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**BY FACSIMILE: (02) 9228 7128**

Mr Lloyd Babb  
Director  
Criminal Law Review Division  
Attorney General's Department (New South Wales)  
GPO Box 6  
SYDNEY NSW 2001

Dear Mr Babb

**Criminal Procedure Further Amendment (Evidence) Bill 2005 (NSW) (the "Bill")  
Changes to section 11 of the *Children (Criminal Proceedings) Act 1987 (NSW)* (the  
"Children's Act") effected by the *Crimes Legislation Amendment Act 2004 (NSW)* (the  
"Amending Act")**

I am writing on behalf of Free TV Australia (**Free TV**), which represents each of the free-to-air broadcasters in Australia, in relation to provisions of the Bill which provides that courts can be closed for the hearing of complainants' evidence in sexual offence proceedings and for the whole of incest proceedings.

I have reviewed Nationwide News Pty Limited's submission (the **Nationwide News Submission**) in relation to each of these topics. Free TV fully supports that submission.

It is extremely important that the media, including broadcasters, be permitted to fulfil their public role of providing fair reports of court proceedings, including proceedings involving sexual offences and incest.

Such reporting is fundamental to our justice system. It also plays an extremely important role in educating the public about the prevalence of such crimes and about the way in which the justice system deals with them.

Broadcasters appreciate that it may be difficult for victims in sexual assault cases to give evidence, and that victims will naturally wish for their privacy and dignity to be respected. Balanced against this, however, such publicity also has an important role in encouraging other victims of sexual assault and incest to come forward. Victims who see that complainants are treated fairly by the system and sensitively by the media are likely to be encouraged to report crimes to police.

In relation to other sexual assault proceedings, where a complainant's evidence cannot be published, the effect of the legislation is likely to be to make media reports appear biased in favour of the accused, which is likely to discourage victims to an even greater extent. In relation to incest, without such reporting, victims would be likely to feel more isolated and would be likely to be uncertain of, and thus more fearful of, the process which would follow any decision by them to press charges.

This is particularly so in the broadcasting context, where such issues are often discussed in the context of programs which deal sensitively with the issues. Such programs play a critical educational role. The Bill would seriously undermine the media's ability to continue to broadcast such programs.

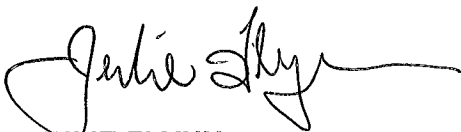
We understand that Warren Beeby from News Limited has been told by Bob Debus' office that their submission misconstrues the effect of the Bill as the evidence will be held in closed court and not in camera, further that 'closed court' means broadcasters can access the evidence and publish it and 'in camera' means in secret. The Bill does refer to 'in camera' not in 'closed court'. It is our view that there is no difference in law between 'in camera' and 'closed court'. Either way s314 of the Criminal Procedure Amendment Act 2004 prevents inspection of documents if proceedings are held in closed court. The effect is that if a broadcaster gains access to evidence given in closed court and then broadcasts it, they will be in contempt of court under the proposed Bill unless the concerns in this letter are addressed.

The Children's Act as affected by the Amending Act is also a matter of great concern to free to air broadcasters. Free to air broadcasters consider broadcast of police appeals for assistance in locating children to be a matter of public duty. It is absurd that they cannot report upon a child being found (either dead or alive) if that event coincides with, or is after, the commencement of criminal proceedings. The effect is to give the public a perception that the child has not been found or that, where the child has been kidnapped, the perpetrators remain at large, even though this is not the case. Free TV therefore urges the Government to amend the Bill and to further amend the Children's Act so that it does not prevent identification of children mentioned in proceedings where those children have died and permits the media to broadcast the outcome of searches for missing children. Where charges are laid following a search for a missing child, the Act should simply prevent the media from naming the witness.

In these circumstances, Free TV urges the Government to make the changes to the Bill and to the Children's Act sought in the Nationwide News Submissions.

I look forward to hearing from you in relation to these issues.

Yours sincerely,



**JULIE FLYNN**  
**Chief Executive Officer**