

[Act 2001 No 100]



New South Wales

Justice Legislation Amendment (Non-association and Place Restriction) Bill 2001

Explanatory note

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

Overview of Bill

The objects of this Bill are:

- (a) to amend the *Crimes (Sentencing Procedure) Act 1999* so as:
 - (i) to enable “non-association” and “place restriction” orders to be imposed on persons who are sentenced for offences carrying a maximum penalty of 6 months imprisonment or more, and
 - (ii) to enable “non-association” and “place restriction” conditions to be imposed on the grant of parole under that Act, and

* Amended in committee—see table at end of volume.

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- (b) to amend the *Children (Criminal Proceedings) Act 1987* so as to enable “non-association” and “place restriction” orders to be imposed on persons who are sentenced for offences carrying a maximum penalty of 6 months imprisonment or more, and
- (c) to amend the *Bail Act 1978* so as to enable “non-association” and “place restriction” conditions to be imposed on the grant of bail under that Act, and
- (d) to amend the *Crimes (Administration of Sentences) Act 1999* so as to enable “non-association” and “place restriction” conditions to be imposed on:
 - (i) the grant of leave under Part 2 of that Act, and
 - (ii) the grant of parole under Part 6 of that Act, and
 - (iii) a sentence of home detention referred to in Part 7 of that Act, and
- (e) to amend the *Children (Detention Centres) Act 1987* so as to enable “non-association” and “place restriction” conditions to be imposed on the grant of leave under section 24 of that Act.

The Bill also makes a consequential amendment to the *Criminal Appeal Act 1912*.

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 or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments set out in Schedule 1 in relation to various Acts relating to sentencing procedure.

Clause 4 is a formal provision giving effect to the amendments set out in Schedule 2 in relation to various Acts relating to bail and sentence administration.

Clause 5 requires the Ombudsman to keep under scrutiny, and to report to the Government on, the amendments made by the proposed Act.

Non-association and place restriction orders

Crimes (Sentencing Procedure) Act 1999

Amendments to the *Crimes (Sentencing Procedure) Act 1999* insert a new Division 4A into Part 2 (**Schedule 1.1 [2]**) and a new Part 8A (**Schedule 1.1 [7]**).

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Proposed Division 4A contains a single provision (proposed section 17A) that enables a court to impose a non-association order or place restriction order on an offender whom it is sentencing for an offence that carries a penalty of imprisonment for 6 months or more if it is satisfied that it is reasonably necessary to do so in order to prevent the offender from committing further such offences. There will be two kinds of non-association order: one that prohibits the offender from being in the same company as one or more specified persons, the other that prohibits the offender from all forms of association with one or more specified persons. There is one kind of place restriction order: it will prohibit the offender from frequenting or visiting a specified place or district. An order under the proposed section will last for up to 12 months.

Proposed Part 8A contains the following provisions:

Proposed section 100A prevents a non-association order from imposing certain restrictions on the persons with whom an offender may associate (that is, members of the offender's close family) and prevents a place restriction order from imposing certain restrictions on the places or districts that the offender may frequent or visit (that is, the offender's residence, or the residence of his or her close family, or the offender's place of work, educational institution or place of worship).

Proposed section 100B requires a court to explain to an offender on whom it has imposed a non-association order or place restriction order the obligations that arise under the order and the consequences that may follow a breach of the order.

Proposed section 100C provides that a non-association order or place restriction order commences when it is made or, if it is stayed on appeal but subsequently confirmed, when it is confirmed.

Proposed section 100D provides that a non-association order or place restriction order is suspended in certain circumstances, such as if the offender is taken into custody.

Proposed section 100E provides that it is an offence (punishable by a maximum penalty of 10 penalty units (\$1,100) or imprisonment for 6 months, or both) for a person to contravene a non-association order or place restriction order without reasonable excuse.

Proposed section 100F enables a court to vary or revoke an offender's existing non-association order or place restriction order when sentencing the offender for a new offence.

Proposed section 100G enables a Local Court to vary or revoke an offender's existing non-association order or place restriction order on application by the

offender. The Commissioner of Police will be notified of all such applications and be entitled to appear as a party to proceedings on such an application.

Proposed section 100H provides that it is an offence, subject to specified exemptions, to publish or broadcast information as to the identity of any person with whom an offender is prohibited from associating pursuant to a non-association order, punishable by a maximum penalty of 10 penalty units (\$1,100).

An amendment is made to section 25 so as to prevent a non-association order or place restriction order from being imposed on an offender in his or her absence (**Schedule 1.1 [3]**).

An amendment is made to section 31 so as to include a reference to the making of a non-association order or place restriction order in the definition of *impose a penalty* in that section (**Schedule 1.1 [4]**).

An amendment is made to section 43 so as to include a reference to the making of a non-association order or place restriction order in the definition of *impose a penalty* in subsection (6) of that section (**Schedule 1.1 [5]**).

An amendment is made to clause 1 of Schedule 2 so as to enable the regulations under the Act to make provisions of a savings or transitional nature consequent on the enactment of the proposed Act (**Schedule 1.1 [8]**). A new Part is inserted at the end of Schedule 2, containing a clause that excludes offences committed before the commencement of proposed section 17A from the operation of that section (**Schedule 1.1 [9]**).

A consequential amendment is made to section 3 (**Schedule 1.1 [1]**).

Children (Criminal Proceedings) Act 1987

An amendment to the *Children (Criminal Proceedings) Act 1987* inserts a new section 33D (**Schedule 1.3 [1]**) which enables a court exercising functions under that Act to impose a non-association order or place restriction order on a person whom it is dealing with under that Act. The proposed section adopts proposed Part 8A of the *Crimes (Sentencing Procedure) Act 1999* in relation to such orders.

An amendment is made to clause 1 of Schedule 2 so as to enable the regulations under the Act to make provisions of a savings or transitional nature consequent on the enactment of the proposed Act (**Schedule 1.3 [2]**). A new Part is inserted at the end of Schedule 2, containing a clause that excludes offences committed before the commencement of proposed section 33D from the operation of that section (**Schedule 1.3 [3]**).

Criminal Appeal Act 1912

A consequential amendment is made to the definition of *sentence* in section 2 (1) of the *Criminal Appeal Act 1912* (**Schedule 1.2**).

Conditions of parole as to non-association and place restriction

Crimes (Sentencing Procedure) Act 1999

An amendment to the *Crimes (Sentencing Procedure) Act 1999* inserts new sections 51A and 51B (**Schedule 1.1 [6]**).

Proposed section 51A enables the conditions of a parole order under that Act to include non-association and place restriction provisions.

Proposed section 51B provides that it is an offence, subject to specified exemptions, to publish or broadcast information as to the identity of any person with whom an offender is prohibited from associating pursuant to parole conditions imposed under proposed section 51A, punishable by a maximum penalty of 10 penalty units (\$1,100).

Crimes (Administration of Sentences) Act 1999

An amendment to the *Crimes (Administration of Sentences) Act 1999* inserts a new section 128A (**Schedule 2.2 [2]**). The proposed section enables the conditions of a parole order to include non-association and place restriction provisions. Under existing section 257, the unauthorised disclosure of information as to the identity of any person with whom an offender is prohibited from associating pursuant to such conditions is an offence punishable by a maximum penalty of 10 penalty units (\$1,100).

Conditions of bail as to non-association and place restriction

Bail Act 1978

Amendments to the *Bail Act 1978* insert new sections 36B, 36C and 39B (**Schedule 2.1 [6]** and **[8]**).

Proposed section 36B enables the conditions of bail to include non-association and place restriction provisions.

Proposed section 36C provides that it is an offence, subject to specified exemptions, to publish or broadcast information as to the identity of any person with whom an accused person is prohibited from associating pursuant to bail conditions imposed under proposed section 36B, punishable by a maximum penalty of 10 penalty units (\$1,100).

Proposed section 39B generalises an existing requirement for an authorised officer or court to whom a bail undertaking is given to explain to any person entering into an associated bail agreement the obligations that arise under the undertaking and the consequences that may follow a breach of the undertaking.

Other consequential amendments are made to the *Bail Act 1978* (**Schedule 2.1 [1]–[5]** and **[7]**).

Conditions of leave as to non-association and place restriction

Crimes (Administration of Sentences) Act 1999

An amendment to the *Crimes (Administration of Sentences) Act 1999* inserts a new section 26A (**Schedule 2.2 [1]**). The proposed section enables the conditions of a local leave permit to include non-association and place restriction provisions. Under existing section 257, the unauthorised disclosure of information as to the identity of any person with whom an offender is prohibited from associating pursuant to such conditions is an offence punishable by a maximum penalty of 10 penalty units (\$1,100).

Children (Detention Centres) Act 1987

An amendment to the *Children (Detention Centres) Act 1987* inserts a new section 24A (**Schedule 2.3**). The proposed section enables the conditions of leave under section 24 of that Act to include non-association and place restriction provisions. Under existing section 37D, the unauthorised disclosure of information as to the identity of any person with whom an offender is prohibited from associating pursuant to such conditions is an offence punishable by a maximum penalty of 10 penalty units (\$1,100) or imprisonment for 12 months, or both.

Conditions of home detention as to non-association and place restriction

Crimes (Administration of Sentences) Act 1999

An amendment to the *Crimes (Administration of Sentences) Act 1999* inserts a new section 165A (**Schedule 2.2 [3]**). The proposed section enables the conditions of home detention imposed under section 165 to include non-association and place restriction provisions. Under existing section 257, the unauthorised disclosure of information as to the identity of any person with whom an offender is prohibited from associating pursuant to such conditions is an offence punishable by a maximum penalty of 10 penalty units (\$1,100).