Confidentiality in child protection cases Who benefits?

Frank Ainsworth and Patricia Hansen

Child protection legislation in every Australian state and territory prohibits the disclosure of the identity of a person who acts as a mandatory reporter. There is also provision in most child protection legislation that prevents the naming of children and families in protection cases. It is argued that disclosure is not in the interests of the child, the family or the general public. Children's Court proceedings in most states and territories in Australia are closed to the public so that, unlike in most other jurisdictions, interested parties are not able to observe the proceedings. Child protection authorities also have considerable power to collect information about children and families from many sources. This power to obtain information is compounded by legislation which removes confidentiality provisions from professional codes of ethics. Furthermore, the rules of evidence do not ordinarily apply in the Children's Court. This article uses New South Wales as the exemplar state and raises questions about all of these issues.

Frank Ainsworth, PhD
Senior Principal Research Fellow (Adjunct)
School of Social Work and Community Welfare
James Cook University
Townsville Campus, Queensland 4811
Email: frankainsworth@hotmail.com

Patricia Hansen, PhD
Head, School of Social Work
Australian Catholic University
Strathfield Campus, Sydney, NSW 2135

Child protection legislation in all Australian states and territories protects a person who acts as a mandatory reporter and prohibits the disclosure of their identity (see list of statutes in Appendix I). Of equal importance is the legislation that prohibits the naming of children and families in child protection cases. In the latter case there are prescribed penalties should such disclosure occur. For example, in the NSW *Children and Young Persons (Care and Protection) Act 1998*, the penalties are a maximum of 200 units, or imprisonment for a period not exceeding 2 years, or both, in the case of an individual, and 2,000 penalty units in the case of a corporation. A penalty unit is valued at $100.

In criminal cases involving a child's murder, a Judge, in NSW at least, may issue a suppression order and prevent the publication of the identities of accused parent and their dead child (Hall 2009). In Victoria, as a recent high profile child murder case has shown, this is not so. The names of the father, mother, murdered child and siblings were reported in the press (Rout 2009a, 2009b). What is also curious is that a NSW grandmother, who had been awarded parental responsibility for the care of her daughter's child, was able to give permission for the child's name to be published. The NSW *Children and Young Persons (Care and Protection) Act 1998* provides that the child's identity can be made public once the child/person has reached the age of 25 years, or the child has died (section 105 1A).

Other legislation also prevents the identity of a child from being made public. The NSW *Children's (Criminal Proceedings) Act 1987*, section 11, used to prevent the name of the accused being made public when the offence related to a child. However, the NSW *Children's (Criminal Proceedings) Amendment (Publication of Name) Act 2007* allows for the senior available next of kin to consent to the publication or broadcasting of the name of the child. Perhaps this is what happened in the Shillingsworth case (NSW Ombudsman 2009a). The inconsistency of Dean Shillingsworth being identified (Madden 2009) and Ebony (NSW Ombudsman 2009b) not being identified by her real name can be attributed to the complexity of the law regarding the publication of the names of children. Such differences suggest that the protection of a parent's or child's identity is not rooted in clear legal principle and is more a matter of individual state or territory preference.

It is also important to remember that Children's Court proceedings in most Australian states and territories are closed to the public so that, unlike in other jurisdictions, interested parties are not able to observe the proceedings. Nor do any of the legal rules of evidence ordinarily apply in Children's Courts in Australia (Hoyano & Keenan 2007; Kennedy & Richards 2007; Odgers 2009). The result is that circumstantial, unreliable and contestable materials can be, and are, admitted into evidence and are rarely tested to the degree that is normal in criminal proceedings where the rules of evidence do apply.

This article raises questions about confidentiality, protection and the public interest (Foster 2009) and asks who benefits as a result of these legal prohibitions. Is this level of confidentiality in the best interests of parents, children and other family members?

> *If reporters did not have their identity protected, would they be more careful about making a report, and would ... unsubstantiated, false or careless reports be reduced?*

PROTECTING THE REPORTER

The NSW *Children and Young Persons (Care and Protection) Act 1998*, sections 26 and 29, set the parameters for the confidentiality provisions in relation to the reporter, mandatory or otherwise. These sections are presented in full Appendix II.

This protection for mandated reporters is throughout all child protection legislation in Australia (Swain 2009). Two arguments are commonly used to support these sections of the Act. The first is that, without this protection, members of the public, including mandatory reporters, may be afraid to report cases of child abuse and neglect, leaving children in a situation where they might suffer harm (Shaw 1998). The second argument is that section S26 and S29 suppress the identity of any reporter to safeguard them from harassment, or adverse consequences, by those they report as suspected perpetrators of abuse or neglect (Parkinson 1997).

All of this has to be measured against the data about reports to the child protection authorities which indicate that, of the 339,454 notifications of suspected cases of child abuse or neglect in Australia in 2008-2009, only 33.6% were investigated, finalised and substantiated (AIHW 2010). In essence, this means that 107,764 – or 66.4% – of the 2008-2009 notifications can be viewed as false, mistaken or careless. While some would say that not substantiated does not mean that child abuse or neglect did not occur, the AIHW figures are the only guide we have as to whether the reports were warranted. The over-reporting and the flood of reports were criticised in the *Report of the Special Commission of Inquiry into Child Protection Services in NSW* (Wood 2008). The amendments proposed by the Commission, which suggested that mandated reporters should only report the risk of 'significant harm' (*Children and Young Persons (Care and Protection) Act 1998* section 23) instead of 'risk of harm', is evidence of a perception that the flood of reports in which child abuse or neglect could not be substantiated diminishes the capacity of the child protection system to pursue real cases of harm.

If reporters did not have their identity protected, would they be more careful about making a report, and would the 66.4% of unsubstantiated, false or careless reports (AIHW 2010) be reduced? A reduction in reports, including vexatious or frivolous reports, would constitute a considerable monetary saving for child protection authorities and also avoid the trauma caused to children and those parents who were falsely or carelessly reported. At this point, it is also worth noting that 'risk of harm' reports made to the child protection authority in NSW are exempt documents under the *Freedom of Information Act 1989* (Shaw 1998; Parkinson 1997).

Section 29 at subsection 1(a) states:

> the making of a report does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct.

This section legislates away the ethics of a professional association whose members are in contact with the NSW child protection system. So, for example, a doctor must ignore the ethical requirements of the Australian Medical Association. The same applies to psychologists as members of the Australian Psychological Society, or social workers in relation to the Australian Association of Social Workers. Surely a government has no right to say what constitutes professional ethical obligations, even in cases of suspected child abuse and neglect?

It is possible to provide reports to child protection authorities while honouring professional codes of practice by ensuring that the report to the child protection authority is discussed with the parents before a report is made. To function from a position of having a decision-making process that is 'fair and transparent' (*Children, Youth and Families Act 2005, Victoria,* section 11 (c)) does not detract from a professional's or the community's ability to protect children.

PROTECTING THE CHILD AND FAMILY

The NSW *Children and Young Persons (Care and Protection) Act 1998* addresses the issue of the protection of the child's and the family's identity. It has to be noted that in Australia, except for Victoria (*Children, Youth and Families*

Act 2005, section 523), the Children's Court is a closed court. The media is given a qualified right to be present in the Children's Court during the course of a hearing. From the authors' experience in the Children's Court, it is clear the media do attend such hearings but their presence in Court is relatively rare. Section 104C of the NSW Act is the source of this right. The argument supporting prohibition of the family's identity is that identification of a parent would lead to the identification of the child who is the subject of court proceedings. It is argued that such a breach of confidentiality is likely to be stigmatising (Foster 2009) and that this is not 'in the best interests of the child' (Goldstein, Solnit, Goldstein & Freud 1996) for this to happen.

THE PUBLIC INTEREST

The public interest argument has a long history and is found in legal discussion concerning issues of confidentiality (ALRC 2009). In essence, the issue is one of non-disclosure over disclosure that is decided against a body of professional opinion that claims that disclosure will 'do harm' to children and families. However, it can equally be argued that non-disclosure reduces the accountability of the Children's Court and the child protection authorities to the wider public. This may, in turn, allow for errors to go unexamined. The question then becomes – whose interests are being protected?

THE RULES OF EVIDENCE

The NSW *Children and Young Persons (Care and Protection) Act 1998*, subsection (3), (4) and (5) of section 93, indicates that the rules of evidence do not apply in the Children's Court unless a magistrate rules otherwise. This means that the Commonwealth *Evidence Act 1995* and the NSW *Evidence Act 1995* do not normally apply. The argument that was used in favour of removing the rules of evidence from the Children's Court was that they allowed some parents to avoid a finding of child abuse and neglect by using technicalities in relation to the legal evidence (Parkinson 1997). In other words, some parents, who the child protection authority was convinced were committing acts of abuse and neglect, were getting away with it because the child protection authorities were unable to establish the necessary facts (DoCS 1997). But as Hoyano and Keenan (2007) indicate:

> Abandoning the rules of evidence can have a deleterious consequence for the quality of the information presented to the court ... it is not unusual to see words attributed to very young children which are well beyond the child's vocabulary (Hoyano & Keenan 2007, p.727).

Certainly, one result of the removal of the rules of evidence is that child protection caseworkers submit material in affidavit form to the court that is all too often biased, inaccurate, and frequently includes assertions and conclusions that are not supported in fact. Nor is the material in caseworker affidavits routinely subject to rigorous scrutiny (*Re Georgia and Luke (No.2)* (2008) NSWSC 1387; *Re Liam* (2005) NSWSC 75).

From a legal perspective, the Children's Court is not concerned with the innocence or guilt of parents. If parents have committed offences, they are dealt with in the criminal court system where their rights are protected in the same way as anyone else accused of a criminal offence. But, in effect, the Children's Court proceedings do put parents under scrutiny. The question put to the Children's Court is 'have these parents failed to care for their children properly ... and can these parents be allowed to care for their children or even have any contact with them at all?' It is easy to see that, from the parents' perspective, the Children's Court process places them on 'trial', and in that process they have few, if any, rights. In fact, many parents have told the authors that, not only do they feel that they are on 'trial', but that they feel like they are being treated like 'criminals' (personal communication 2009, 2010). The right that parents do have is to legal representation in the Children's Court (assuming they can obtain a Legal Aid grant) and to put their response or rebuttal by affidavit to any allegations of child abuse and neglect that may have been made against them. If they are unable to obtain legal representation, they can represent themselves.

> *Once children and families become involved with the child protection authorities, it appears that they cease to have any right to privacy or confidentiality in relation to what they may think are their private affairs ...*

Another element in this context is that the standard against which Children's Court decisions are made is a 'balance of probabilities', rather that the higher 'beyond reasonable doubt' criteria as applied in criminal proceedings (Aronson & Hunter 1998; Bendall 2009; Brown et al. 2006). The balance of probabilities is appropriate for the Children's Court as it is part of the civil court system and the objective is to ensure the safety of children.

PROTECTING THE CHILD PROTECTION AUTHORITIES

Media reporting suggests that the legally sanctioned secrecy of child protection matters may be concealing injustice. For example, in Queensland, similar legislation has prevented the parents of a child who died while in foster care from making their story known (Stewart 2009). The same secrecy

applies to legal settlements in the case of children abused while in foster care (Wenham 2009).

In the same way, in the case of *Re Georgia and Luke (No. 2)* in NSW, the legislation prevented the parents from being identified even though this is what they wanted. The Judge found that DoCS caseworkers were guilty of a serious abuse of power (Overington 2009a; *Re Georgia and Luke (No. 2)*). Not surprisingly, some would say that in this case the legislation that prohibited publication of the parents' identity, and inhibited the media from publishing the full story, was actually shielding the departmental caseworkers.

Another incidence of inappropriate secrecy is the Special Commission of Inquiry in NSW (Wood 2008) which refused to publish a substantial number of submissions from parents that were critical of Department of Community Services child protection practices, as publication might have resulted in the names of the children in out-of-home care becoming known to the public (Overington 2008). Arguably, section 105 protects DoCS caseworkers from public criticism and the Department itself from open and transparent scrutiny. It diminishes the Department's accountability to the wider community.

SUBPOENAS AND OTHER INFORMATION GATHERING

As in other jurisdictions, a Children's Court can issue subpoenas to obtain information from a wide range of agencies including police, health, mental health, education, personal counsellors, and agencies that provide both family support services and various forms of out-of-home care. In NSW this provision is under section 109C of the *Children and Young Persons (Care and Protection) Act 1998.*

Furthermore, under section 248 (b), the NSW Director-General of the Department of Community Services may direct an agency to furnish the Department with 'information relating to the safety, welfare and well being of a particular child or young person or class of children or young persons' *(Children and Young Persons (Care and Protection) Act 1998)* (see Appendix II).

Once children and families become involved with the child protection authorities, it appears that they cease to have any right to privacy or confidentiality in relation to what they may think are their private affairs; and this happens in other countries as well as in Australia (Williams 2008). Conversely, the NSW Department of Human Services (DHS) – formerly the Department of Community Services (DoCS) – can and does archive data that remains confidential to them about children and families, even when the Children's Court did not find that the parents abused or neglected their child. The argument is that the data may be of use at some later point should a further report of suspected child abuse or neglect be made (DoCS 2006). All of this conveys a double standard where parents have no privacy, but the child protection authority's decision-making process is shielded from public gaze.

EVIDENCE BY AFFIDAVIT

Under the recently passed NSW *Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009*, the requirement for child protection caseworkers to provide evidence to the Children's Court by way of sworn affidavit was repealed. Under the amended provision, a care application will be supported by a written report from a departmental caseworker. This appears to be a downgrading of the quality and integrity of the materials that the Court has to rely on for legal decision-making purposes. It also means that a child protection caseworker will be even less accountable to the Children's Court. The intention of this provision is to encourage caseworkers to report professionally on their assessment rather than to present a statement of facts in the adversarial manner that is usual in litigation (Wood 2008).

Parents do not experience the Children's Court process as offering procedural fairness or natural justice.

WHO BENEFITS?

The issue of protecting the identity of a Court witness, in this instance a reporter, is long established in law (*R v Webster* [1880] NSWLR 327; *R v Carroll* [1913] VLR 380; *Witness Protection Act 1994 (Cwlth)*). However, an equally important legal principle that has its foundation in British common law is that the accused person, as a defendant in the criminal jurisdiction, has a right to know the identity of the accuser.

In the civil jurisdiction, the equivalent legal principle applied is 'procedural fairness' or natural justice (*Kioa v West* [1985] 159 CLR 550). While determining fairness must be considered in the circumstances of the particular case, there are specific rights to be heard by neutral persons who will consider the facts without bias, the right to be informed of allegations made, and the right to have an opportunity to respond to the allegations (Douglas 2009).

The section of the NSW *Children and Young Persons (Care and Protection) Act 1998* that provides for the protection of the identity of a reporter erodes that principle in that the parents do not have a right to test the statements made by a reporter to the Helpline. The assertions made by a reporter are readily assumed to be fact.

Parents do not experience the Children's Court process as offering procedural fairness or natural justice. In no small

measure their reactions are because of the immense power that the NSW legislation gives to the child protection authority. Parents consider that material introduced into the Court is biased and inaccurate, and takes no account of their complex life circumstances. In that regard, parents do not experience 'fairness' which many would say is the foundation of social justice (Sen 2010).

In relation to the section of the Act which prevents the disclosure of the name of any child or family that is the subject of Children's Court proceedings, it is important to examine who is protected by this? Many parents who are involved with the child protection authorities in NSW see this as protecting caseworkers and the child protection authority (Family Inclusion Network NSW 2009). Parents want to be publicly identified and want to be able to tell their side of the story. They are angry at being silenced by the legislation. This silencing is also reinforced by the fact that the Children's Court is a closed court and is a court in which the rules of evidence do not apply. All of these provisions are experienced by parents as a lack of transparency and seen as procedural unfairness. Legal rules about confidentiality in child protection cases are cast against the 'public interest' principles (Hoyano & Keenan 2007), but this depends on who is designated as the 'public'. Is it children, parents, extended family, child protection authorities, the Children's Court, or government services in general? Or does the general public, in whose name these rulings have been made, have a right to know what is being done for good or ill in their name by child protection authorities (Overington 2009b)? Now that is a matter for debate.

The writers of this article are against all forms of child abuse and neglect. But there are troubling questions as to whether child protection legislation, with its prohibitions, closed Court hearings, and acceptance of a low standard of evidence, is the best we can do. Indeed, are all these prohibitions and closed proceedings in the best interests of children, parents and extended family?

The writers are not alone in making these points as others are also beginning to question this secrecy and lack of transparency in Children's Court proceedings, which are invariably cast in terms of the need for confidentiality (*Australian* 12 June 2009, editorial, p.13; Reardon & Noblet 2009; Stewart 2009). It is certainly hard to see how current Australian child protection legislation and the secrecy that such legislation supports can meet the expectations of the drafters of the United Nations Universal Declaration of Human Rights (1948) (http://un.org/Overview/rights.html) when they called for respect for the dignity of all persons. In fact, the vital 'open justice' principle is ignored (Robertson 2009; Tang 2009). As a community we need to consider the costs of this erosion of citizens' rights. ■

NOTE

Frank Ainsworth is a Guardian Ad Litem in the New South Wales Children's Court.

Patricia Hansen is Head of Social Work at the Australian Catholic University in Sydney. She is also a lawyer practicing part-time in the New South Wales Children's Court.

Frank and Pat are also respectively the President and Secretary of the Family Inclusion Network New South Wales Inc (FIN-NSW). FIN-NSW is a family support, advice and advocacy service that promotes 'family inclusive child protection practice'. The FIN-NSW website is < www.fin-nsw.org.au>.

REFERENCES

Aronson, M. & Hunter, J. (1998) *Litigation, evidence and procedures*, (6th edn.), Sydney: Butterworths.

Australian Institute of Health and Welfare (2010) *Child protection Australia 2008-2008*, Canberra.

Australian Law Reform Commission (2009) *Secrecy laws and open government*, Canberra.

Bendall, C. (2009) 'The demise of the enhanced standard of proof in child protection cases: re B (2008) ukhl 35', *Journal of Social Welfare and Family Law*, 31, 2, 185-191.

Brown, D., Farrier, D., Egger, S., McNamara, L. & Steel, A. (2006) *Criminal laws: Material and commentary on criminal law and process of New South Wales*, Sydney: Federation Press.

Convention on the Rights of the Child (1989). Accessible at http://www.un.org/library/ethics/un-convention/ Accessed 2 March 2009.

Department of Community Services (1997) *Review of the Children (Care and Protection Act 1987*, Legislation Review Unit, Sydney.

Department of Community Services (2006) *Statutory child protection in NSW: Issues and options for reform*, Sydney.

Douglas, R. (2009) *Douglas and Jones's Administrative Law*, Sydney: Federation Press.

Family Inclusion Network NSW Inc. (2009) *Submission the National Human Rights consultation*, May.

Foster, C. (2009) *Choosing life, choosing death: The tyranny of autonomy in medical ethics and the law*, Oxford: Hart Publishing.

Goldstein, J., Solnit, A.J., Goldstein, S. & Freud, A. (1996) *The best interest of the child: The least detrimental alternative*, New York: The Free Press.

Hall, L. (2009) 'Black vomit, ants in 'starved' girl's mouth', 20 May, *Sydney Morning Herald*, p.8.

Hoyano, L. & Keenan, C. (2007) *Child abuse: Law and policy across boundaries*, Oxford: Oxford University Press.

Kennedy, R. & Richards, J. (2007) *Integrating human services law and practice*, Melbourne: Oxford University Press.

Madden, J. (2009) 'Hate drove mum to murder', 9 October, *The Australian*, p.3.

NSW Ombudsman (2009a) *The death of Dean Shillingsworth: Critical challenges in the context of reforms to the child protection system*, Sydney: December.

NSW Ombudsman (2009b) *The death of Ebony: The need for an effective interagency response to children at risk*, Sydney: October.

Odgers, S. (2009) *Uniform evidence law*, Sydney: Lawbook Co.

Overington, C. (2008) 'Child welfare inquiry turned into farce by official secrecy', 29 August, *The Australian*, pp. 3 and 5.

Overington, C. (2009a) 'Couple awarded $50K to sue DoCS', 20 April, *The Australian*, p.5.

Overington, C. (2009b) 'Tales of broken, battered kids shows how the system on brink', *The Australian*, 11 June, pp. 1 and 2

Parkinson, P. (1997) *Review of the Children (Care and Protection Act) 1987*, Sydney: Department of Community Services.

Reardon, K.K. & Noblet, C.T. (2009) *Childhood denied: Ending the nightmare of child abuse and neglect*, Thousand Oaks, CA: Sage.

Robertson, G. (2009) 'A charter we can believe in', *Australian Literary Review*, 4, 2, 9 and 18.

Rout, M. (2009a) 'I saw her fall, just like a rag doll', 8 October, *The Australian*, p.3.

Rout, M. (2009b) 'Ex-wife told GP she fears for her children', 9 October, *The Australian*, p.3.

Shaw, J.W. (1998) *Children and Young Persons (Care and Protection) Bill*, Second reading, Parliament of New South Wales Legislative Council, 1 December.

Sen, A. (2010) *The idea of justice*, New York: Allen Lane.

Stewart, H. (2009) 'Secrecy rules surrounding children in care may be concealing injustice', 25-26 April, *The Weekend Australian*, p.9.

Swain, P. (2009) 'The ethics of social work practice', in P. Swain and S. Rice (eds.), *In the shadow of the law: The legal context of social work practice*, Sydney: Federation Press, pp.36-63.

Tang, A. (2009) *Dealing with the media in children's proceedings*, paper presented at the Children's Legal Services annual conference, Sydney, 30 May, p.3.

Universal Declaration of Human Rights (1948). Available at http://un.org/Overview/rights.html Accessed 2 March 2009.

Wenham, M. (2009) 'Foster care abuse victim gets taxpayers-funded settlement', *Courier-Mail*, 16 June.

Williams, J. (2008) *Child law for social work*, London: Sage Publications.

Wood (2008) *Report of the Special Commission of Inquiry into Child Protection Services in NSW*, Department of Premier and Cabinet, Sydney. November.

CASES

Kioa v West (1985) 159 CLR 550, 585, Massey J.

R v Webster (1880) NSWLR 327.

R v Carroll (1913) VLR 380.

Re Georgia and Luke (No. 2) (2008). Equity Division, NSWSC 1387, Palmer J.

Re Liam (2005) Equity Division, NSWSC 75, McDougall J.

APPENDIX I

The statutes

Commonwealth
Witness Protection Act 1994 (Cth)
Evidence Act 1995 (Cth)

Australian Capital Territory
Children and Young People Act 1999

New South Wales
Children and Young Persons (Care and Protection) Act 1998
Freedom of Information Act 1989
Children's Criminal Proceedings Act 1987
Children's (Criminal Proceedings) Amendment (Publication of Name) Act 2007
Evidence Act 1995

Northern Territory
Community Welfare Act 1983

Queensland
Child Protection Act 1999

South Australia
Family and Community Services Act 1972
Children's Protection Act 1993

Tasmania
Children, Young Persons and their Families Act 1997

Victoria
Children, Youth and Families Act 2005
Child Wellbeing and Safety Act 2005
Children, Youth and Families Act 2005

Western Australia
Children and Community Services Act 2004

APPENDIX II

NSW Children and Young Persons (Care and Protection) Act 1998

Section 26 Anonymity

A report under s 24 (Report concerning child or young person at risk of harm) and s 25 (Pre-natal reports) can be made anonymously.

Section 29 Protection of persons who make reports or provide certain information

(1) If, in relation to a child or young person or a class of children or young persons, a person makes a report in good faith to the Director-General or to a person who has the power or responsibility to protect the child or young person or the class of children or young persons:

(a) the making of a report does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct, and

(b) no liability for defamation is incurred because of the report, and

(c) the making of the report does not constitute ground for civil proceedings for malicious prosecution or for conspiracy, and

(d) the report, or evidence of its contents, is not admissible in any proceedings (other than care proceedings in the Children's Court, or any appeal arising from those care proceedings), and

(e) a person cannot be compelled in any proceedings to produce the report or a copy of or extract from it or to disclose or give evidence of any of its contents, and

(f) the identity of the person who made the report, or information from which the identity of that person could be deduced, must not be disclosed by any person or body, except with:

(i) the consent of the person who made the report, or

(ii) the leave of a court or other body before which proceedings relating to the report are conducted, and, unless that consent or leave is granted, a party or witness in any such proceedings must not be asked, and, if asked, cannot be required to answer, any question that cannot be answered without disclosing the identity or leading to the identification of that person.

(1A) A certificate purporting to be signed by the Director-General that a document relating to a child or young person or a class of children or young person is a report to which this section applies is admissible in any proceedings and, in the absence of evidence to the contrary, is proof that the document is such a report.

(2) A court or other body cannot grant leave under subsection (1))f) (ii) unless the court or other body is satisfied that the evidence is of critical importance in the proceedings and that failure to admit it would prejudice the proper administration of justice.

(3) A court or other body that grants leave under subsection (1) (f) (ii):

(a) must state the reasons why leave has been granted, and

(b) must ensure that the holder of the report is informed that evidence as to the identity of the person who made the report, or from which the of that person could be deduced, has been disclosed.

(3A)The protection given by this section to a person who makes a report apply to:

(a) any person who provides information on the basis of which the report was made, in good faith, to the person, and

(b) any person who otherwise was in good faith concerned in making such a report or causing such a report to be made,

in the same way as they apply in respect of the person who actually made the report.

(4) Subsection (1) (f) does not prevent the disclosure of information from which the identity of a person may be deduced if the prohibition on the disclosure of that information would prevent the proper investigation of the report.

(5) A report to which this section applies is taken to be an exempt document for the purposes of the Freedom of Information Act 1989.

Section 104C Entitlement of media to hear proceedings

At anytime while the Children's Court is hearing proceedings with respect to a child or young person, any person who is engaged in preparing a report of the proceedings for dissemination through a public news medium is, unless the Children's Court otherwise directs, entitled to enter and remain in the place where the proceedings are being heard.

Section 105 Publication of names and identifying information

(1) The names of a child or young person:

(a) who appears or is likely to appear as a witness before the Children's Court in any proceedings, or

(a1) who is involved, or is reasonably likely to be involved, in any capacity in any non-court proceedings, or

(b) with respect to whom proceedings before the Children's Court or in any non-court proceedings, or

(c) who is, or is reasonably likely to be mentioned or otherwise involved in any care proceeding before the Children's *Court or in any non-court proceedings*, or

(d) who is the subject of a report under section 24, 25, 27, 120, 121 or 122,

must not be published or broadcast in any form that may be accessible to a person in NSW whether the publication or broadcast occurs before any proceedings have commenced during proceedings or after they are disposed of.

Section 93 General nature of proceedings

(3) The Children's Court is not bound by the rules of evidence unless, in relation to particular proceedings or particular parts of proceedings before it, the Children's Court determines that the rules of evidence, or such of those rules as are specified by the Children's Court, are to apply to those proceedings or parts.

(4) *In any proceedings before the Children's Court, the standard of* proof is proof on a balance of probabilities.

(5) Without limiting subsection (4), any requirement under the Act that the Children's Court be satisfied as to a particular matter is a requirement that the Children's Court be satisfied on the balance of probabilities.

Section 109J Action that may be taken if a person does not comply with subpoena

(5) The Children's Court, Children's Magistrate or Registrar before whom a before whom is an adult is brought on arrest on a warrant issued under this section may:

(a) if bail is not dispensed with or granted, issue a warrant under Division committing the person to a correctional centre or other place of security, and

(b) order that the person to be brought before the Children's Court at the date, time and place specified in the order.

Section 248 Provision and exchange of information

(b) the Director-General may, in accordance with the requirement (if any) prescribed by the regulation direct the prescribed body to furnish the Director-General with information relating to the safety, welfare and well being of a particular child or young person or class of children or young persons.