the campaigning on different areas and that is one document I refer to during my address.

The second one I refer to is copy of Just Us. We have printed 25,000 of those and it has been distributed throughout Australia and New Zealand before the end of last year, funded by Breakout Design & Print web, distributed to every Member of Parliament by name in Australia, every judicial member in Australia, down to magistrates and has gone into every gaol in five states and territories, but there are three states that have so far said that they will not accept it inside the prison system and that is currently before the Supreme Court, awaiting a decision on whether it should enter the New South Wales prison system.

The third document is a brochure from Breakout Design & Print web, which is the basis for the self-funding organisation of Breakout, which funds Justice Action, whom I represent.

I would like first of all to identify myself as in fact a prisoner at the age of 17 in a youth institution, youth prison, and was sentenced to a period of 0-2 years. It was actually in New Zealand, very similar to in Australia. I was also sentenced to 17 years gaol in 1970 and served 10 years, almost 10 years of that time. I have been involved in the prison movement now for 40 years and I am proud to have led the team of ex-prisoners, or people from Justice Action, and to have been asked to defend the right of prisoners to vote nationally in the Senate last year, which of course was won before the High Court of Australia later in the year last year.

The strength of the organisation we represent is that we are unfunded. We fund ourselves out of an organisation which is based upon a business. I have been managing director of the business for the last 23 years. We run that business preferably employing people who have had trouble with the law, employing volunteers. We have at the moment 20 people who are working with us. We are based in Trades Hall. We have an office there with 10 people working there. We also have a significant printing operation, design and printing operation, which is based out at Alexandria in another space, where we employ ex-prisoners as a preferred industrial base.

In the process we also link up to organisations such as the unions, who are our major support, plus organisations in the community, and some corporations, major corporations who also give us work in preference to giving work to other organisations.

CHAIR: Would you like to expand on the effects of naming and shaming, the number of negative effects? Would you like to expand on that for the Committee?

Mr COLLINS: We have been carefully through the other submissions that have been presented to the Committee and we have just a couple of extra points to make. We do not want to reiterate the material that has already been presented. We would see that as even doubting the

goodwill of those people who would oppose the naming and shaming of those vulnerable children. We would see them particularly as our children, coming out of our communities, as the children of prisoners and children out of the same areas who are inside the gaols. They are the children who come to us for support and to alienate them or to damage them and isolate them even further can only be to the damage of the community as a whole, and we question the goodwill of anyone that would create problems and difficulties within the community on the back of legislation which produces a process such as this.

We would like to point out an issue that has so far not been advanced by other organisations which is the use of the internet and that changes the scene, contrary to what it was before. To now be named means that for ever you will be named and you will find it extremely difficult as a prospective employee, or even with girlfriends, for example, who might decide to Google you and to discover who you are and will then discover your history. You can never escape your history in this current use of the internet.

Our strong view is that environmental factors lead to crime and it is the areas that are most represented inside the gaols that should be receiving social services. We feel that to name and to shame in fact focuses upon the individuals, rather than accepting the fact that there are warnings, these individuals misbehaving are in fact a warning to the community as a whole that that area needs support and it is a distraction to look at the individuals and demonise them. In fact there should be an offering of teaching life skills to those children in fact instead of having the alienation effects that we have been talking about.

The Hon. DAVID CLARKE: Mr Collins, on Monday we heard evidence from a victims support group and that evidence was to the effect that the naming of offenders, at least those between the ages of 16 to 18, not those less, would assist in the rehabilitation of victims. Would you have a comment to make on that?

Mr COLLINS: We have been involved. A lot of our members are also not only offenders but also victims. In fact they are quite often in the same group. We never hear that comment made. In fact, quite often in our dealings with victims groups, and we have very intimate dealings with the three major groups - we have a trusting relationship with them - that is not the statement we get from them at all. There is almost an obligation on some of those victims groups to present a harder face than what their members present behind them.

I did have some other comments in response to the other questions that were actually sent to us? Is it appropriate to respond to those?

CHAIR: I think we will get around to them and if we do not, at the end we will tidy it up.

Mr COLLINS: Maybe I can briefly cover them, to make sure we mention them.

CHAIR: No, we will definitely do that at the end.

The Hon. DAVID CLARKE: The evidence that came from the body which I think was called the Homicide Victims Support Group, that comes as a surprise to you, that they consider over their years of experience that there is assistance provided to the rehabilitation of the victims from the naming of these offenders?

Mr COLLINS: We have never heard that expressed by any victims. Of course sometimes we feel there is a vengeance individually and we acknowledge and understand that, but that is certainly not the experience and the feedback we get.

The Hon. JOHN AJAKA: I note your concerns in relation to specifically naming the young offender and in your mind that would apply to any young offender from the age of 18? You do

not see a difference between, for example, naming a young offender between 16 to 18 years of age?

Mr COLLINS: I think it would equally apply. They are at a vulnerable age and still learning and finding their way in life and they need to have support.

The Hon. JOHN AJAKA: Do you see any adverse effects through labelling, stigmatisation, adverse impact on not only the young offender but a community that the young offender is associated with? We heard earlier that with indigenous Australians there is a stigmatisation not only to the young offender but the community as a whole.

Mr COLLINS: Absolutely. We have had many situations where in fact other members of the family who are close by are also damaged in the process. In fact the whole community around that individual who is affected is demonised in the process.

The Hon. JOHN AJAKA: I think you were present when the last witness was giving evidence. Would you also say the same would apply to other Australians of ethnic background origin?

Mr COLLINS: Without a doubt. One of our major concerns is that certain sectors of the community are disproportionately affected and the media attacks them in a way that is really unfair.

The Hon. JOHN AJAKA: Not only would you be concerned about the offender's name being utilised, but what is your view about the ethnic background of the offender, whether it be indigenous Australian, Lebanese, Asian?

Mr COLLINS: We are most concerned about the labelling of any ethnic origin. That lays a smear on the whole of that particular community and we are totally against it.

The Hon. JOHN AJAKA: When you hear that Government departments such as the police force are utilising terms such as Middle Eastern Crime Squad, or an offender of Middle Eastern appearance?

Mr COLLINS: We are appalled at that. It amazes us that such blatant racism should be accepted by a government department.

The Hon. JOHN AJAKA: Would you like to see section 11 extended to cover protections in those areas?

Mr COLLINS: Absolutely. We are surprised that it is actually maintained as it is.

Ms SYLVIA HALE: Mr Collins, clearly the Committee is concerned, and I think most people are concerned, with rehabilitation of offenders and the most effective way to do that, to prevent recidivism and whatever. What are Justice Action's views as to the main factors that affect that chance of an individual being rehabilitated?

Mr COLLINS: We would say that reintegration into the community is actually the most significant thing, that they actually do have a community that is supportive underneath them; that they have employment; that they have an upward path into employment; that they have a sense of self-esteem, that they do feel good about themselves; and they have good role models around them with whom they can identify; and a whole range of social and intellectual and emotional skills that should be nurtured in school and nurtured around them. Quite often we have found that people do not easily enter the structure of the school that is being offered to them and it requires something more creative and wider for some individuals in that situation in order to give them rehabilitation.

We have, over the years, offered a Justice Action mentor, the JA mentoring format, which is

the basis for that handbook, which is in fact reaching out from the community of people who have previously had the experience of breaking the law and realise that there are other ways of dealing with their angers, tensions and frustrations, and then offering from like an elder's point of view the benefit of their experience and using the opportunity for trust to give them guidance in a new way.

Ms SYLVIA HALE: So how would you see naming and shaming as countering that rehabilitation?

Mr COLLINS: First of all it indicates to the young person that they are excluded, it means that people around them no longer want to be as closely associated with them. It makes it difficult for anyone who wants to give them support because there is this counter pressure on the individual. In fact, in some notorious cases when you actually associate with someone who has the media glare on them, it makes it difficult for other people around you to also give support. It gives them a wash of that guilt and it makes it difficult for the whole process of rehabilitation.

The Hon. GREG DONNELLY: Could you perhaps elaborate on the mentoring program that Justice Action has and comment on your views about its effectiveness or otherwise in terms of dealing with rehabilitation?

Mr COLLINS: The mentoring program is one that has been running now for a number of decades. We began it in fact in our early stages when we ran a halfway house called Glebe House back in the late sixties, early seventies. I was co-ordinator of the halfway house for two and a half years. After being released from gaol I was given the support of the halfway house and then remained there, lived there and eventually became the co-ordinator. So we had, at times, twenty people who were living in the house whom we saw as our responsibility, not just to provide accommodation but also to ensure that they had some jobs to go on to and also that they did not put themselves at risk.

That JA mentoring we found was a very fine model. We never actually put a word on it until after a period we said, we have really got something here that is quite significant and it really was the basis of our social support given to our own community. That extended back into the gaols themselves and over the whole period we have been working with the prisoners, their families and their children to try and lessen the risk that they are obviously confronting.

Most importantly, showing them other ways of dealing with their issues. So quite often their issues which were quite alienating to them, they could not see a way through them, then we would offer them another way of dealing with them. So effectively it would be a series of ears that would actually offer them support available at any time.

The basis of the JA mentoring relationship is one of trust and because we are part of the offender's community, we are in a situation to listen to them without being betoken to the Government and being seen to be independent of the Government. As such, we have an opportunity to listen to them carefully, let them say what they really feel and then give them an indication about how it really could be dealt with in reality or some other ways of handling the same problem.

Quite often we have some quite outlandish propositions put to us which may well have either been carried out or not, where we have been in a situation to bring in a breath of reality and also find other ways of dealing with things, and this is a day by day activity.

We finally formalised it just before a conference in Toronto in the year 2000 and proposed it as a response to incarceration. This was a conference called the International Conference on Penal Abolition and we then presented a draft paper, which then formed the basis of this booklet.

There are two things that are different in our JA mentoring program, one is that the person in fact was recallable. It was not a person who was imposed upon the individual but it was a recallable position where the person became a role model and a friend, but in fact it was up to the offender or the person who needed assistance to accept or reject that mentor.

The second thing we proposed in the model is that the mentor should be paid. It should be acknowledged as a position, it is not just one of community good will but it is a particular role that is very significant as a crime preventing project, which allows it to build and allows training to occur, allows the people who have had the experience of breaking the law to serve a function.

So it not only gives some special support to the individual who is at risk, it also allows people who have previously actually breached the law and quite often has not had a great opportunity to fit back into the workforce and struggles to survive, it gives them a special opportunity to give a positive benefit of the experience.

We have found again and again that this has actually worked in remarkable ways and we have a whole series of individuals, and probably the most remarkable one is Gregory Cable, who is referred to in this report, he was a man who was regarded as being so dangerous that the Community Protection Act was brought in against him. He has been our primary case worker for the last probably twelve years now and is currently working at Justice Action on a number of cases. He has had the spread in front of him, fully engrossed in mentoring other people who are facing the same problems that he has faced in the past. That, of course is being paid for by Breakout Design Print Web.

The Hon. GREG DONNELLY: Other witnesses have given some evidence about circle sentencing. Do you have, first of all, an understanding of it and secondly, would you care to comment about its effectiveness?

Mr COLLINS: We think circle sentencing is extremely valuable. The whole idea of restorative justice, of which that is part, we think is a way forward. It clearly keeps the person in the community, allows the community around the person to participate in the solutions and empowers in them in the process as well. So it gives them a chance to learn about the problems that that person has had to encounter and it gives them a chance to be proactive for others around them. We have no doubt at all that that is one of the ways forward.

We would also propose that as an extension of circle sentencing that mentoring is also a natural part of it too. We say rather than voluntary mentoring, it should be acknowledged as a function in the community for which it should be paid and for which training should occur, but it should be independent of Government, because it is that issue of trust that is essential to be retained in the mentoring function. If it becomes say, a part of a Government department, like an extension of the Probation and Parole Service, for which there would be a lot of temptation, we would say that would totally lose the benefit of the mentoring, which is based upon trust.

The Hon. AMANDA FAZIO: Mr Collins, my understanding is that most of the ex-offenders that Justice Action deals with are adult offenders, is that correct?

Mr COLLINS: Well, no adult and youth offenders, we deal with them all.

The Hon. AMANDA FAZIO: We have heard a lot of theoretical comments about the effect on people who are juvenile offenders who are named in terms of making it difficult for them to rehabilitate or to move on to a different phase of their life where they are not involved in any criminal activities. From your experience in dealing with the many people who have been in contact with Justice Action over the time you have been involved in it, would you be able to give us any practical examples of the difficulties that people have encountered by having been stigmatised as juveniles because of their offences?

Mr COLLINS: Yes, in fact when this issue was first raised with us we had a discussion about what it actually meant in practice. The surprising thing and one of the special things we actually bring to this Committee is what it is like to be named as an individual.

Rather than actually something that is an issue of shame – and one would assume it would be an issue of shame – it is not just an issue of shame, it is an issue of pride. There is the bravado of someone who has previously been told that he or she is just rubbish and of no consequence and quite often has suffered physical, emotional and psychological abuse. If for the first time they actually have

their name in the paper and they are seen as having a status, instead of as previously having been regarded as a person of no worth, they then take on a hero status, and not only hero status, they then for the first time feel as though they have been recognised, and in that recognition they also provide a beacon to other children, how they could also become recognised.

For these children sometimes it is the only way that they are recognised as an individual and they can from that point on identify, not in a negative term but in a positive term, and they are the criminals of the future, and they not only present with such excitement and they wait for the media bulletins stating what they did, they are dismayed when it has not been expressed properly and not in the newspaper. Then they compete with one another for the more horrendous crime that they can actually commit as a way in which they can actually at least boast of their hero status.

That is a reality on the ground and that is what happens in the cells in Baxter and in Kariong, as well as in the major prisons in the State. That is a situation which does not work for the community, it works against the community.

CHAIR: Can I just extend that a bit further, in your mind is this issue in relation to young persons aged sixteen to eighteen being permitted to give permission for the names to be printed?

Mr COLLINS: Well, no, sorry – the proposition is that they have the choice?

CHAIR: Young persons from sixteen to eighteen actually have the right to give permission for their name to be printed. This is how it is now under the law. Can you tell us what you think of that?

Mr COLLINS: We would propose that there is no benefit in ever publishing names of children and it should not be in the hands of the child who is not trusted not to commit an offence, to make that decision for him or herself. That is, the decision should be in the hands of the Court, as it currently is, as a discretion.

The Hon. JOHN AJAKA: You feel the child at sixteen years of age does not have the maturity to actually make that decision voluntarily?

Mr COLLINS: Absolutely.

The Hon. JOHN AJAKA: And should not be placed in that situation.

Mr COLLINS: Absolutely.

The Hon. JOHN AJAKA: Anymore than I say a child under sixteen would enter into a contract that is binding?

Mr COLLINS: Yes, absolutely.

The Hon. DAVID CLARKE: Does that flow over into other areas as well, for instance, with regard to the age of consent?

Mr COLLINS: Well, one would hope you would get a lot more support from some parents and community around them on those sorts of issues. The other question I guess is with whom the person is fraternising with to require the age of consent. There are other social issues involved in that, but here is the situation where the criminal law is directly affected rather than social interactions.

The Hon. DAVID CLARKE: Are you suggesting, or have I misunderstood, that the right of offenders, aged between sixteen and eighteen, to have their names published should actually be taken from them?

Mr COLLINS: That is right, yes.

The Hon. DAVID CLARKE: I am putting to you that by pursuing that precedent that would also have a flow on effect into other areas, as I say, the age of consent.

Mr COLLINS: I don't think the same thing runs at all. I would have thought that a public issue of criminal law and public policy is very different from personal relationships between individuals.

The Hon. DAVID CLARKE: Except that if the young person was adversely affected and was immature to make the appropriate decisions in those other aspects of his life, that is what I am referring to.

Madam Chair, could I just make one clarification to the record. When I asked Mr Collins to comment on evidence given by – I think I referred to “a victim support group” without giving a specific name, I was in fact referring to the evidence given on Monday by the Homicide Survivors Support After Murder Group Incorporated.

I just want to make that clear because I think there may be victim support groups around that actually have the name Victim Support Group.

The Hon. AMANDA FAZIO: You mentioned about the internet and how people will forever have a criminal record because of the internet, which raises an interesting question, because at the moment after a certain number of years without reoffending your criminal record basically lapses, unless you commit certain serious offences. Have you got any recommendations or suggestions about what might be done to overcome that?

Mr COLLINS: Absolutely. We have many instances in fact of men and women who have gone on to significant positions of authority, and we can think straight away of someone inside the Government itself, but in other areas where they are in fact contributing to the community, through an internet search they have been uncovered and have been shamed in their community and the projects on which they have been working have actually had pressure put on them to have funding withdrawn if they are not removed from those projects. This is a matter of major concern to us where people have transcended their problems and are still limited by their histories, so to limit them at this stage in the time of the internet, to limit them by that shaming would be unthinkable and should not even be considered by the Government as a matter of policy.

Ms SYLVIA HALE: Mr Collins, there has been a view expressed that rather than the prohibition on naming coming into force as soon as an offender is charged, that it should come into effect as soon as there is a reasonable possibility of charges being laid. Would you support that, or what would be your thoughts?

Mr COLLINS: I would have thought that would be a simple practical issue to be adopted. I would find it hard to understand why the same principle does not exist there as it does when a person has been charged.

CHAIR: In your submission you actually have addressed this issue of bad genes. Quite interesting persons express an opinion that there is such a thing as a bad gene in relation to criminal behaviour. Can you very quickly or perhaps can you take on notice to give us back some information that you people have in relation to this question?

Mr COLLINS: I think it is a matter of perception really. A lot of people feel that they are locked down into their group of criminal sub-culture and it is just lifting them out of that. That is what JA mentoring is about as well, to give them a role model. I did not say this, by the way, we have just been asked to join Mission Australia in a partnership in JA mentoring for 500 young children in the western suburbs, and it appears that there has been a larger acceptance, at least in the community and community organisations, for people who have previously had trouble with the law linking across and using their experience in a positive way.

The Hon. JOHN AJAKA: Maybe, Madam Chair, if Mr Collins still has any answers he can table them.

CHAIR: Yes, thank you. Would you be willing to table the answers that you have brought with you that we have not yet heard?

Mr COLLINS: That is fine, I think most of it has been covered.

(The witness withdrew)

(Luncheon adjournment)