



# Legal issues bulletin

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## Child Protection (Offenders Prohibition Orders) Act 2004 implications for schools

### What is the purpose of the Act?

The Child Protection (Offenders Prohibition Orders) Act 2004 ("the Act") empowers police to seek various prohibition orders from the court if they believe any person convicted of certain offences involving children pose a threat to the sexual safety or life of a child or children in general.

### How does the Act affect the department?

If police believe it is necessary for the purpose of making an application to the court, they can serve a notice on any government agency directing the agency to provide specified information. A number of schools have already been asked by police to provide such information.

### Which offenders are subject to the Act?

The Act applies to offenders who are required to be registered under the provisions of the Child Protection (Offenders Registration) Act 2000, ("registrable persons"). These are offenders who have been found guilty and sentenced in respect of the following offences or types of offences (called registrable offences):

- Murder, where the victim is a child.
- Kidnapping a child, except where the offender is a parent or carer of the child.
- Sexual intercourse with and/or committing an act of indecency with a child.
- Child prostitution matters.
- Child pornography matters.
- Filming children for sexual gratification.
- Attempting or aiding and abetting any of the above offences or types of offences.

### Does the Act apply to offenders who are under the age of 18 years?

Yes, so long as they have been found guilty and sentenced in respect of a relevant offence.

### What sort of orders can the Court make?

The Court can make an order (called a prohibition order) which prohibits the offender from:

- associating with or contacting specified persons or kinds of persons
- being in specified locations or kinds of locations

- engaging in specified behaviour
- being in specified employment or employment of a specified kind

There is no limitation on the kinds of conduct that can be prohibited by an order.

### What factors does a court take into account when deciding whether to make an order?

The Act specifies a number of factors that the Court must take into account before making an order, including:

- the seriousness of the offence and the period which has elapsed since the offence was committed
- the age of each victim at the time of the offence and age of the offender, both currently and at the time of the offence
- the difference in age between the offender and each victim
- the seriousness of the offender's total criminal record
- the level of risk that a further registrable offence will be committed compared to the effect of the order on the offender
- in the case of an offender under the age of 18 years, the offender's educational needs

In making an order, the Court does not need to be satisfied that the offender is likely to pose a risk to a particular child or particular class of children. Any proceedings before the Court are heard in the absence of the public. If considered appropriate, the Court can permit other persons or their representatives to be present during any hearing. There are also restrictions on publishing any details of proceedings that might reasonably identify the offender or any victims or other persons considered at risk.

### For what period of time can an order be made?

In respect of adult offenders, the court can make an order for a maximum period of 5 years. In respect to offenders under the age of 18, the maximum period is 2 years.

### Who can make an application for an order under the Act?

Applications can only be made by police officers.

### What happens if a person contravenes the terms of an order?

If an offender contravenes an order without a reasonable excuse, he or she is liable to a penalty of up to \$11,000 or 2 years imprisonment or both. The Act empowers police to arrest offenders if they believe, on reasonable grounds, that the offender has breached the terms of an order.

### Will schools be told about people who are subject to these orders?

NSW Police is responsible for the maintenance of records relating to people subject to orders under the Act. Schools can anticipate being advised of orders made if the order:

- requires the person to remain away from a particular school(s)
- restricts the contact a person can have with a particular student or students attending a government school
- prohibits the person from engaging in any activity relevant to the school
- has other provisions which, in the view of the police, make it appropriate to provide the advice.

In determining whether to disclose information to principals, police will assess each matter on a case by case basis. The NSW Police Information Disclosure Policy obliges police to release information about registrable persons only in circumstances where:

- there is a reasonable and honest belief that it is necessary to protect any person from a crime, or
- it is necessary to comply with any law, or
- it relates to a legitimate law enforcement function.

### Who should be told about the existence of such orders?

If police advise principals that an order has been made, this information should be made known to all staff. As parents and other members of the community may provide assistance to schools, advice should be sought from the police about the appropriateness of informing those people about any orders made. Any decision to inform the wider school

community must only be made after consultation with police, the School Education Director and/or the Safety and Security directorate. This is particularly important in view of provisions within the Act which limit the circumstances in the identity of a person subject to an order can be revealed.

### What if principals have concerns about particular persons known to have been convicted of a registrable offence and they have not been advised by the police that an order has been made or is being sought?

Principals may become aware that persons associated with the school have been found guilty of a registrable offence in circumstances where police have not advised that an order has been made or is being sought. In these cases, principals should contact local police. It will then be necessary for the police to determine whether it is appropriate for an application for an order to be made.

### What action should I take if a person who has been found guilty of a registrable offence seeks to enrol or is currently enrolled in the school?

While it is anticipated such circumstances will be rare, if the person is the subject of an order under the Act, the enrolment will be subject to the conditions outlined in the order.

If principals are not aware if orders have been made or are being sought by the police, they should contact local police. A risk assessment should also be undertaken to determine what other action, if any, needs to be taken pending further advice from the police.

### What other implications arise for principals under the Act?

Staff may be asked to make written statements to assist the police in determining whether any risks exist sufficient to justify the seeking of an order under the Act. Staff should provide whatever assistance is reasonably necessary in these circumstances.

In pursuing applications under the Act, police have the power to serve a notice on any government agency directing the agency to produce to the police any information held that is relevant to the assessment of risk posed by an offender to the lives or sexual safety of any children. If served with a notice, principals must provide any relevant information to the police. [A copy of the "Information Request"](#) that will be used by the police is available for staff from the Legal Services portal.

There is no requirement to provide any information that is subject to legal or other professional privilege. In the school context, the only material likely to attract such privilege is that held by school counsellors which may be subject to professional confidential relationship privilege (PCRP). In the event information held on a counsellor's file is captured by a notice served by the police, counsellors should consult with their line managers to determine what material may be provided.

Any material that is subject to PCRP must only be provided if the person about whom the information relates consents to the release.

Further advice regarding the operation of the new legislation can be obtained from Legal Services.

## About Legal Services

Legal Services is here to support our government schools. **[Staff can contact Legal Services by email or phone.](#)**

Legal Services can only provide legal advice to departmental staff. It is not able to provide legal advice or assistance to parents, students or members of the public due to the potential for a conflict of interest.