

# The Shopfront

## YOUTH LEGAL CENTRE

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### Non-Association and Place Restriction Orders

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#### 1 Background

The *Justice Legislation Amendment (Non-Association and Place Restriction) Act* was passed by the New South Wales Parliament in late 2001. It is fully operational from 22 July 2002.

The Act is ostensibly aimed at breaking up gangs by stopping members from associating with each other and hanging out in certain places. It is strongly influenced by US research showing that gangs share certain characteristics, including identification with a particular territory.

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#### 2 What the Act will do

##### 2.1 Court may make non-association or place restriction orders

The Act allows a court to impose an order prohibiting contact with certain people, or entry to certain areas.

An order may be made only if the court is sentencing a person for an offence carrying a maximum penalty of 6 months or more (in practice, this includes just about any offence!).

An order may be made in addition to any other sentence that is imposed (eg fine, bond, community service).

An order cannot be made if the court dismisses the matter under section 10 of the *Crimes (Sentencing Procedure) Act* (adult courts) or section 33(1)(a) of the *Children (Criminal Proceedings) Act* (Children's Court), deals with the matter under the *Young Offenders Act*, or puts the offender on a "Griffiths Remand" (a long adjournment to assess the offender's rehabilitation capacity or progress)

An order cannot be made in the offender's absence.

The court has to be satisfied that the order is reasonably necessary to ensure the person does not commit further offences. However, there is no requirement that the person(s) or place(s) specified in the order have anything to do with the criminal activity the defendant is being sentenced for.

## 2.2 Types of orders

The court may make one or both of the following orders:

- a **non-association order**, prohibiting the person from associating with certain people - either by prohibiting them from being in company (hanging out together) or by prohibiting all forms of contact (phone, email, etc). The order cannot stop a person from associating with close family members (eg children, siblings, spouses, parents, grandparents, guardians or carers).
- a **place restriction order**, prohibiting the person from going to certain areas. The order cannot stop a person from going to their own home, any close family member's home, or to their regular workplace, educational institution or place of worship.

The order may be made for up to 12 months.

## 2.3 Breach of an order

It will be an offence to breach a non-association or place restriction order, unless the person has a reasonable excuse (eg they accidentally ran into someone they were not supposed to associate with, or there was an emergency that required them to go to a certain area). The maximum penalty for a breach is 6 months' imprisonment and/or a fine of 10 penalty units (\$1,100).

## 2.4 Appeals, variation or revocation of orders

A person who receives a non-association or place restriction order from the Local or Children's Court may appeal against it to the District Court, just like any other sentence.

A person may also apply to the court which imposed the order to have the order revoked or varied (eg if circumstances have changed and the order is no longer necessary or appropriate). If the court refuses to vary or revoke the order, there is no appeal against this decision.

## 2.5 Bail and parole conditions

The Act also allows non-association or place restriction conditions to be imposed as part of a person's bail, parole or leave from a detention centre. This part of the Act commenced in May 2002. However, this is really nothing new - courts have always had power to set bail and parole conditions as they see fit.

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## 3 Problems with the Act

- The NSW government claims that this is part of a comprehensive anti-gang package and is based on US research (the 1995 USA Federal Bureau of Justice Assistance Youth Gang Survey). Australian academics have criticised the relevance of US research on crime to the Australian experience. Patterns of crime and criminology are very different, with the incidence of US-style gangs here low. There are very few organised youth gangs.

- The Act is unlikely to have much impact on “gangs”, which are highly organised networks with hierarchical structures and an identifiable leadership. Instead, it is likely to impact negatively on young people and indigenous people.
- Young people, or people with difficult lives and little social support, may find it very difficult to abide by the orders. They will then be charged with breaching an order - yet another public order offence. They may end up with a penalty including a bond with stricter conditions, a fine, or a custodial sentence (which would guarantee exposure to negative peer influences!).
- The Act contradicts efforts to reduce the over-representation of disadvantaged and vulnerable people, particularly young people and Aboriginal and Torres Strait Islander people, in the criminal justice system.
- The Act contravenes international human rights to freedom of association and peaceful assembly.
- While it is true that young people may commit offences if they “hang out with the wrong crowd”, this problem would be better addressed by giving young people some positive alternatives. We should be trying to get them out of the criminal justice system, not enmesh them further in it (where they are more likely to form negative associations).

### **Shopfront Youth Legal Centre July 2002**

*The Shopfront Youth Legal Centre is a service provided by Freehills, in association with the Sydney City Mission and the Salvation Army.*

*This document was last updated in July 2002, and to the best of our knowledge is an accurate summary of the law in New South Wales at that time.*

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