



New South Wales

# Child Protection (Offenders Prohibition Orders) Act 2004 No 46

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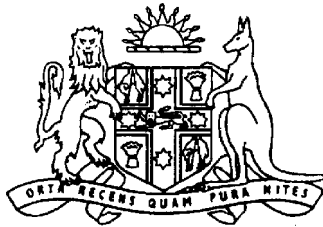
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New South Wales

## **Child Protection (Offenders Prohibition Orders) Act 2004 No 46**

Act No 46, 2004

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An Act with respect to orders prohibiting certain offenders who pose a risk to the lives or sexual safety of children from engaging in specified conduct; and for other purposes. [Assented to 6 July 2004]

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**The Legislature of New South Wales enacts:**

**Part 1 Preliminary**

**1 Name of Act**

This Act is the *Child Protection (Offenders Prohibition Orders) Act 2004*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

**3 Definitions**

(1) In this Act:

*child* means any person who is under the age of 18 years.

*conduct* includes an act or omission or a course of conduct.

*exercise* a function includes perform a duty.

*function* includes a power, authority or a duty.

*government agency* includes any public or local authority.

*interim prohibition order* means an interim child protection prohibition order granted under section 7.

*prohibition order* means a child protection prohibition order granted under section 5, and includes an interim prohibition order.

*registrable offence* has the same meaning as in the *Child Protection (Offenders Registration) Act 2000*.

*registrable person* has the same meaning as in the *Child Protection (Offenders Registration) Act 2000*.

*young registrable person* means a registrable person who is under the age of 18 years.

(2) For the purposes of this Act, a person poses a *risk to the lives or sexual safety of one or more children or children generally* if there is a risk that the person will engage in conduct that may constitute a registrable offence against or in respect of a child or children.

(3) Notes included in this Act do not form part of this Act.

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## Part 2 Child protection prohibition orders

### 4 Commissioner of Police may apply for orders

An application may be made by the Commissioner of Police to a Local Court for an order under this Part prohibiting a registrable person from engaging in specified conduct.

**Note.** Part 6 of the *Local Courts Act 1982* sets out the procedures for the making and hearing of applications and confers rights to appeal against the granting of prohibition orders.

### 5 Local Court may make child protection prohibition order

- (1) A Local Court may make a child protection prohibition order prohibiting a person from engaging in conduct specified in the order if it is satisfied that the person is a registrable person and that, on the balance of probabilities:
  - (a) there is reasonable cause to believe, having regard to the nature and pattern of conduct of the person, that the person poses a risk to the lives or sexual safety of one or more children, or children generally, and
  - (b) the making of the order will reduce that risk.
- (2) A Local Court may make an order under this section against a young registrable person only if, in addition to the matters set out in subsection (1), it is satisfied that all other reasonably appropriate means of managing the conduct of the person have been considered before the order was sought.
- (3) In determining whether to make an order under this section against a registrable person, a Local Court is to consider the following:
  - (a) the seriousness of each offence with respect to which the person is a registrable person,
  - (b) the period of time since those offences were committed,
  - (c) the age of the person when those offences were committed,
  - (d) the age of each victim of the offences when they were committed,
  - (e) the difference in age between the person and each such victim,
  - (f) the person's present age,
  - (g) the seriousness of the person's total criminal record,

- (h) the effect of the order sought on the person in comparison with the level of the risk that a further registrable offence may be committed by the person,
  - (i) to the extent that they relate to the conduct sought to be prohibited, the circumstances of the person, including the person's accommodation, employment needs and integration into the community,
  - (j) in the case of a young registrable person, the educational needs of the person,
  - (k) any other matters it thinks relevant.
- (4) The Local Court is not required to be satisfied that the person is likely to pose a risk to a particular child or children or a particular class of children.
- (5) If a registrable person against whom an order is sought is already subject to a prohibition order and no application has been made to revoke the existing order, the Local Court must, if it decides to make the order:
- (a) revoke the existing order and replace it with a new order (which may contain matters relating to the existing order), or
  - (b) vary the existing order to include the matters with respect to which it has decided to make the order.
- (6) An order is not invalidated by a failure to comply with subsection (5).

## **6 Term of prohibition orders**

The Local Court must specify the term of a prohibition order (other than an interim prohibition order) being a term of not more than 5 years or, in the case of a young registrable person, not more than 2 years, after it is made.

## **7 Interim prohibition orders**

- (1) A Local Court may make an interim child protection prohibition order prohibiting a registrable person from engaging in specified conduct if it appears to the Local Court that it is necessary to do so to prevent an immediate risk to the lives or sexual safety of one or more children, or children generally.
- (2) An interim prohibition order may be made by a Local Court whether or not:

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- (a) the registrable person is present at the proceedings, or
  - (b) the registrable person has been given notice of the proceedings.
- (3) The Local Court is not required to be satisfied that the person is likely to pose a risk to a particular child or children or a particular class of children.
  - (4) If an interim prohibition order is made by a Local Court, the Court must issue a court attendance notice requiring the registrable person to attend the Court for a further hearing of the matter as soon as practicable after the interim order is made.
  - (5) At the further hearing, the Local Court may confirm the prohibition order (with or without variation) or revoke it.
  - (6) An interim prohibition order remains in force until it is revoked or the relevant application is withdrawn or dismissed, whichever occurs first.
  - (7) Section 5 does not apply to an application for an order under subsection (1).

## **8 Conduct that may be the subject of orders**

- (1) A prohibition order may prohibit conduct of the following kind:
  - (a) associating with or other contact with specified persons or kinds of persons,
  - (b) being in specified locations or kinds of locations,
  - (c) engaging in specified behaviour,
  - (d) being in specified employment or employment of a specified kind.
- (2) Subsection (1) does not limit the kinds of conduct that may be prohibited by a prohibition order.

## **9 Explanation of orders**

- (1) A Local Court that makes a prohibition order must ensure that all reasonable steps are taken to explain to the registrable person (in language that the registrable person can readily understand):
  - (a) the person's obligations under the order, and
  - (b) the consequences that may follow if the person fails to comply with those obligations.
- (2) An order is not invalidated by a failure to comply with this section.

## **10 Orders by consent**

- (1) A Local Court may make a prohibition order (other than an interim prohibition order), without being satisfied as to the matters referred to in section 5, if the applicant and the registrable person consent to the making of the order.
- (2) A Local Court may make an interim prohibition order, without being satisfied as to the matters referred to in section 7, if the applicant and the registrable person consent to the making of the order.
- (3) The Local Court is not required to conduct a hearing before making an order under this section unless the Local Court is of the opinion that it is in the interests of justice to conduct the hearing.
- (4) Without limiting subsection (3), in determining whether it is in the interests of justice to conduct the hearing the Local Court may have regard to the following:
  - (a) whether the registrable person has obtained legal advice in relation to the order concerned,
  - (b) whether the person:
    - (i) has impaired intellectual functioning, or
    - (ii) is subject to a guardianship order (within the meaning of the *Guardianship Act 1987*), or
    - (iii) is illiterate, or is not literate in the English language, or
    - (iv) is subject to some other condition that may prevent the person from understanding the effect of giving consent to the order.
- (5) The registrar of a Local Court may not exercise the functions of a Local Court under this section.

## **11 Variation or revocation of prohibition orders**

- (1) An application may be made to a Local Court by the Commissioner of Police or a person subject to a prohibition order for an order varying or revoking a prohibition order.
- (2) The application must be accompanied by a copy of the relevant order, together with any variations to it that have been made under this Part.
- (3) A person subject to a prohibition order may not make an application except by leave of the Local Court. Leave may be granted only if the Local Court is satisfied that, having regard to changes in the



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applicant's circumstances since the order was granted or last varied, it is in the interests of justice that leave be granted.

- (4) The Local Court may dispose of the application:
  - (a) by varying or revoking the prohibition order, or
  - (b) by dismissing the application.
- (5) For the purposes of an application under this section, the *respondent* to an application is:
  - (a) in the case of an application made by the Commissioner of Police, the registrable person subject to the prohibition order, and
  - (b) in the case of an application made by a registrable person subject to a prohibition order, the Commissioner of Police.

#### **12 Notification of orders made in absence of registrable person**

The registrar of a Local Court that makes or varies or revokes a prohibition order against a registrable person in the absence of the person must cause a copy of the order to be served on the person.

#### **13 Contravention of orders**

- (1) A person who is subject to a prohibition order must not, without reasonable excuse, contravene the prohibition order.  
Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.
- (2) A police officer may, without a warrant, arrest a person if the police officer suspects on reasonable grounds that the person has committed an offence under this section.
- (3) A police officer who arrests a person under this section must, as soon as is reasonably practicable, take the person before an authorised person (within the meaning of the *Criminal Procedure Act 1986*) to be dealt with according to law.

#### **14 Applications not to be determined in public**

- (1) Proceedings for an application under this Part must be heard in the absence of the public.
- (2) Despite subsection (1), the Local Court hearing the proceedings may, if it considers it to be appropriate, permit persons who are not parties to the proceedings or their barristers, solicitors or representatives to be present during the hearing of the proceedings.

### **15 Appeal does not stay order**

Despite any provision of the *Crimes (Local Courts Appeal and Review) Act 2001*, an appeal under that Act against an order made under this Act does not operate to stay the operation of the order unless the court to which the appeal is made so orders.

**Note.** Section 64 of the *Local Courts Act 1982* provides for a right of appeal against the making of an order under this Act. Section 63 of the *Crimes (Local Courts Appeal and Review) Act 2001* provides for a stay of orders on appeal.

### **16 Information relating to registrable persons**

- (1) For the purposes of determining whether to make an application under this Part, or making an application under this Part, the Commissioner of Police may, by notice in writing served on a government agency, direct the government agency to provide to the Commissioner, on or before a day specified in the notice, any information held by the agency that is relevant to the assessment of the risk posed by a registrable person to the lives or sexual safety of one or more children, or children generally.
- (2) A government agency is authorised and required to provide information requested under subsection (1) to the Commissioner of Police.
- (3) A government agency is not required to give information that is subject to legal or other professional privilege.

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## Part 3      Miscellaneous

### 17    Applications for orders against young registrable persons

The Commissioner of Police may not delegate the function of making an application for a prohibition order against a young registrable person, or to vary or revoke any such prohibition order, to a person other than a member of NSW Police of the rank of inspector or above having responsibility for child protection matters.

**Note.** The Commissioner of Police may delegate his or her powers under section 31 of the *Police Act 1990*.

### 18    Restriction on publication of identity of registrable persons and victims

- (1) A person must not publish in relation to any proceedings relating to an order under this Act:
- (a) information that identifies or is reasonably likely to enable the identification of a person as the person against whom the order is sought or any such order is made,
  - (b) the name of any victim of a registrable offence committed by a registrable person,
  - (c) the name of any particular person referred to as a person at risk because of the conduct proposed to be prohibited,
  - (d) any matter reasonably likely to enable a person referred to in paragraph (b) or (c) to be identified.

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

- (2) This section does not apply in relation to the publication of any matter with the authority of the Local Court to which the application was made or any publication by a person of his or her name.
- (3) This section does not apply in relation to the publication of any matter to any of the following persons:
- (a) the registrable person,
  - (b) any other person or class of persons specified in the order concerned,
  - (c) any member of NSW Police or a member of a law enforcement agency of the Commonwealth or another State or Territory (including CrimTrac) in their official capacity,

- (d) any person involved in the administration of the order,
- (e) any member of staff of a government agency involved in the assessment and management of a registrable person,
- (f) any person for the purpose of an investigation of an alleged breach of an order or to any person involved in proceedings for any such breach,
- (g) any other person to whom it is required or permitted to be disclosed pursuant to any other Act or law.

### **19 Recognition of prohibition orders made in other jurisdictions**

- (1) Regulations may be made for or with respect to the recognition of orders made by a court of a jurisdiction other than this State (including jurisdictions outside Australia) that are similar in nature to prohibition orders (*corresponding prohibition orders*).
- (2) In particular, regulations may be made for or with respect to the following matters:
  - (a) the recognition of corresponding prohibition orders in this State,
  - (b) applications for recognition in this State of corresponding prohibition orders,
  - (c) the conferral on registrars of Local Courts, or Local Courts, of jurisdiction with respect to recognition in this State of corresponding prohibition orders,
  - (d) the modification of corresponding prohibition orders for the purposes of recognition in this State,
  - (e) the effect of recognition of corresponding prohibition orders in this State,
  - (f) the conferral on Local Courts of jurisdiction with respect to the variation or revocation of corresponding prohibition orders.

### **20 Nature of proceedings for offences**

Proceedings for an offence under this Act or the regulations may be dealt with summarily before a Local Court.

## **21 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) A regulation may create an offence punishable by a penalty not exceeding 50 penalty units.

## **22 Amendment of other Acts**

Each Act specified in Schedule 1 is amended as set out in that Schedule.

## **23 Savings and transitional provisions**

Schedule 2 has effect.

## **24 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

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## Schedule 1 Amendment of other Acts

(Section 22)

### 1.1 Child Protection (Offenders Registration) Act 2000 No 42

#### Section 20A

Insert after section 20:

#### **20A Application of reporting obligations to persons subject to child protection prohibition orders**

- (1) If a child protection prohibition order is made against a registrable person, the reporting obligations of the registrable person recommence or continue to apply to the registrable person for the term of the order, despite any other provision of this Act.
- (2) Subsection (1) does not affect any period of the application of reporting obligations to a registrable person under this Act that exceeds the period for which a prohibition order is in force.
- (3) A person whose reporting obligations are recommenced by this section must notify the Commissioner of Police of the person's relevant personal information not later than 28 days after the order is made or within such other period as the regulations may prescribe.
- (4) The regulations may prescribe the manner in which information is to be notified under this section.
- (5) In this section, *child protection prohibition order* means a prohibition order within the meaning of the *Child Protection (Offenders Prohibition Orders) Act 2004*.

### 1.2 Commission for Children and Young People Act 1998 No 146

#### [1] Section 33 Definitions

Insert in alphabetical order in section 33 (1):

*child protection prohibition order* means a prohibition order within the meaning of the *Child Protection (Offenders Prohibition Orders) Act 2004*, and includes an order which has expired or been revoked.

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**[2] Section 34 Nature of employment screening**

Insert “, for any child protection prohibition orders made against the person” after “person” where secondly occurring in section 34 (a).

**[3] Section 36 Functions of Commission in respect of employment screening**

Insert “, child protection prohibition orders made against any person” after “person” where firstly occurring in section 36 (1) (a).

**[4] Section 38 Notification of information relating to relevant criminal records or other orders**

Insert “or any child protection prohibition orders in respect of persons,” after “persons,” where secondly occurring in section 38 (1).

**1.3 Evidence (Children) Act 1997 No 143**

**[1] Section 3 Definitions**

Insert in alphabetical order in section 3 (1):

*child protection prohibition order* means a prohibition order within the meaning of the *Child Protection (Offenders Prohibition Orders) Act 2004*, and includes an interim child protection prohibition order made under that Act.

**[2] Section 17 Proceedings to which Part applies**

Insert at the end of section 17 (d):

, and

- (e) a proceeding in relation to an application for a child protection prohibition order or to vary or revoke any such order or a proceeding in relation to a contravention of any such order.

**[3] Section 27 Children have a right to presence of a supportive person while giving evidence**

Insert at the end of section 27 (1) (d):

, and

- (e) a proceeding in relation to an application for a child protection prohibition order or to vary or revoke any such order.

## **1.4 Local Courts Act 1982 No 164**

### **Section 36 Proceedings to which Part does not apply**

Insert after section 36 (2) (b):

- (c) applications for orders, or to vary or revoke any such orders, under the *Child Protection (Offenders Prohibition Orders) Act 2004*.



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## **Schedule 2 Savings and transitional provisions**

(Section 23)

### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:  
this Act
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

### **2 Application of Act to previous actions**

This Act applies to or in respect of a person who was a registrable person immediately before the commencement of this clause.

[Second reading speech made in—

Legislative Assembly on 3 June 2004

Legislative Council on 24 June 2004]

BY AUTHORITY