

Child Protection (Offenders Prohibition Orders) Act 2004 No 46

[2004-46]



New South Wales

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Child Protection (Offenders Prohibition Orders) Act 2004 No 46



New South Wales

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.

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.

contact prohibition order means a contact prohibition order made under section 16C.

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.

Note—

The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

- (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.

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 the Local Court for an order under this Part prohibiting a registrable person from engaging in specified conduct.

Note—

Part 4 of the *Local Court Act 2007* 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) The 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) The 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, the 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) The 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 the Local Court whether or not:
 - (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 the 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 a worker (within the meaning of the *Child Protection (Working with Children) Act 2012*) 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) If the Local Court makes a prohibition order, the Local Court 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) The 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) The 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) A registrar of the Local Court may not exercise the functions of the Local Court under this section.

11 Variation or revocation of prohibition orders

- (1) An application may be made to the 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 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

If the Local Court makes, varies or revokes a prohibition order, the relevant registrar of the Local Court 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: 500 penalty units or imprisonment for 5 years, or both.

- (1A) It is a defence to proceedings for an offence under this section if it is established by or on behalf of the person charged with the offence that, at the time the offence is alleged to have occurred, the person had not received a copy of the prohibition order and was otherwise unaware of the person's obligations under the order.
- (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) (Repealed)

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 (Renumbered as sec 17A)

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.

Part 2A Contact prohibition orders

16A Definitions

In this Part:

contact means to communicate in person or by any other means (including by post, facsimile, telephone and email or any other form of electronic communication).

contact prohibition order means an order prohibiting a person who is a registrable person in relation to a particular registrable offence from contacting:

- (a) any victim of the registrable offence who is specified in the order, or
- (b) any person who was a co-offender in relation to that registrable offence who is specified in the order.

16B Commissioner of Police may apply for orders

An application may be made by the Commissioner of Police to the Local Court for a contact prohibition order against a registrable person if:

- (a) the Commissioner has reasonable grounds to suspect that the registrable person will seek to contact the victim or co-offender concerned, and
- (b) the registrable person is not subject to, and the Commissioner considers contact cannot be prevented by the making of, any of the following:
 - (i) an extended supervision order under the *Crimes (High Risk Offenders) Act 2006* or the *Terrorism (High Risk Offenders) Act 2017*,
 - (ii) a prohibition order under this Act,

- (iii) any court order prescribed by the regulations, and
- (c) the Commissioner is satisfied that there are sufficient grounds to justify the making of the application.

Note—

Part 4 of the *Local Court Act 2007* sets out the procedures for the making and hearing of applications and confers rights of appeal against the granting of contact prohibition orders.

16C Local Court may make contact prohibition order

- (1) The Local Court may make a contact prohibition order against a registrable person if:
 - (a) it is satisfied that there are sufficient grounds for making the order, or
 - (b) the Commissioner of Police and the registrable person consent to the making of the order.
- (2) The Local Court must specify the term (not exceeding 12 months) of the contact prohibition order.
- (3) A contact prohibition order takes effect:
 - (a) when the order is made, or
 - (b) if it is stayed under section 17A by a court to which an appeal is made but is confirmed on appeal (whether expressly or impliedly)—when it is confirmed.
- (4) This section does not limit the kinds of prohibition or restriction that may be imposed on a registrable person by means of any other order or direction under this Act.

16D Contact prohibition order not to restrict certain contacts

- (1) The persons specified in a contact prohibition order as persons the registrable person must not contact may not include any member of the registrable person's close family.
- (2) Despite subsection (1), a member of the registrable person's close family may be specified in a contact prohibition order if, and only if, the Local Court considers that the following exceptional circumstances exist:
 - (a) if the member of the family concerned was a victim of the registrable offence committed by the registrable person—it would be contrary to the best interests of the victim for contact to occur,
 - (b) if the member of the family concerned was a co-offender in relation to the registrable offence committed by the registrable person—there is reasonable cause to believe (having regard to the ongoing nature and pattern of criminal activity of the registrable person) that there is a risk that contact could result in the registrable person being involved with the co-offender in the commission of a

further registrable offence.

- (3) In determining the best interests of a victim under subsection (2) (a), the Local Court may take into account any wishes expressed by the victim.
- (4) The Local Court must make a record of its reasons for making an order under subsection (2).
- (5) The failure of the Local Court to comply with subsection (4) does not invalidate the order.
- (6) In this section, a registrable person's **close family** includes:
 - (a) the registrable person's spouse or de facto partner, and
 - (b) the registrable person's parents, step-parents and grandparents, and
 - (c) the registrable person's children, step-children and grandchildren, and
 - (d) the registrable person's brothers and sisters, and step-brothers and step-sisters, and
 - (e) the registrable person's guardians or carers, and
 - (f) in the case of a registrable person who is an Aboriginal person or a Torres Strait Islander—persons who are or have been part of the extended family or kin of the registrable person according to the indigenous kinship system of the registrable person's culture.

Note—

“De facto partner” is defined in section 21C of the [Interpretation Act 1987](#).

16E Variation or revocation of contact prohibition orders

- (1) An application may be made to the Local Court by the Commissioner of Police or a person subject to a contact prohibition order for an order varying or revoking a contact 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 contact 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 applicant's circumstances since the order was made 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 contact 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 contact prohibition order, and

(b) in the case of an application made by a registrable person subject to a contact prohibition order—the Commissioner of Police.

16F Explanation of orders

(1) If the Local Court makes a contact prohibition order, the Local Court 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 subsection (1).

16G Contravention of contact prohibition order

(1) A registrable person who is subject to a contact prohibition order must not, without reasonable excuse:

(a) contact or attempt to contact any victim or co-offender specified in the order, or

(b) procure another person to contact or attempt to contact that victim or co-offender.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

(2) Without limiting subsection (1), it is a reasonable excuse for contacting a person in contravention of a contact prohibition order if:

(a) the registrable person did so in compliance with an order of a court, or

(b) having contacted the person unintentionally, the registrable person immediately terminated the contact, or

(c) contact is made with a co-offender while the registrable person was in strict government custody within the meaning of the *Child Protection (Offenders Registration) Act 2000*.

(3) 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.

- (4) This section extends to an act contravening this section done outside Australia by a person resident or domiciled in the State.

16H 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 legal or other representatives to be present during the hearing of the proceedings.

Part 3 Miscellaneous

17 Applications for orders against young registrable persons

The Commissioner of Police may not delegate (under section 31 of the [Police Act 1990](#)) any of the following functions unless the delegation is made to a police officer, or to police officers of a class, prescribed by the regulations:

- (a) making an application for a prohibition order or contact prohibition order against a young registrable person,
- (b) making an application to vary or revoke a prohibition order or contact prohibition order against a young registrable person.

17A Appeal does not stay order

Despite any provision of the [Crimes \(Appeal and Review\) 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 70 of the [Local Court Act 2007](#) provides for a right of appeal against the making of an order under this Act. Section 63 of the [Crimes \(Appeal and Review\) Act 2001](#) provides for a stay of orders on appeal.

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 the NSW Police Force or a member of a law enforcement agency of the Commonwealth or another State or Territory (including the Australian Crime Commission) 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 the Local Court, or the Local Court, 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 the Local Court of jurisdiction with respect to the variation or revocation of corresponding prohibition orders.

20 Nature of proceedings for offences

- (1) Proceedings for an offence under this Act (except an offence under section 13) or the regulations may be dealt with summarily before the Local Court.
- (2) Chapter 5 of the *Criminal Procedure Act 1986* (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of an offence under section 13.

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 (Repealed)

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.

Schedule 1 (Repealed)

Schedule 2 Savings and transitional provisions

(Section 23)

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent

on the enactment of this Act or any Act that amends 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.

Part 2 Provisions consequent on enactment of this Act

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.

Part 3 Provisions consequent on enactment of [Child Protection Legislation \(Registrable Persons\) Amendment Act 2009](#)

3 Contact prohibition orders

Part 2A applies to or in respect of a person who was a registrable person immediately before the insertion of that Part.

Part 4 Provisions consequent on enactment of [Child Protection Legislation Amendment \(Offenders Registration and Prohibition Orders\) Act 2013](#)

4 Definition

In this Part:

amending Act means the [Child Protection Legislation Amendment \(Offenders Registration and Prohibition Orders\) Act 2013](#).

5 Contravention of orders

Section 13, as in force immediately before its amendment by the amending Act, continues to apply in respect of a contravention that occurred before that amendment.

6 Contact prohibition orders

Section 16C (1), as substituted by the amending Act, does not apply in respect of an application that was made before the commencement of that substitution.

7 Applications for orders against young registrable persons

Section 17, as in force immediately before its substitution by the amending Act, continues to apply in respect of an application referred to in that section that was made before that substitution.