

Chapter 7. Operation of the Act

This chapter details the use of the provisions during the review period.

7.1. Non-association and place restriction orders imposed at sentencing

7.1.1. *Crimes (Sentencing Procedure) Act 1999 and the Children (Criminal Proceedings) Act 1987*

7.1.1.1. Non-association and place restriction orders imposed

The Act enables a court to impose a non-association order or place restriction order on an adult or juvenile offender sentenced for an offence that carries a penalty of imprisonment for six months or more.¹⁶¹

Information obtained from NSW Local Courts and BOCSAR indicates that for the review period 22 July 2002 to 22 July 2004, there were 20 non-association and place restriction orders imposed by the courts.¹⁶² These orders were imposed at eight local courts, with one local court, Raymond Terrace, being responsible for 11 of the orders.¹⁶³ Thirteen of the orders were imposed by the same magistrate.¹⁶⁴

Only two of the orders were imposed at a court located in the metropolitan area.

Sixteen of the orders prohibited an offender from visiting a specified place or district, whilst the remaining four prohibited an offender from associating with a specified person or persons. Of the four non-association orders, three were limited non-association orders which prohibited the offender from being in company with a specified person, whilst one was an unlimited non-association order which prohibited the offender from being in company with a specified person and from communicating with that person by any means.¹⁶⁵

Just over half of the orders were made for a period of 12 months, whilst the remainder were for six months.

Table 1 shows the specific details of each of the 20 non-association and place restriction (NAPR) orders imposed by the courts between 22 July 2002 – 22 July 2004.

7.1.1.2. Characteristics of offenders subject to non-association and place restriction orders

Table 1 details the characteristics of offenders subject to non-association and place restriction orders. Some general observations can be made about the characteristics of offenders subject to these orders:

- 19 of the 20 non-association and place restriction orders were imposed on male offenders.
- 5 of the offenders were juveniles.
- 5 were recorded as being Aboriginal.

7.1.1.3. Offences for which non-association and place restriction orders were issued

Table 1 details the types of offences committed, which resulted in a non-association or place restriction order being imposed by the court.

Nineteen of the 20 offenders who had orders imposed on them were convicted of offences that attracted penalties of six months imprisonment or more. Seventeen of the offenders had previous criminal histories.

However one offender (Case no.14) was convicted of minor offences that did not attract a penalty of more than three months imprisonment. The order imposed in this matter appears to have been in contravention of the Act. Section 17A(1), *Crimes (Sentencing Procedure) Act 1999* states that the section applies to any offence that is punishable by imprisonment for six months or more only, whether or not the offence is also punishable by fine. The details of the matter are as follows:

A male offender, 20 years old, at the time of the offence was at a hotel in the town of Medowie, north of Newcastle. Police arrived at the hotel in response to a fight that had occurred outside the premises. While the police and hotel manager were speaking, the manager identified the offender who was intoxicated as a patron that had previously been banned from the hotel. The police instructed the offender to leave the hotel, and he finally did. When the police left the hotel they witnessed the offender trying to re-enter the hotel. When they again instructed him to leave he became disgruntled, was abusive, and resisted arrest from police. He was arrested and charged. The manager of the hotel advised the police that she was fearful of the offender and felt unable to exert her authority to remove him from the premises although he had been banned. The manager requested the police give consideration to placing conditions on the offender that he not contact the hotel and not attend the hotel including the carpark and confines. The offender was convicted of failure to quit premises and behave in an offensive manner and ordered to enter a bond for 12 months and fined. The court also imposed a place restriction order on the offender prohibiting him from visiting or frequenting the hotel for six months.¹⁶⁶

Table 1: Details of NAPR orders imposed between 22 July 2002 and 22 July 2004

No.	Gender	Age (yrs)*	Aboriginal Status	Date of Order	Offence	Act	Maximum Penalty	Sentence	Type of Order	Length of Order (mths)	Court
1	Male	17	Aboriginal	11/09/2002	Take & drive conveyance w/o consent of owner	Section 154A (1)(A) Crimes Act 1900	5 yrs imprisonment	1 mth (12mths non parole) Control Order: s33(1)(g) Children (Criminal Proceedings) Act 1987	Place restriction: must not enter or be within 5 kilometres of Bonalbo	12	Casino
					B&E bldg commit serious ind off (steal) value <= \$15000 (x5)	Section 112 (1) Crimes Act 1900	14 yrs imprisonment	Supervised parole: Children's (Detention Centres) Regulation 1995, Regulation 52E			
					Steal motor car/ motor vehicle	Section 154AA(1) Crimes Act 1900	10 yrs imprisonment				
					Threaten violence to cause fear	Section 11A(1) Summary Offences Act 1988	10 penalty units or 6 mths imprisonment				
					Larceny	Section 117 Crimes Act 1900	5 yrs imprisonment				
					Plus driving offences						
2	Male	17	No	14/05/2003	Common assault	Section 61 Crimes Act 1900	2 yrs imprisonment	Probation: s33(1)(c) Children (Criminal Proceedings) Act 1987	Place restriction: city of Cessnock	12	Cessnock

Table 1: Details of NAPR orders imposed between 22 July 2002 and 22 July 2004

No.	Gender	Age (yrs)*	Aboriginal Status	Date of Order	Offence	Act	Maximum Penalty	Sentence	Type of Order	Length of Order (mths)	Court
3	Male	13	No	3/10/2002	Shoplifting value <=\$2000	Section 117 Crimes Act 1900	5 yrs imprisonment	6 mths bond: s33 (1)(b)C Children (Criminal Proceedings) Act 1987	Place restriction: not to go inside retail store at Bonnyrigg, unless accompanied by brother or mother	6	Lidcombe
4	Male	23	No	2/09/2002	Common Assault	Section 61 Crimes Act 1900	2 yrs imprisonment	12 mth bond: s10 (1) Crimes (Sentencing Procedure) Act 1999	Non-association: prohibited from being in the company of the specified person	12	Raymond Terrace
5	Male	31	Aboriginal	18/11/2002	Fail to quit premises when refused entry by licensee Common assault	Section 103(3) Liquor Act 1982 Section 61 Crimes Act 1900	50 penalty units 2 yrs imprisonment	Sentenced to the rising of the court, fine: s15 Crimes (Sentencing Procedure) Act 1999	Place restriction: prohibited from frequenting/visiting licensed premises/hotel, Raymond Terrace	12	Raymond Terrace

Table 1: Details of NAPR orders imposed between 22 July 2002 and 22 July 2004

No.	Gender	Age (yrs)*	Aboriginal Status	Date of Order	Offence	Act	Maximum Penalty	Sentence	Type of Order	Length of Order (mths)	Court
6	Male	29	No	24/01/2003	Maliciously destroy or damage property < = \$2000 (x2)	Section 195(A) Crimes Act 1900	5 yrs imprisonment	3 mths imprisonment: s5 Crimes (Sentencing Procedure) Act 1999 3 yr bond: s9 Crimes (Sentencing Procedure) Act 1999	Place restriction: prohibited from frequenting/visiting Kearsley	12	Raymond Terrace
					Contravene AVO	Section 562(1) Crimes Act 1900	50 penalty units or 2 yrs imprisonment				
					Common Assault	Section 61 Crimes Act 1900	2 yrs imprisonment				
7	Female	25	Aboriginal	21/02/2003	Shoplifting (x2)	Section 117 Crimes Act 1900	5 yrs imprisonment	2 yr bond: s9 Crimes (Sentencing Procedure) Act 1999	Place restriction: prohibited from frequenting/visiting retail stores, Hunter Street Mall, Newcastle	12	Raymond Terrace

Table 1: Details of NAPR orders imposed between 22 July 2002 and 22 July 2004

No.	Gender	Age (yrs)*	Aboriginal Status	Date of Order	Offence	Act	Maximum Penalty	Sentence	Type of Order	Length of Order (mths)	Court
8	Male	22	Aboriginal	26/05/2003	Affray	Section 93C(1) Crimes Act 1900	10 yrs imprisonment	2 yr bond: s9 Crimes (Sentencing Procedure) Act 1999	Place restriction: prohibited from frequenting/visiting a Service Station at Karuah	6	Raymond Terrace
9	Male	32	No	5/05/2003	Assault Occasioning Actual Bodily Harm	Section 59(1) Crimes Act 1900	5 yrs imprisonment	2 yr bond: s9 Crimes (Sentencing Procedure) Act 1999	Place restriction: prohibited from frequenting/visiting an Indoor Sports Centre at Medowie	6	Raymond Terrace
10	Male	29	No	10/03/2003	Stalk/Intimidate with intent to cause fear physical/mental	Section 562AB(1) Crimes Act 1900	5 yrs imprisonment or a fine of 50 penalty units, or both.	12mth bond: s9 Crimes (Sentencing Procedure) Act 1999	Place restriction: prohibited from frequenting/visiting licensed premises/hotel, Glen Innes	12	Raymond Terrace

Table 1: Details of NAPR orders imposed between 22 July 2002 and 22 July 2004

No.	Gender	Age (yrs)*	Aboriginal Status	Date of Order	Offence	Act	Maximum Penalty	Sentence	Type of Order	Length of Order (mths)	Court
11	Male	41	No	22/04/2003	Common Assault	Section 61 Crimes Act 1900	2 yrs imprisonment	\$300 fine: s5 Crimes (Sentencing Procedure) Act 1999	Place restriction: prohibited from frequenting/visiting licensed premises/hotel, Nelson Bay	6	Raymond Terrace
12	Male	15	Aboriginal	11/02/2003	Shoplifting < = \$2000	Section 117 Crimes Act 1900	5 yrs imprisonment	Bond: s33(1)(b) Children (Criminal Proceedings) Act 1987	Non-association: prohibited from being in the company of the specified persons	12	Tamworth
13	Male	21	No	27/04/04	Affray	Section 93C(1) Crimes Act 1900	10 yrs imprisonment	3 mth periodic detention: s6 Crimes (Sentencing Procedure) Act 1999	Limited non-association: prohibited from being in the company of specified persons	6	Raymond Terrace
14	Male	21	No	15/03/04	Fail to quit premises — person previously refused Behave in an offensive manner in/near a public place/school	Section 103(3) Liquor Act 1982 Section 4 Summary Offences Act 1988	50 penalty units 6 penalty units or imprisonment for 3 mths	12 mth bond and fine (\$300): s9, s14 Crimes (Sentencing Procedure) Act 1999	Place restriction: prohibited from frequenting/visiting licensed premises/hotel, Medowie	6	Raymond Terrace

Table 1: Details of NAPR orders imposed between 22 July 2002 and 22 July 2004

No.	Gender	Age (yrs)*	Aboriginal Status	Date of Order	Offence	Act	Maximum Penalty	Sentence	Type of Order	Length of Order (mths)	Court
15	Male	34	No	9/06/04	Contravene apprehended domestic violence order	Section 562 Crimes Act 1900	50 penalty units or 2 yrs imprisonment	9mths imprisonment (suspended sentence); s12 Crimes (Sentencing Procedure) Act 1999	Place restriction: prohibited from frequenting/visiting City of Cessnock	12	Cessnock
16	Male	34	No	20/07/04	Contravene apprehended violence order	Section 562 Crimes Act 1900	50 penalty units or 2 yrs imprisonment	6 mths imprisonment (suspended sentence); s12 Crimes (Sentencing Procedure) Act 1999	Place restriction: prohibited from frequenting/visiting an area bounded in Brisbane Waters	6	Gosford
17	Male	15	No	14/07/04	Robbery in company	Section 97 Crimes Act 1900	20 yrs imprisonment	70 hrs of community service and fine (\$300); s33(1)(f), s33(1)(c) Children Criminal Proceedings) Act 1987.	Unlimited non-association: prohibited from being in the company and communicating with specified persons	6	Lidcombe

Table 1: Details of NAPR orders imposed between 22 July 2002 and 22 July 2004

No.	Gender	Age (yrs)*	Aboriginal Status	Date of Order	Offence	Act	Maximum Penalty	Sentence	Type of Order	Length of Order (mths)	Court
18	Male	20	No	30/06/04	Supply prohibited drug (cannabis)	Section 25 (1) <i>Drug Misuse and Trafficking Act 1985</i>	2000 penalty units or 10 yrs imprisonment, or both If dealt with summarily: 100 penalty units or imprisonment for 2 yrs, or both	12mths imprisonment (suspended sentence): s12 <i>Crimes (Sentencing Procedure) Act 1999</i>	Place restriction: prohibited from frequenting/visiting township of Nimbin	12	Lismore
19	Male	20	No	15/06/04	Maliciously destroy or damage property < = \$2000	Section 195 <i>Crimes Act 1900</i>	5 yrs imprisonment	CSO (75 hours) & 2 yr Bond: s8, s9 <i>Crimes (Sentencing Procedure) Act 1999</i>	Place restriction: prohibited from frequenting/visiting a Caravan Park, Heatherbrae	12	Raymond Terrace
20	Male	43	No	24/06/04	Contravene apprehended violence order	Section 562 <i>Crimes Act 1900</i>	50 penalty units or 2 yrs imprisonment	Bond: (s9) (12 mth) <i>Crimes (Sentencing Procedure) Act 1999</i>	Place restriction: prohibited from frequenting/visiting within 50 metres of a residential address in Coonabarabran	6	Coonabarabran

Source: NSW Local Courts data and court papers and BOC SAR data, July 2002–July 2004

* The age of the NAPR recipients detailed in Table 1 refers to their age at the time of being charged by police

7.1.1.4. Places from which offenders were prohibited from frequenting

Below is a summary of the places offenders were prohibited from frequenting in the 16 matters where place restriction orders were imposed:

- townships (6)
- licensed premises/hotels (4)
- retail stores (2)
- service station (1)
- sports centre (1)
- caravan park (1)
- within 50 metres of a residential address (1).

In a number of the matters where place restrictions orders were imposed the offenders had committed offences in licensed premises whilst intoxicated. The details of one of those matters is set out below:

An Aboriginal male offender, aged 31 at time of sentencing, was convicted of assault. The offender had entered the main bar area of a hotel in Raymond Terrace in a heavily intoxicated state. The victim, the licensee of the hotel, refused to serve the offender and requested him to leave. The defendant then struck the victim in the chest and arm and left the premises. Shortly after he was arrested and taken into custody. The offender was convicted for assault and sentenced to the rising of the court and fined.¹⁶⁷ The court also imposed a place restriction order on the offender prohibiting him from frequenting or visiting the hotel for 12 months. The magistrate commented that 'it is probably in your interests as well as in the interest of the licensee whom you assaulted [that you not return to the hotel]'.¹⁶⁸

In a number of matters where place restriction orders were imposed the offenders were prohibited from frequenting or visiting particular retail stores arising from shoplifting convictions. The details of one of these matters is set out below:

An Aboriginal female offender, aged 25, was caught shoplifting at two women's fashion retail stores located in Newcastle. The magistrate noted that the offender stole to fund a cannabis addiction. The offender was convicted of shoplifting and sentenced to enter a bond for two years. The court also imposed a place restriction order that prohibited the offender from visiting or frequenting the retail stores for 12 months.¹⁶⁹

In one matter the place restriction order imposed on a male juvenile included the exception that the offender not attend the retail store at Bonnyrigg unless accompanied by his brother or mother.¹⁷⁰

7.1.1.5. Persons from which offenders were prohibited from associating

There were four matters where non-association orders were imposed. In three of those matters offenders were prohibited from associating with co-offenders. In the other matter the offender was prohibited from associating with the two juveniles who were in his company just prior to the offence being committed.

It appears that in all the matters where non-association orders were imposed, no co-offenders or persons accompanying the offender had orders imposed on them. There is some evidence that this may be because the particular offenders who had orders imposed on them were perceived by the court to be more vulnerable than their cohorts.

In one such matter it was noted by the magistrate that the offender was the less aggressive member of the offending group:

A male offender, aged 23 at the time of offence, was involved, along with a co-offender, in a physical assault upon two victims. Both offenders were intoxicated at the time. The court noted that the co-offender's assault on the victims was more serious than the offender's assault. The court found the offender guilty of the offence but did not record a conviction and discharged the offender upon entering a 12 month good behaviour bond. The court also imposed a non-association order prohibiting the offender from associating with the co-offender for 12 months. The police prosecutor commented that 'it is in the defendant's interest that a [non-association] order be made...as opposed to leaving it up to perhaps a person who is not strong enough to make those decisions.' The magistrate commented 'it's probably a good idea if you don't get together'.¹⁷¹

In another matter where a juvenile offender committed a robbery in company with five other juvenile males the offender's solicitor commented that the co-accused 'were older and had more criminal history than he did at that stage and certainly now as well' and that it was 'one of those offences of immaturity' (see 7.1.1.6 below for more details).¹⁷²

In another matter an Aboriginal juvenile offender's mother addressed the court and asked for a non-association order commenting that 'I'd rather he not associate with those boys. He's too easily influenced'.¹⁷³

However, in one matter it appears that the court may have attempted to separate the 'main' offender from his co-offenders by imposing a non-association order on the offender. The matter involved five young males committing an

offence of affray. The court noted that the offender who had the order imposed upon him had a considerable criminal history and was the 'prime mover' behind the offence (see 7.1.1.6 below for more details).¹⁷⁴

7.1.1.6. Orders imposed where the offences appeared to be 'gang type' offences

As discussed in Chapter 3 in the absence of an established definition of a gang in the Australian context, we refer to a 'gang type' offence as an offence where there is evidence of criminal activity involving two or more people.

Applying this definition to those 20 matters where non-association and place restriction orders were imposed in the review period we can determine that five (5) of the matters could be classified as matters which involved 'gang type' offences.

Two of these matters involved juveniles in small groups committing shoplifting offences and another matter involved two young males assaulting a group. One matter involved six juvenile males committing an offence of robbery in company. The details of this matter are set out below:

A juvenile male aged 15 years was in the company of five other juvenile males when committing the offence of robbery in company. The offenders and co-offenders approached the victim on a train in a metropolitan area and demanded money. The offender acted as a 'stand over man' with four other offenders while the remaining offender robbed the victim of money from his wallet and mobile phone. The offenders were identified from footage from the State Rail CCTV. The offender's lawyer in court stated that the offender no longer had 'a need to associate' with the co-offenders stating 'He knew them mostly through school, Year 9, he left them in early Year 10 and certainly because he's now full time employed he has no real need or opportunity to be associating with some of those other co-accused some of whom were older and had more criminal histories than he did at that stage and certainly now as well.' The offender was sentenced to 70 hours of community service, fined and ordered to pay compensation to the victim. A non-association order was also imposed which prohibited him from being in the company of the five co-offenders for a period of 12 months.¹⁷⁵

The fifth matter involved five young males committing an offence of affray:

A 21 year old intoxicated male was in the company of four other males in a car when they became disgruntled with another driver. They started to harass the other driver, who then stopped. The five offenders then threw beer bottles at the victim, one striking him in the head, and others causing damage to the victim's vehicle. The victim proceeded to the nearest police station where he reported the matter. This occurred in Nelson Bay, NSW. The five offenders were apprehended and charged with affray. The offender in question was identified by the court as the 'principal offender' and had a considerable record. He was sentenced to three months of periodic detention and ordered to pay compensation to the victim. A non-association order was also imposed which prohibited him from being in the company of the four co-offenders for a period of six months.¹⁷⁶

7.1.1.7. Sentences received by those subject to non-association and place restriction orders

Sentences imposed on those who were subject to non-association and place restriction orders include the following:

- imprisonment (2)
- periodic detention (1)
- community service orders (2)
- suspended sentences (3)¹⁷⁷
- good behaviour bonds (7)¹⁷⁸
- fines (4)
- rising of the court (1)
- probation (1).¹⁷⁹

7.1.1.8. Raymond Terrace and Casino courts

The fact that 13 (65%) of the orders were imposed by the same magistrate at two local courts, Raymond Terrace and Casino, merits comment. It appears there may have been a number of factors which have influenced this occurrence.

It was reported in the *Newcastle Herald* in 2001 that 'juvenile group activity' in the Raymond Terrace area acted as a prompt for the introduction of the legislation. The paper reported the following on Saturday, 31 March 2001:

A Raymond Terrace couple terrorised by groups of youths half their age have prompted a NSW Opposition push for tough new 'anti-gang' laws....The NSW Opposition is using the Dipper's terrible predicament as evidence of the need for tough new anti-gang laws to allow police to break up the 'pack mentality of juvenile louts'. The Coalition is formulating a policy that will be followed by legislation in Parliament. Opposition legal spokesman

Chris Hartcher said it was obvious police could not control juvenile gangs. Police should have the power to take offenders before a magistrate and get an order prohibiting individuals from coming together or associating if they are known to create trouble when in each other's company. Mr Hartcher said 'if they continued to get together they would face some form of disciplinary program or sanction'.¹⁸⁰

The comments from the member for Port Stephens, Mr J Bartlett MP, when the Act was introduced into the Legislative Assembly in 2001 provides further evidence of a perceived problem in the Raymond Terrace area. The Port Stephens electorate includes Raymond Terrace. Mr Bartlett commented that the legislation 'goes a long way towards addressing the concerns that have been expressed' by the Raymond Terrace Chamber of Commerce and other committees and persons in the area.¹⁸¹

For the purposes of the review, this Office interviewed the magistrate who imposed the 13 orders at Raymond Terrace and Casino courts. At the time of the interview in early 2003, she had imposed three orders.

In response to a question as to why she used the orders she replied that: 'They were all made on the application of the police prosecutor...I am fortunate that I have such an astute police prosecutor.' She further commented that 'I knew of them [the orders] but you are constantly being told of new things and it does take a little bit of time to start using them and become accustomed to them'.¹⁸²

She said that 'the prosecutors are also relying on the advice from police. I think it might be a country thing and the police are saying I don't want these people hanging around together'.¹⁸³

She also commented that when dealing with gangs she believed you should 'try and separate off the vulnerable ones, those who are easily influenced, who can be persuaded by peer group pressure and get them away from the influence of people who are going to do what they want to do anyway'.¹⁸⁴

The same police prosecutor was present in 11 of the 13 matters where this magistrate imposed the orders. In December 2005 we interviewed this police prosecutor for the purposes of the review. He was of the view that the orders had been effective in reducing crime in the area, and that the place restriction orders prohibiting offenders from visiting licensed premises and shopping centres had been particularly useful in reducing criminal activity in and around those locations. Prior to requesting such an order it was his usual practice to consult with the licensee or other relevant person to discuss the utility of imposing such an order.¹⁸⁵

In relation to the impact of the orders on gang related activity in the area the police prosecutor commented that those offenders who had orders imposed upon them as a result of his submissions were often loosely involved with a group who consumed alcohol together. He commented that these groups did not have the 'cohesive nature of a gang'.¹⁸⁶

The police prosecutor believes that these orders were particularly suited for use in regional areas where the police were more familiar with the offenders, the persons named and the locations connected with the orders.

7.1.1.9. Consideration by the court of issues related to association with close family

The scope of non-association orders is qualified by provisions that prevent a non-association order from imposing certain restrictions on the people an offender may associate with (that is members of the offender's close family).¹⁸⁷

A study of the transcripts and court papers of the four matters where non-association orders were imposed reveals that none of the people the offenders were prohibited from associating with were members of the offender's close or extended family. In all cases they were associates or co-offenders.

7.1.1.10. Consideration by the court of issues related to restricting access to specified places

The scope of place restriction orders is qualified by provisions that prevent the court 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).¹⁸⁸

A study of the transcripts and courts papers of the 16 matters where place restriction orders were imposed in the review period revealed the following:

- one offender was prohibited from frequenting or visiting a township where, prior to sentencing, the offender had resided
- one offender was prohibited from frequenting or visiting a township where, prior to sentencing, the offender had resided and where his parents still lived
- one offender was prohibited from frequenting or visiting a township where his former partner resided who was pregnant with his baby
- one offender was prohibited from frequenting or visiting a township which he had to travel through in order to visit his mother and sister.

In the first matter the offender was prohibited from being within five kilometres of the township from which the offender formerly resided. It was noted in court that the offender himself had decided that he wished to reside elsewhere. The details of the matter are set out below:

A young Aboriginal male, aged 17, was sentenced in the Children's Court for a number of matters including a number of break and enters, malicious damage, common assaults, unlicensed driving and take and drive conveyance. At the time of sentence the offender had been in custody for some six weeks. All offences had occurred in a country town in northern NSW. In sentencing the offender the magistrate referred to the pre-sentence report which documented that the offender was 'a likeable young man with an outgoing personality' who was very remorseful and keen to live elsewhere. The offender's lawyers commented in court that the offender had got 'mixed up with the wrong people'. The magistrate commented that the defendant needed to get away 'from the peer group that he was mixing with' and his lawyer advised the court that the offender had 'expressed a strong desire to go and live with his mum in Sydney'. The magistrate clarified 'He doesn't want to go back there. I take it' to which his lawyer advised 'that's correct'. The magistrate imposed a control order for 12 months with a one month non-parole period and imposed a place restriction order for 12 months prohibiting the offender from entering or being within 5 kilometres of the town.¹⁸⁹

In the second matter the offender was prohibited from frequenting the township where his former girlfriend lived which also happened to be the township where he had resided with his parents:

A male offender who was 29 at the time of sentencing, was convicted of a series of offences. The offender had been diagnosed with a mental illness, and admitted to having a problem with binge drinking. The offender resided in his parent's residence which was located in the same street that the victim lived in Cessnock, NSW. The offender and victim had an intermittent relationship for five months prior to the offence. The victim had an apprehended violence order placed on the offender. On the night of the offence the offender was at the victim's house and became irate and violent. The offender was asked to leave the residence, and did so, only to later return and find himself locked out. The offender then proceeded to kick in the back door. The victim locked herself in a room, and called 000. The offender was given a 3 month custodial sentence for assault, malicious damage and contravening the apprehended violence order. The court also imposed a place restriction order which prohibited the offender from visiting or frequenting the town for a period of 12 months. The offender advised the court that he had made arrangements to live with his sister in another area of the state.¹⁹⁰

The prosecutor in the above matter indicated to the magistrate that he had some concerns that by imposing a place restriction order 'we're setting him up to fail if he comes and visits his parents'. The magistrate replied by indicating that she believed she had little option as she did not want to 'keep him locked up forever'.

In the third matter the court gave consideration to the impact of a place restriction order on a male offender who was prohibited from visiting the township where his former partner resided who was pregnant with his baby:

A male offender, aged 35 at the time of the offence, had previously had an AVO placed against him after a complaint of assault on a former partner. The offender called the house of his former partner and made multiple threats to her and her family resulting in a breach of the AVO. The offence had occurred in Cessnock. At the time of the offence the victim was six months pregnant. The offender was said to be the father of the child. The offender was arrested and charged with contravening an apprehended violence order and given a suspended sentence for nine months on condition that he enter a bond for the same period and accept supervision of probation and parole. The current AVO was adjusted to protect everyone in the victim's household. In addition to the AVO the court also imposed a place restriction order on the offender prohibiting him from visiting or frequenting the town for a period of 12 months. The prosecutor noted that the order was pursuant to s 17A of the Crime (Sentencing Procedure) Act as 'there is no close family member in that this is an estranged relationship, not defacto'. The magistrate expressed some concern that once the child was born then a 'close family member' would presumably be in residence in the town and the order would be 'ultra vires of the legislation'.¹⁹¹ The prosecutor indicated that a variation could then be sought if the child was born and this posed a problem.¹⁹²

Our inquiries with the relevant courts and the prosecutor involved in the matter revealed that the offender did not seek any variation or revocation of the order.

In the fourth matter the 21 year old offender was found by an undercover operative to be supplying cannabis in Nimbin, NSW. At the time of sentencing the offender had moved from the town to make a 'fresh start'. The offender was given a suspended sentence and the court imposed a place restriction order prohibiting the offender from visiting or frequenting the township for 12 months. The order included an exception that the offender was allowed to drive through the township for the sole purpose of visiting his mother and sister who lived just outside the township.¹⁹³

7.1.1.11. Explanation of non-association and place restriction orders to offenders

The Act directs that the court is required to explain to an offender on whom it has imposed an order, the obligations that arise under the order and the consequences that may follow if he or she breaches the order.¹⁹⁴

In practice this means that after the offender has been sentenced they are required to attend the administration desk of the court and the Clerk of the Court is required to provide the offender with a copy of the order, ensure the order is signed and explain to the offender their obligations in relation to the order. Each order issued contains the following statement, which is to be signed by the offender and counter signed by the Clerk of the Court:

My obligations under the order have been explained to me and I understand the consequences that may follow if I fail to comply with those obligations.

In addition to the above statement the following information is detailed at the base of each order under the heading 'Important Notes' (see also Appendix 1):

1. If you breach this order without a reasonable excuse you will be guilty of an offence. The maximum penalty for breaching this order is \$1100 fine and six months imprisonment.
2. It is a reasonable excuse for a breach of the order if the breach occurred in compliance with an order of a court or, having unintentionally associated with a specified person you immediately terminate the association.
3. If your circumstances change you may apply to a Local Court to vary or revoke this order.
4. Communication with a person includes by post, facsimile, telephone or email.

Copies of the orders imposed were supplied by the courts to this Office and in each matter it was noted that the order had been signed by both the offender and the Clerk of the Court.

The Director of Local Courts advised that court staff are required to adhere to the Local Courts Policy and Procedure Guidelines which direct court staff to explain orders to defendants. The guidelines emphasise that the court must ensure that all reasonable steps are taken to explain to the offender in language that the offender can readily understand the offender's obligations under the order and the consequences that may follow if the offender fails to comply with those obligations.

In one matter in the review period where a place restriction order had been imposed on a juvenile offender it was evident from the court papers that the offender was dissatisfied with the order once it had been explained to him by the Clerk of the Court.

The 17 year old had been prohibited from frequenting the township where he previously lived and where many of his friends/associates remained. The NSW Department of Juvenile Justice (DJJ) report on the matter indicated that one of the main reasons the offender's family had moved from the township was to ensure the offender 'remained trouble free. His parents stated that when he is not in Cessnock he does not represent a supervision problem'. Further details of the matter are set out below:

*A juvenile male, aged 17 at the time of sentencing, was before the court for assaulting another juvenile by hitting him in the ribs. This occurred in the town of Cessnock. The offender admitted guilt, had a long criminal history, and was currently on an 18-month bond. A Juvenile Justice Department report which was referred to in court stated that the defendant 'appears to be at greater risk of offending when he returns to the negative influences of the town'. The Children's Court ordered that the defendant be returned to probation for a period of 12 months upon the conditions that he be of good behaviour and adhere to a place restriction order not to enter the town for 12 months.*¹⁹⁵

The Clerk of the Court documented the following on the bottom of the court copy of the place restriction order in this matter:

The defendant was explained the order and consequences of not complying. The defendant at first refused to sign the notice, he wanted to go into custody. He eventually signed it by putting a cross and told the court staff that he was going to not comply with the restriction order and be present in Cessnock.

7.1.1.12. Commencement of orders

An order commences at the time it was made by the court¹⁹⁶ and is suspended if the offender is taken into custody. The suspension of an offender's order does not operate to postpone the date on which the order comes to an end.¹⁹⁷

In three matters where orders were imposed the order was suspended due to the offender having been taken into custody.

In the first matter an Aboriginal male juvenile had been given a control order for 12 months with a one month non-parole period and had a 12 month place restriction order imposed on him. Thus in effect the place restriction order only operated for an 11 month period.¹⁹⁸

In the second matter a 29 year old male was given a three month custodial sentence and had a 12 month place restriction order imposed on him. So in effect the place restriction order only operated for a nine-month period.¹⁹⁹

In the third matter a 21 year old male offender was sentenced to three months periodic detention and had a six-month non-association order imposed on him. So in effect the place restriction order only operated for the period in which the offender was not in periodic detention.²⁰⁰

7.1.1.13. Contravention of non-association and place restriction orders

If an offender contravenes their order without reasonable excuse they are liable to up to 10 penalty units (\$1100) or imprisonment for six months or both.²⁰¹

Information obtained from NSW Local Courts and BOCSAR indicates that no proceedings were commenced for the breach of non-association and place restriction orders.

7.1.1.14. Variation or revocation of non-association and place restriction orders

A court may vary or revoke an offender's existing order when sentencing the offender for a new offence.²⁰²

An offender may apply to a Local Court to vary or revoke their order.²⁰³

NSW Local Courts has advised that statistical reports containing information on variations and revocations of orders cannot be generated under the current system so there is no information available on the use of the provisions relating to variations and revocations.

7.1.1.15. Certain information not to be published or broadcast

The Act also makes it an offence to publish or broadcast the fact that a named person (other than the offender) is specified in a non-association order or any information calculated to identify any such person.²⁰⁴

Information obtained from NSW Local Courts and BOCSAR indicates that there have been no prosecutions of such offences during the review period.

7.1.1.16. Criminal Appeal Act 1912

The Act also makes a consequential amendment to the definition of sentence in the *Criminal Appeal Act 1912*²⁰⁵ allowing for appeals to be made against the imposition of non-association and place restriction orders.

NSW Local Courts has advised that reports containing information on appeals against orders cannot be generated under the current system so there is no information available on the use of the provisions relating to any appeals of the orders.

7.2. Conditions of parole as to non-association and place restriction

7.2.1. Crimes (Sentencing Procedure) Act 1999

The Act amends the Crimes (Sentencing Procedure) Act to enable the court to impose non-association and place restriction conditions as part of a parole order.²⁰⁶

The Director of NSW Local Courts has advised that statistical reports containing information on such conditions imposed at parole cannot be generated under the current system.

If conditions were imposed they would have been documented manually on the individual files.

Based on the information available it is not possible to determine the impact the new provisions have had on the non-association and place restriction conditions imposed on parole determined at court.

7.3. Conditions of court imposed bail as to non-association and place restriction

As outlined previously, magistrates may grant bail to a person appearing before them who is accused of an offence, or who is appealing to a higher court.

The Act amends the *Bail Act 1978* to create a specific provision (s36B) relating to bail conditions which prohibit or restrict a person from associating with a specified person or visiting a specified place or district.²⁰⁷

The court had previously been able to impose non-association and place restriction type conditions at bail through s36(2)(a) of the *Bail Act 1978*.²⁰⁸

Bail conditions imposed at court are documented in the 'Bail Undertaking' Form 5 or 5A in accordance with the *Bail Act 1978* Regulations.²⁰⁹

NSW Local Courts has advised that no amendments were made to these forms to explicitly incorporate the provisions introduced by the Act nor were there any arrangements made for these conditions to be entered differently on the computer system. Any non-association or place restriction conditions imposed since the Act were documented manually in the section, which allows for further conditions to be included.

It is the task of the magistrates to document what provisions have been referred to when imposing non-association and place restriction conditions at bail. For the purposes of the review, magistrates and police prosecutors were surveyed as to their use of the new legislation in relation to bail. A number of magistrates were also interviewed in person for the review.

It is quite clear from the responses received from magistrates that many frequently impose non-association and place restriction provisions when granting bail. However, it is clear that many magistrates have continued to use the 'old' provision (s36(2)(a)) to impose such conditions and in any case, often do not detail which provision has been referred to when documenting the conditions imposed. As one magistrate commented:

I regularly impose non-association and place restriction conditions. I have never specified that they are imposed under s36B rather than under s36(2)(a). The current forms in use in Local Courts do not make provision for a distinction and I have never considered it necessary to make such a distinction.

Another magistrate advised that 'whether out of habit or otherwise I [continue to use] s36(2)(a)'. The magistrate went on to comment:

My preference has no deeply held philosophical reasons attached to it. I feel more comfortable doing what is familiar...Because there are two sources of power to impose these conditions, personally, I don't think that people really address which is being used and it is more a matter of form rather than substance as to which is applied...For me they are not recorded differently and the court forms are not well adapted so that they are recorded differently.

A police prosecutor commented:

I have asked for 36B and the magistrate granted it under 36(2)(a) — when raised, the magistrate replied 'that it does the same thing'.

So the current court forms do not distinguish between the legislative basis for conditions which are imposed on alleged offenders, and magistrates appear to not make the distinction when they document their decisions. This means that when conditions are entered onto the computer system by court officers there is no distinction made as to what section has been used to impose the conditions.

As a result, on the information available it is not possible to determine the impact the new provisions have had on the non-association and place restriction conditions imposed when granting bail at court.²¹⁰

7.4. Conditions of police imposed bail as to non-association and place restriction

An authorised police officer may grant bail to an accused person at a police station.²¹¹ Police deal with approximately 50% of applications for bail in NSW.

The Act amends the *Bail Act 1978* to create a specific provision (s36B) relating to bail conditions which prohibit or restrict a person from associating with a specified person or visiting a specified place or district.²¹²

Police had previously been able to impose non-association and place restriction type conditions at bail through s36(2)(a) of the *Bail Act 1978*.²¹³

Police are required to enter all conditions imposed on COPS. Enhancements to COPS were made to incorporate the amendments to the *Bail Act 1978*. Two additional 'create bail condition' screens were introduced, namely 'Create non-association condition' and 'Create place restriction condition'. These screens were developed to enable officers to enter details of the new bail conditions directly into COPS.

7.4.1. COPS bail data obtained

In order to determine how NSW Police has used the new provisions in the review period, arrangements were made for NSW Police to provide us with a range of COPS data about police bail. This included the provision of general data on the following:

- the total number of charge records for the review period (May 2002 to May 2004)
- a breakdown of that total including the total number of charges where unconditional and conditional bails were imposed for the period and the total number of persons bail refused for the review period
- comparative data for the period May 2000 to May 2002.

More specific bail data was also provided by NSW Police including the following:

- a 'charge enquiry list' detailing all matters where conditional bail had been imposed for all NSW charging stations for the specific days within the review period (May 2002 to May 2004)
- comparative data for the period May 2000 to May 2002.

The data provided for the review period indicated where a 'Create non-association condition' and 'Create place restriction condition' screen was used and details of the information recorded.

It should be noted that the 'Create non-association condition' and 'Create place restriction condition' screens that were developed to enable police officers to enter details of the new non-association and place restriction bail conditions directly into COPS were not operational until July 2002.²¹⁴ The provisions relating to bail commenced on 13 May 2002. Thus the screens were not available to record information regarding the new bail conditions imposed until just under two months into the review period. Consequently the non-association and place restriction screen data was not recorded for the whole review period but for the period August 2002 – May 2004 only.

In addition to the information provided by NSW Police, we also made our own inquiries of the COPS database to obtain details of incidents such as background details about offences, any breaches of orders or bail conditions, re-offending rates and 'event narratives' composed by operational police who dealt with particular incidents and court outcomes.

7.4.2. Examination of a sample period

There were approximately 56, 545 charge records created in the review period, which contained conditional bails.

As it was impracticable for us to comprehensively assess all these records we examined a sample of data in order to determine police use of the new provisions.

Scrutiny of a sample of data involved the examination of COPS bail data for all NSW charging stations for 12 days (the last Friday of every second month) across the review.²¹⁵ These sample days will be referred to as the 'review sample period'.

The number of conditional bails imposed in the review sample period was 662.

Scrutinising a sample of data enabled us to:

- examine in detail the bail conditions imposed by police
- identify all the non-association and place restriction type conditions that had been imposed
- obtain demographic data including gender, age distribution and Aboriginal status
- assess the location, offence, breach and other details related to the imposition of these conditions.

Our sample analysis involved examination of those conditions recorded in the non-association and place restriction screens and all the additional COPS bail data for the review sample period.

7.4.2.1. Police use of the non-association and place restriction screens in the review sample period

In undertaking our sample analysis we first identified those matters in the review sample period where the police had used the 'Create non-association condition' and 'Create place restriction condition' screens in COPS and examined the information recorded. Examination of this data allowed us to ascertain the extent to which police were recording non-association and place restriction conditions in the appropriate screens created for the new provisions.

Table 3 shows the non-association and place restriction conditions recorded in the 'Create non-association condition' and 'Create place restriction condition' screens that were developed to enable police officers to enter details of their use of the new provisions directly into COPS.

Table 3: Conditions recorded in the COPS NAPR screens by NSW Police in the review sample period

	Type of condition			Total NAPR
	Non-association	Place Restriction	Non-association and place restriction	
Number recorded in NAPR screens by NSW Police	10	59	1	70

Source: NSW Police COPS data, May 2002 – May 2004

There were 10 non-association conditions recorded by police in the non-association screens in the review sample period. This accounted for 2% of all conditional bails imposed.

There were 59 place restriction conditions recorded by police in the place restriction screens in the review sample period which accounted for 9% of all conditional bails imposed. There was also one case where the individual received both a non-association and place restriction bail condition for the same charge.

Thus there were 70 non-association and place restriction conditions in total recorded on the screens, which accounted for 11% of all conditional bails imposed.

In relation to those conditions recorded by NSW Police the following matters were identified:

- In one matter a place restriction was listed but there was no place restriction detailed in the screen. The restriction was that the person was 'not to consume alcohol'. This event was therefore not included in the total number of place restriction screens used by the police in the sample period.
- There were five matters where the place restriction conditions imposed did not satisfy the requirements of the Act, as they did not specify the place or district where the alleged offender must not frequent or visit. These matters were also not included in the total number of place restriction screens used by police in the sample period (see 7.4.2.9 for more details).
- Eleven place restrictions were imposed which appeared to be exclusively imposed for the protection of a victim or witness of a crime.

7.4.2.2. Additional non-association and place restriction conditions identified in the sample period

In undertaking our sample analysis we also examined all of the additional conditional COPS bail data provided for the review sample period to determine when a place restriction or non-association condition had been imposed but had not been entered into a non-association or place restriction screen.

We examined these additional conditions as surveys of police revealed that since the introduction of the Act some police officers were uncertain as to whether they should impose non-association and/or place restriction conditions under s36(2)(a) or s36B of the *Bail Act 1978*.²¹⁶ Therefore whilst non-association and place restriction conditions were being used as a condition of a person's bail, they were not necessarily being imposed under the new provisions and the new screens were not necessarily being used to record them.

In distinguishing these additional conditions we included only those non-association and place restriction conditions that satisfied the requirements of the Act.

Table 4 shows the additional non-association and place restriction conditions identified in the COPS bail data provided for the review sample period.

Table 4: Additional NAPR conditions identified by the Ombudsman in the review sample period

	Type of condition			Total NAPR
	Non-association	Place Restriction	Non-association and place restriction	
Number of additional conditions identified by Ombudsman	19	201	4	224

Source: NSW Police COPS data, May 2002 – May 2004

We identified 19 additional non-association conditions and 201 additional place restriction conditions imposed by police in the review sample period that were not recorded in the screens. We also identified four occasions where both a non-association and a place restriction were imposed on persons for the same charge in the review sample period.

The total number of additional non-association and place restriction conditions identified in the review sample period was 224 which accounted for 34% of all conditional bails imposed.

7.4.2.3. Total number of non-association and place restriction conditions identified for the review sample period

Table 5 displays the combined statistics of those of non-association and place restriction conditions recorded in the non-association and place restriction screens by NSW Police and the additional conditions identified in the review sample period.

Table 5: Conditions recorded in the NAPR screens by NSW Police and the additional conditions identified by the Ombudsman in the review sample period

	Type of condition			Total NAPR
	Non-association	Place Restriction	Non-association and place restriction	
Number recorded in NAPR screens by NSW Police	10	59	1	70
Number of additional conditions identified by Ombudsman	19	201	4	224
Total	29	260	5	294

Source: NSW Police COPS data, May 2002 – May 2004

We found that 294 or 44% of all conditional bail imposed by police in the review sample period included a non-association condition, a place restriction condition or both. If this proportion was replicated during the review period approximately 25,000 of the 56,545 conditions imposed contained non-association or place restriction conditions.

We found that place restriction conditions were much more common than non-association conditions. We identified 29 non-association conditions and 260 place restriction conditions imposed at bail by police in the review sample period. Thus place restriction conditions accounted for 88% of the total number of these types of conditions identified and 39% of all conditional bail imposed.

7.4.2.4. Gender of alleged offenders who had non-association and place restrictions imposed at bail in the review sample period

Table 6 details the gender of the persons who had non-association and place restriction conditions imposed upon them at bail by police in the review sample period.

Table 6: Gender of persons who had NAPR conditions imposed upon them at bail by police in the review sample period

	Type of condition			Total NAPR
	Non-association	Place Restriction	Non-association and place restriction	
Male	28	219	5	252
Female	1	41	0	42
Total	29	260	5	294

Source: NSW Police COPS data, May 2002 – May 2004

In the review sample period 97% of those persons who had non-association conditions imposed upon them at bail by police were male and 84% of those persons who had place restriction conditions imposed upon them were male.

7.4.2.5. Aboriginal status of alleged offenders who had non-association and place restrictions imposed at bail in the review sample period

Following a recommendation from the Royal Commission into Aboriginal Deaths in Custody in 1991, NSW police officers have had to record whether or not the person they are charging is an Aboriginal or Torres Strait Islander. The COPS database does not allow the record to be finalised unless this question is answered.

Table 7 details the Aboriginal status of persons who had non-association and place restriction conditions imposed upon them at bail by police in the review sample period.

Table 7: Aboriginal status of persons who had NAPR conditions imposed upon them at bail by police in the review sample period

	Type of condition			Total NAPR
	Non-association	Place Restriction	Non-association and place restriction	
Number Aboriginal males	11	35	2	48
Number Aboriginal females	0	10	0	10
Total Aboriginal	11	45	2	58

Source: NSW Police COPS data, May 2002 – May 2004

In the review sample period 38% of those persons who had non-association conditions imposed upon them at bail by police identified as Aboriginal and 17% of those persons who had place restriction conditions imposed upon them identified as Aboriginal.

Data contained in Table 6 and Table 7 shows that 19% of all males who had non-association and place restriction conditions imposed upon them were Aboriginal and 24% of the female total were Aboriginal.

Overall 20% (58/294) of the non-association and place restriction conditions were imposed on Aboriginal persons in the review sample period.

7.4.2.6. Age of alleged offenders who had non-association and place restrictions imposed at bail in the review sample period

Table 8 details the ages of persons who had non-association and place restriction conditions imposed upon them at bail by police in the review sample period.

Table 8: Age of the persons who had NAPR conditions imposed upon them at bail by police in the review sample period

Age*	Type of condition			Total NAPR
	Non-association	Place Restriction	Non-association and place restriction	
< 18	18	33	1	52
18-25	11	75	3	89
26-40	0	106	1	107
> 41	0	46	0	46
Total	29	260	5	294

Source: NSW Police COPS data, May 2002 – May 2004

* The age of the NAPR condition recipients refers to their age at the time of bail being imposed by police

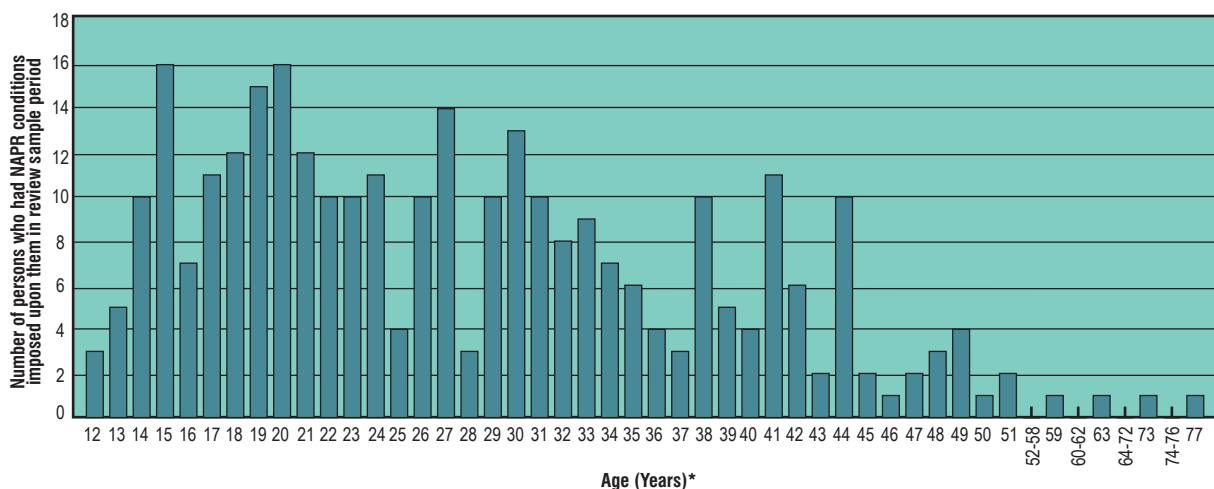
In the review sample period 62% of those persons who had non-association conditions imposed upon them at bail by police were juveniles and 13% of those persons who had place restriction conditions imposed upon them were juveniles.

Overall, juveniles accounted for 18% of persons who had non-association and place restriction conditions imposed on them in the review sample period. Persons 25 years and under accounted for just under 50% of all non-association and place restriction conditions imposed.

Persons between the age of 26–40 account for 36% of non-association and place restrictions conditions imposed upon them.

Analysis of the age distribution and the type of matters for which non-association and place restriction bail conditions were imposed reveals that a significant amount of the conditions imposed on persons aged 26 and above were for matters related to domestic and personal violence as opposed to other crime such as malicious damage, property and drug related crime and street crime.

Figure 1: Age of recipients of NAPR bail conditions imposed by police in the sample review period



Source: NSW Police COPS data, May 2002 – May 2004

* The age of the NAPR condition recipients refers to their age at the time of bail being imposed by police

Table 9 details the age of persons who had non-association and place restriction conditions imposed upon them at bail for a purpose other than that of solely protecting the victim or witness.

Table 9: Age of persons who had NAPR conditions imposed upon them at bail by police for a purpose other than that of solely protecting the victim or witness

Age*	Type of condition			Total NAPR
	Non-association	Place restriction	Non-association and place restriction	
< 18	18	25	1	44
18 – 25	11	48	3	62
26 – 40	0	47	1	48
> 41	0	15	0	15
Total	29	135	5	169

Source: NSW Police COPS data, May 2002 – May 2004

* The age of the NAPR condition recipients refers to their age at the time of bail being imposed by police

Table 9 shows that when bail conditions used solely for the purpose of protecting the victim or witness are removed, the age distribution of persons who received non-association and place restriction bail conditions is significantly different. The age group 26–40 is no longer the predominant group subject to these conditions. Those persons aged 25 years or younger are the main group subject to these conditions.

Eighty-five per cent of non-association and place restriction bail conditions imposed on juveniles were for a purpose other than that of protecting the victim or witness of a crime. In contrast for those in the age group 41 and over, only 33% of these conditions were imposed for a purpose other than protecting the victim or witness of a crime. The findings related to the use of these conditions for the protection of victims and witnesses are further examined at 7.4.13.

7.4.2.7. LAC data

The COPS data included the location of the charging station, LAC and region for each non-association and/or place restriction condition imposed for the review sample period.

Table 10 links LACs' use of non-association and place restriction conditions during the review sample period with the number of residents in each LAC. The LACs are ranked in descending order of use of the conditions per 1000 residents.²¹⁷

Table 10: LACs use of NAPR conditions during the review sample period

Local Area Command	Population	Non-association	Place restriction	Non-association and place restriction	Total NAPR	NAPR per 1000 residents
Kings Cross	19,886	0	13	0	13	39.8
The Rocks	2,017	0	1	0	1	30.2
Darling River	17,223	0	4	0	4	17.7
Newtown	30,377	0	6	0	6	14.0
Cabramatta	52,165	0	11	0	11	12.8
Redfern	33,810	0	7	0	7	12.6
Barwon	34,744	0	7	0	7	12.3
Surry Hills	17,458	0	3	0	3	10.5
Newcastle	48,242	0	8	0	8	10.1
Barrier	30,838	0	4	0	4	7.9
Liverpool	86,695	2	9	0	11	7.7
Mudgee	31,932	0	4	0	4	7.6
Goulburn	42,657	0	5	0	5	7.1
Parramatta	58,979	2	4	0	6	6.2
Penrith	66,208	0	6	0	6	5.5
Deniliquin	36,168	2	1	0	3	5.0
Richmond	109,976	0	7	0	7	5.0
Macquarie Fields	74,433	0	5	0	5	4.9
Castlereagh	12,447	0	1	0	1	4.9
Mid North Coast	109,135	1	7	0	8	4.5
Orana	56,272	0	4	0	4	4.3
Wagga Wagga	72,405	0	5	0	5	4.2
Tweed/Byron	103,389	2	5	0	7	4.1
Oxley	74,094	3	2	0	5	4.1
Canobolas	59,635	0	3	1	4	4.1
Lower Hunter	167,236	1	10	0	11	4.0
Hawkesbury	62,149	0	4	0	4	3.9
Shoalhaven	83,548	0	5	0	5	3.6
Campbelltown	68,226	1	3	0	4	3.6
Coffs/Clarence	122,036	1	6	0	7	3.5
Burwood	89,344	1	4	0	5	3.4
Monaro	71,813	3	0	0	3	3.4
Manning/Grt Lakes	72,663	0	4	0	4	3.3
Fairfield	129,143	0	7	0	7	3.3
Mt Druitt	92,249	0	5	0	5	3.3
Brisbane Water	154,654	1	6	1	8	3.1
Lake Illawarra	144,158	0	7	0	7	3.0
Blacktown	83,496	0	4	0	4	2.9
Chifley	63,308	0	3	0	3	2.9
Far South Coast	63,388	0	3	0	3	2.9
Tuggerah Lakes	129,919	2	4	0	6	2.8
New England	65,521	1	1	0	2	2.8
Green Valley	67,263	2	1	0	3	2.7
Wollongong	113,067	0	5	0	5	2.7

Table 10: LACs use of NAPR conditions during the review sample period

Local Area Command	Population	Non-association	Place restriction	Non-association and place restriction	Total NAPR	NAPR per 1000 residents
Albury	68,785	1	1	0	2	2.7
Quakers Hill	79,330	0	3	0	3	2.3
Harbourside	81,885	0	3	0	3	2.2
Holroyd	85,760	1	2	0	3	2.1
Camden	116,556	0	4	0	4	2.1
Lake Macquarie	177,335	0	6	0	6	2.1
Eastern Beaches	119,730	0	2	2	4	2.0
Sutherland	125,366	0	2	0	2	1.9
Bankstown	164,045	0	4	0	4	1.9
St George	106,163	0	3	0	3	1.7
Northern Beaches	179,874	0	5	0	5	1.7
Blue Mountains	74,317	0	2	0	2	1.6
North Shore	111,831	0	3	0	3	1.6
Flemington	82,264	0	2	0	2	1.5
Waratah	83,411	2	0	0	2	1.5
Cootamundra	43,110	0	1	0	1	1.4
Hurstville	102,245	0	2	0	2	1.2
Eastern Suburbs	52,073	0	1	0	1	1.2
Griffith	54,038	0	0	1	1	1.2
Total	5,063,834	29	260	5	294	3.7

Source: NSW Police COPS data, May 2002 – May 2004

Our analysis of the sample reveals widespread use of non-association and place restrictions conditions in LACs. There were 80 LACs located in NSW at the time of the review. Table 10 shows that 63 of the 80 LACs imposed non-association and place restrictions conditions.

It is interesting to note that busy urban LACs such as Cabramatta and Kings Cross were amongst the highest users of these types of conditions as were LACs with high Aboriginal populations such as Darling River, Barwon, Orana and Barrier LACs.

7.4.2.8. Alleged offences for which non-association and place restriction conditions were imposed at bail in the review sample period

There were 141 types of offences for which alleged offenders were charged and non-association and place restriction conditions were imposed at bail in the review sample period. Table 11 details the most common offences.

Table 11: Most common offences for which NAPR's were imposed at bail by police in the review sample period

Alleged offence	Number of NAPR's imposed at bail for this offence
Common assault	85
Assault occasioning actual bodily harm	34
Possess prohibited drug	26
Resist officer in execution of duty	20
Assault officer in execution of duty	18
Maliciously destroy or damage property <= \$2000	18
Contravene apprehended domestic violence order	15

Alleged offence	Number of NAPR's imposed at bail for this offence
Goods in personal custody suspected being stolen (not motor vehicle)	15
Affray	12
Use offensive language in/near public place/school	11
Enter inclosed land not prescribed premises without lawful excuse	11
Resist or hinder police officer in the execution of duty	11
Larceny value <=\$2000	10
Shoplifting value <=\$2000	10
Behave in offensive manner in/near public place/school	8
Maliciously destroy or damage property	8
B&E bldg commit serious indictable offence (steal) value <= \$15000	7
Larceny	7
Shoplifting	7
Enter prescribed premises of any person without lawful excuse	6
Break and enter building (steal) value <= \$15000	6
Contravene apprehended violence order	6
Fail to quit premises when refused entry by licensee	6
Possess housebreaking implements	6
Robbery in company	6
>3 people use violence cause fear	5
Break and enter with intent (steal)	4
Fail to comply with direction to move on	4
Riot	4
Stalk/intimidate with intent to cause fear physical/mental harm	4
Total	390*

Source: NSW Police COPS data, May 2002–May 2004

*The number of NAPRs imposed for these offences exceeds the number of NAPRS imposed overall for the review period (294) as many alleged offenders were charged with multiple offences.

Table 11 shows that common assault was by far the most common offence for which non-association and place restriction type offences were imposed, followed by assault occasioning actual bodily harm and possess prohibited drug. Assault, resisting and hindering police, breach of apprehended domestic violence orders, property, drug and summary offences appear to be the types of offences which predominantly attract this type of condition.

There were two matters identified in the review sample period where the alleged offenders were charged with minor offences only and place restrictions were imposed at bail. These include a case where the person would never have been liable to a place restriction order if convicted, as the offence was not punishable by imprisonment for six months or more.²¹⁸ Table 12 details the offences and the conditions imposed in these matters.

Table 12: Matters where the alleged offenders had been charged with minor offences only and NAPR conditions were imposed at bail by police

Offence	Act	Maximum Penalty	Sentence	Non-association or place restriction Condition imposed
Enter inclosed land without lawful excuse Plus license and vehicle related offences ²¹⁹	Section 4 <i>Inclosed Lands Protection Act 1990</i>	10 penalty units in the case of prescribed premises or 5 penalty units in any other case	\$200 monetary fine	Prohibited or restricted from frequenting or visiting a specified residence

Table 12: Matters where the alleged offenders had been charged with minor offences only and NAPR conditions were imposed at bail by police. Cont'd.

Offence	Act	Maximum Penalty	Sentence	Non-association or place restriction Condition imposed
Give false name Plus unlicensed for class offence	Section 9 <i>Police Powers (Vehicles) Act 1998</i>	50 penalty units or 12 mths imprisonment, or both	\$500 monetary fine License disqualification: 12 mths	Prohibited or restricted from frequenting or visiting within 1000m of Kings Cross Railway Station — The accused is to sign a map indicating the area in which he is prohibited from entering

Source: NSW Police COPS data and information, May 2002–May 2004

The details of the matters listed in Table 12 are provided below:

In October 2002, a woman observed a man placing property into the rear of a vehicle parked outside the home of a deceased estate and contacted police. The police attended and conducted a search of the property. The defendant was located in the rear yard of the premises. He was cautioned and arrested for the offence of trespass. A search of the defendant revealed that he was in possession of two screw drivers. An inspection of the defendant's vehicle also revealed that the vehicle was displaying different registration numbers on the front and rear and that the registration had expired earlier in the year. The defendant was conveyed to the local police station where he admitted driving the unregistered vehicle to the estate. The defendant stated that he attended the estate in an effort to find scraps and rubbish and that the screw drivers in his possession were used to remove the metal scraps from the property. The defendant was subsequently charged with the registration offences, expired licence offences and trespass. As a condition of police bail, the man was prohibited from entering the deceased estate.²²⁰

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In April 2004, police were patrolling an area well known to police for prostitution when they observed a vehicle. Police activated their warning signals in order to stop the vehicle for the purpose of a random breath test. The vehicle stopped and police approached the 27 year old man who gave police a name and date of birth, but was not able to produce a driver's licence. Police conducted a check via radio, to which no result was found. Police placed the man under arrest and conveyed him to the local police station. The man gave the vehicle owner's contact details and a contact number. The owner told the police that she had lent the vehicle to the man, but she was not able to provide police with the identity of the accused, stating that she knew him only by his first name and that he stayed with her occasionally. Checks via the Police and RTA systems failed to confirm that the man was a holder of a current driver's licence. The owner of the vehicle subsequently arrived at the police station, where she provided police with the man's real name and birth date. From the time police stopped the vehicle until the time police were provided with his correct details, three hours had lapsed. When questioned about giving police the incorrect details, the accused stated that he did not want to get the owner of the vehicle into trouble. He also stated that he used a false identity to avoid being found that he was unlicensed, believing that police would take his details as being true and correct and allow him to leave without further incident. The defendant was given police bail on the condition that he not enter within 1000 metres of a particular area.²²¹

7.4.2.9. Summary of the places from which offenders were prohibited from frequenting in the review sample period

The most common places from which alleged offenders in the review sample were prohibited from visiting or frequenting were:

- the residential premises of the victim/witness
- business premises (including restaurants, service stations, supermarkets and retail stores)
- shopping centres
- central business districts
- railway stations
- hotels/licensed premises/night clubs
- suburbs/townships/streets.

The assessment of all conditional bail imposed for the review sample period revealed 17 place restriction type conditions which made inexact or very broad references to a class of place or district. Some of these conditions were described as follows:

- The defendant is not to enter any retail store within the Camden Local Government Area.
- The defendant is not to enter any retail shopping centres in Eagle Vale, Minto, Ingleburn and Macquarie Fields.
- The accused is not to enter the inclosed land or residences of any Anglican Church within the township of Wagga Wagga.
- The accused will not enter any retail store unless in the company of her mother.
- The accused is not to enter any Kmart store within NSW.
- The accused is not to enter NSW until the day of attending court.
- The defendant is not to attend any licensed premises where any of the victims may be.

These conditions were not included in the total number of place restrictions imposed for the review sample period as only those place restriction conditions that satisfied the requirements of the Act were included.

We also identified that five of the place restriction type conditions recorded by police in the screens developed for the new provisions were described in very broad or vague terms. These conditions were also not included in the total number of place restrictions imposed for the review sample period. These conditions were described as follows:

- The defendant is not to approach or enter any points of international departure.
- The defendant is prohibited from frequenting or visiting any area owned and or operated by the State Rail without being in possession of a valid rail ticket.
- The alleged offender was advised that they were prohibited from approaching within 100 metres of any residence/premises at which the victim may reside or work.
- The alleged offender was not to enter any HMV Music Stores.
- The alleged offender was prohibited from frequenting or visiting any vacant residential premises within a particular area without first obtaining a tenancy agreement or lease.²²²

7.4.2.10. Summary of the people offenders were prohibited from associating with in the review sample period

Alleged offenders were prohibited from associating with co-offenders in all the non-association type conditions imposed during the review sample period. Some of the conditions contained exceptions such as:

- an alleged offender was prohibited from associating with a co-offender except when at his home address
- an alleged offender was prohibited from associating with a particular co-offender except during the course of their employment at a particular place
- an alleged offender was prohibited from associating with a number of co-offenders, with the exception of his brother
- an alleged offender was prohibited from associating with co-offenders when within 100 metres of a particular residence.

7.4.2.11. Conditions imposed where the offences appeared to be 'gang type offences' in the review sample period

Applying the definition that a 'gang type' offence involves evidence of criminal activity involving two or more people to those 294 matters where non-association and place restriction conditions were imposed at bail we found that 64 (22%) of matters could be classified as involving 'gang type' offences.

Table 13 details the non-association and place restriction conditions imposed at bail where the offence/s appeared to be 'gang type' offences in the review sample period.

Table 13: NAPR conditions imposed at bail by police where the offence/s appeared to be 'gang type' offences in the review sample period

	Non-association	Place restriction	Non-association and place restriction	Total NAPR
Number of NAPR conditions imposed for 'gang type' offences	25	34	5	64
Number of NAPR conditions imposed for 'other' offences	4	226	0	230

Source: NSW Police COPS data and information, May 2002–May 2004

Table 13 shows that 'gang type' offences accounted for 64 (22%) of the total number of non-association and place restriction conditions imposed at bail in the review sample period.

All of the matters where both a non-association and place restriction were imposed on alleged offenders in the review sample period were imposed for offences that appeared to be 'gang type offences'. Thirty-four (13%) of the place restriction conditions imposed were imposed for offences that appeared to be 'gang type offences'. Twenty-five (86%) of the 29 non-association conditions imposed for the review period were imposed for offences that appeared to be 'gang type' offences. The details of three of these matters are provided below:

In August 2003, a 17 year old male person and three co-offenders left their high school in a motor vehicle. During this car trip, one of the co-offenders suggested that they 'roll' someone. All of the occupants of the motor vehicle agreed to this, as they wanted money to purchase lunch. Two of the co-accused exited the vehicle and walked toward a car park. At this location, they robbed the victim of \$21.60, a weekly train ticket and an 'X Com' phone card. During this robbery offence, the victim was punched to the face three or four times by one of the co-accused and was struck twice to the top of the head by another co-accused. The offenders then fled the scene running back to the location of the motor vehicle. Whilst driving back to the high school, all four within the motor vehicle had a conversation in relation to the robbery offence. Upon returning to the high school, the four offenders used the proceeds of the robbery to purchase lunch at the school canteen. When arrested, the young person admitted to leaving school with three co-offenders on the day of the incident. The young person made further partial admissions as to being in the motor vehicle and having knowledge of the offence. The young person stated during the interview that he did not have complete knowledge of the offence and that he did not eat the food purchased with the proceeds of the offence. The young person was then charged with the offence of concealing a serious indictable offence of another person. One of the conditions of bail was that he not associate with two of the known alleged co-offenders.²²³

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In August 2003 a 17 year old indigenous male was alleged to be the driver of a vehicle in a matter involving theft from a computer shop. At 3.10 am in August 2003, four people were captured on digital video surveillance standing at the front of a computer store. One of the persons was seen throwing an object at the front lower glass panel window of the shop. This caused the window to shatter, but not break. The four persons then proceeded to kick the glass panel until it broke, allowing them access. All four persons proceeded to enter the store. The owner of the store, who resided directly above the shop, heard the sound of the glass breaking and observed one of the offenders exiting the shop carrying property from the store. The owner gave chase, but failed to apprehend the person, and he was subsequently able to make his way back to the motor vehicle. A short time later, the three remaining persons within the shop exited the shop through the smashed glass panel. They were observed carrying objects out of the shop and leaving in a motor vehicle, driven by another person. The owner of the premises contacted police and police circulated the details of the motor vehicle. The vehicle was then located and police removed all persons from the vehicle. A subsequent search of the vehicle located a number of computers. The young persons were arrested and conveyed to a police station, where they all refused to participate in interviews. Police alleged that the driver of the motor vehicle at the time of, and immediately following the break, enter and steal offence was the 17 year old indigenous male. Although the police did not allege that the young person had entered the computer store, they argued that the young person acted in common purpose with all other co-accused to carry out the break, enter and steal. As a condition of bail, the young person entered into an agreement to comply with specified requirements restricting the person from associating with the alleged co-offenders, with the only exception being contact with one of the alleged co-offenders whilst in the course of employment.²²⁴

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In October 2002, a number of young males were seen to get into a car. Subsequent inquiries in relation to this vehicle revealed that it was stolen. A security guard later sighted the vehicle with three young persons, including a 15 year old male (the defendant) standing near the car. The security guard apprehended two of the alleged offenders, including the 15 year old, however, a third offender fled the scene on foot. An initial search of the vehicle revealed a large quantity of property believed to have been stolen, which included television sets and hi fi equipment. Both young persons declined to be interviewed and were charged with property related offences. One of the conditions of bail for the 15 year old male was that he not associate or contact the alleged known co-offender.²²⁵

7.4.2.12. Breach of non-association and place restriction conditions imposed at bail

In order to assess how many non-association and place restriction conditions imposed were subsequently breached we examined the criminal history records on COPS of each person who had these conditions imposed in the review sample period. Table 14 details the number of non-association and place restriction conditions breached in the review sample period.

Table 14: Breach of NAPR conditions imposed at bail by police in the review sample period

	Non-association	Place restriction	Non-association and place restriction	Total NAPR
Number of NAPR conditions breached	5	28	0	33
No record of breach recorded	24	232	5	261

Source: NSW Police COPS data and information, May 2002 – May 2004

Table 14 shows that 33 (11%) of the conditions imposed in the review sample period were subsequently recorded as breached.

This suggests a reasonably high rate of compliance amongst alleged offenders with the conditions imposed given that it appears most offenders (89%) did not have a breach of their condition detected by police. It should be noted, however, that this data does not take account of those occasions where the breach of conditions was not identified.

Non-association conditions were recorded as being breached at a greater frequency than place restriction conditions. Five (17%) of the non-association conditions imposed in the review period were breached. Twenty-eight (11%) of the place restriction conditions were breached in the review period.

Details of the circumstances of a typical breach of a non-association condition are provided below:

In September 2003, police received numerous phone calls concerning a car being erratically driven in the vicinity of a reserve. The police attended the location and spoke with the young person along with three other people. As a result, all four young people were arrested, cautioned and conveyed to the police station, where they were placed into custody. A check of police records revealed that the young person was currently on bail conditions not to associate with one of the young males also at the scene, as well as a condition to be in the company of his father at all times. The young person was spoken to, in the presence of his father, where he admitted driving the unregistered vehicle without a current drivers licence. He was arrested for breach of bail.²²⁶

Details of the circumstances of a typical breach of a place restriction condition are provided below:

In June 2002, a young male person was issued with bail conditions. The conditions prohibited the young person from entering a particular railway station (except for transit to another railway station) as well as entering a particular area. In November 2002, police were patrolling the railway station in question when they approached the young person on the main concourse and asked him to produce his valid rail ticket. The young person stated that he did not have a ticket and could not give a reason as to why. Police then checked via radio as to whether the young person was currently wanted and it was revealed that he was in breach of his bail conditions. Police informed the young person that if he left the railway station he would be breaching his bail, as he was only to be there on transit to another railway station. The young person stated that he would return home, however, police then watched him exit the railway station. Police followed the young person, but were unable to apprehend him as he ran off. Later the same day, police on patrol noticed the young person within the area from which he had been banned. He was subsequently arrested for breaching his bail conditions.²²⁷

Table 15 details the age of the persons who were identified as breaching their non-association and place restriction bail conditions in the review sample period.

Table 15: Age of the persons who breached their police imposed NAPR bail conditions in the review sample period

Age*	Breach of non-association condition	Breach of place restriction condition	Breach of non-association & place restriction condition	Total NAPR breached	% of total NAPR for age group
< 18	3	7	0	10	19%
18 – 25	2	7	0	9	10%
26 – 40	0	11	0	11	10%
> 41	0	3	0	3	7%

Source: NSW Police COPS data, May 2002 – May 2004

* The age of the NAPR condition recipients refers to their age at the time of bail being imposed by police

Juveniles were the most likely age group to be identified by police as having breached their bail conditions. When comparing the general age data of those persons who had non-association and place restrictions conditions imposed upon them (see Table 8) and the breach data, juveniles accounted for 19% of those breaches identified, almost twice the 'breach' rate of the next age group (18-25).

Similarly, indigenous people were arrested for breaching their bail conditions on 11 occasions. This accounted for 19% of the 58 non-association and place restriction conditions imposed on Aboriginal persons in the review sample period (see Table 7) and one third of all reported breaches of non-association and place restriction bail conditions.

Table 16 details the LACs in which breaches of non-association and place restriction conditions were identified in the review sample period.

Table 16: LACs in which breaches of NAPR conditions were identified in the review sample period

LAC	Breach of non-association	Breach of place restriction	Breach of non-association and place restriction	Total NAPR breached
Kings Cross	0	3	0	3
Redfern	0	3	0	3
Deniliquin	2		0	2
Fairfield	0	2	0	2
Macquarie Fields	0	2	0	2
Tuggerah Lakes	2	0	0	2
Bankstown	0	1	0	1
Barwon	0	1	0	1
Brisbane Water	0	1	0	1
Cabramatta	0	1	0	1
Canabolas	0	1	0	1
Chifley	0	1	0	1
Coffs/Clarence	0	1	0	1
Far South coast	0	1	0	1
Harbourside	0	1	0	1
Lake Illawarra	0	1	0	1
Liverpool	0	1	0	1
Manning/Great Lakes	0	1	0	1
Mid-North Coast	1	0	0	1
Mudgee	0	1	0	1
Newcastle	0	1	0	1
Newtown	0	1	0	1
North Shore	0	1	0	1
Shoalhaven	0	1	0	1
The Rocks	0	1	0	1
TOTAL	5	28	0	33

Source: NSW Police COPS data, May 2002 – May 2004

Table 16 shows that just over half (17) of the breaches were identified in Metropolitan LACs. The inner-city LACs of Kings Cross and Redfern registered the highest detection rate for breaches. It is interesting however that no metropolitan LACs identified breaches of non-association conditions. All of the breaches of non-association conditions were identified in regional areas.

7.4.2.13. Place restriction conditions imposed for the protection of the victim

When examining the content and context of the non-association and place restriction conditions imposed by police in the review sample period it became apparent that a significant number of place restriction conditions had been imposed at bail in order to secure the protection of the victim or witness of a crime.²²⁸ Table 17 details the place restriction conditions imposed for the protection of the victim or witness in the review sample period.

Table 17: Place restriction conditions imposed for the protection of the victim or witness in the review sample period

Reason for imposition of place restriction condition	Number of Place restrictions	Proportion of the total number of place restrictions imposed
Victim/witness protection	124	48%
Other*	136	52%

Source: NSW Police COPS data, May 2002 – May 2004

*The category 'Other' includes those place restrictions conditions imposed for reasons other than for victim/witness protection.

It was identified that these conditions were imposed in the following circumstances:

- where criminal charges had been laid and an AVO application was being made concurrently by police. The bail conditions imposed mirrored the terms of the AVO and appeared to be put in place to reinforce the protection of the victim
- where criminal charges had been laid but no AVO was in place or was being sought. The bail conditions in these circumstances may have been used instead of an AVO
- where an application for a telephone interim order had been hindered by some operational issue or refused and bail had apparently been imposed as an interim measure.

These factors were identified both in those place restrictions recorded by police in the 'place restriction screens' developed for the new provisions and in the additional place restrictions conditions identified by us in the remaining conditional bail matters in the review sample period.

This finding has implications for the following:

- the development of guidelines for consideration when imposing non-association and place restrictions at bail
- police use of place restriction conditions for the protection of victims and witnesses where other measures might be more appropriate.

Details of two circumstances where an AVO was made concurrently with criminal charges and conditional bail are provided below:

At 7.20 am in February 2003, the defendant was released on conditional bail, which included a place restriction. A TIO was also served upon the defendant, as a result of an earlier domestic violence incident involving the victim. The defendant entered into a conditional bail undertaking that corresponded with the conditions of the TIO. At 7.50am on the same day, the same victim attended the police station, visibly out of breath and shaken. She had swelling to her mouth area and dried blood around her lips. The victim informed the police that the defendant had been around to her unit. The defendant allegedly had climbed the balcony of their home unit. The victim, fearing the neighbours may be awoken, reluctantly let him in. Upon entering the unit, the defendant rushed towards the victim and punched her in the mouth area with a clenched right fist. As a result of this punch, the victim has received a large cut on the upper internal lining of the mouth and swelling around the left upper lip area. The defendant then said, 'Thanks a lot for getting me in trouble.' The defendant then blocked the doorway of their unit, preventing the victim from leaving. However, the victim managed to elude the defendant and leave the unit. The defendant then chased the victim all the way from their unit to the police station. Along the way, the defendant caught up with the victim and pleaded with the victim not to report him. The defendant was subsequently arrested for breaching his bail conditions and contravening an AVO.²²⁹

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In January 2004, the victim, her daughter and her boyfriend were sitting at the dining room table at their home address. When the defendant entered the residence, the victim (the daughter of the defendant) told the defendant to 'get out.' The defendant replied with, 'ring the police and get me locked up,' before walking into another room. A short time later the defendant went into the lounge room and removed a few pictures from the wall that belonged to him. He was yelling and screaming at the victim. Subsequently, the defendant opened the bedroom door and said to the victim, 'I am gonna kill you' before walking off. The victim replied with, 'I am going to call the police.' The victim, her daughter and boyfriend waited until the defendant was out of sight before leaving the house and attending the police station to report the matter to police. At the time of the incident, an

AVO was in existence between the two persons. The AVO stated that the defendant must not enter the premises at which the victim resided. Furthermore, the defendant also had conditional bail in place which restricted the defendant from frequenting or visiting the victim's residence. Police subsequently arrested the defendant for contravening an AVO as well as breaching his bail conditions.²³⁰

Details of a matter where criminal charges had been laid but no AVO was in place are provided below:

In April 2005 a man and a woman arrived home from drinking with friends. Whilst at home, an argument ensued and the man punched the woman in the face with a clenched fist, causing the woman to fall to the ground. The woman then sat on the lounge next to the man, whereupon another argument developed and the man again punched the woman in the face three times. The woman attempted to stand up, but the man grabbed her and pulled her back onto the lounge. The woman then ran to the front door, being pursued by the man, who pushed her on the shoulders saying, 'No you're not going anywhere.' The woman yelled out to her neighbour, who came to the woman's driveway and attempted to render assistance. After a short verbal argument with the man, the woman went to the neighbour's house across the road. After several minutes, the man knocked on the door of the neighbour's house and when let in verbally abused the victim. After a verbal argument with the neighbour, the neighbour closed the door. The man knocked on the door several times, and then finally left, whereupon police were called. Police obtained a statement from the woman, who stated that she did not want to make an application for an AVO. She also stated that she did not wish to have the man charged with the assault. However, police charged the man with assault and gave him bail conditions on the proviso that he not enter the premises of the victim.

About 10 minutes after the man was released from police custody, the man's father attended the police station and informed police that the man refused to return home with him and was on his way to the victim's residence. Police attended the woman's premises and prior to entering, heard persons arguing within the house. Police knocked on the front door, which was answered by the man. He was arrested and conveyed to the police station where he was placed into custody and found to have failed to comply with bail conditions.

In June 2003 the assault charge was heard at the local court. The magistrate imposed an AVO on the man, in effect for 18 months. The man was also found guilty of assault and received a section 9 bond, with one of the conditions being that the man comply with the AVO.²³¹

Details of a matter where a TIO was applied for but failed are outlined below:

In February 2004, the victim was at her residence. The victim had just got out of the shower, when she saw the defendant, her estranged partner, sitting on her lounge chair in the living room with their daughter. A short time later the defendant left the living area and walked down stairs. The victim followed the defendant, thinking that he was leaving the premises. The defendant said to the victim, 'you are a stupid bitch. You have broken my heart, keeping me from my children.' The victim said, 'I haven't done that.' The defendant grabbed the victim around the neck with both of his hands and started to choke her. The defendant then pushed the victim up against the wall, released his grip from the victim and pushed his way into the victim's premises. The victim contacted police and informed them of the incident. As the victim was on the phone to the police, the defendant ran out of the unit. Police contacted the defendant and subsequently informed the defendant that he was under arrest for assault of the victim. Police applied for a Domestic Violence Telephone Interim Order, but the magistrate declined it. They subsequently applied for an AVO on the victim's behalf. On granting bail the police imposed a place restriction condition prohibiting the defendant from frequenting or visiting the victim's premises.²³²

7.4.3. Comparative sample period

In order to assess the impact of the new bail provisions on police use of non-association and place restriction conditions at bail we also examined COPS bail data in the two year period prior to the introduction of the Act.

This involved the examination of a comparative sample of COPS bail data for all NSW charging stations for 12 days (the last Friday of every second month) across the comparison period (May 2000 to May 2002).²³³ In the COPS data provided for this period there was no distinction made in the data as to whether conditional bail contained non-association and/or place restriction type conditions. Thus to distinguish these conditions we examined each condition imposed in this comparison sample period and identified those conditions that were non-association or place restriction type conditions.

This sample period will be referred to as the 'comparative sample period'.

Table 18 details the non-association and place restriction type conditions identified in the comparative sample period and what percentage they accounted for in the total conditional bail imposed in the period.

Table 18: NAPR type conditions identified in the comparative sample period

	Type of condition			Total NAPR
	Non-association	Place Restriction	Non-association and place restriction	
Number of NAPR type conditions identified	22	262	12	296
Percentage of all conditional bails imposed in the comparative sample period	3%	41%	2%	47%

Source: NSW Police COPS data, May 2000 – May 2002

Table 19 compares the non-association and place restriction conditions we identified in our examination of the data provided for the review sample period and the comparative sample period.

Table 19: Comparison figures of NAPR conditions imposed by police in the sample periods

Type of Condition	Review sample period (May 2002–May 2004)		Comparative sample period (May 2000–May 2002)	
	Conditions imposed	Percentage of all conditional bail for the review sample period	Conditions imposed	Percentage of all conditional bail for the comparative review period
Non-association	29	4%	22	3%
Place restriction	260	39%	262	41%
Non-association and Place restriction	5	1%	12	2%
Total NAPR	294	44%	296	47%

Source: NSW Police COPS data, May 2000 – May 2002 and May 2002 – May 2004

When comparing the data for the two sample periods it was found that the use of non-association and place restriction conditions by police when granting bail had remained remarkably static. These conditions accounted for 44% of all conditional bail in the review sample period and 47% of all conditional bail in the earlier comparative sample period.

7.4.3.1. Comparative analysis of the characteristics of the alleged offenders

Table 20 details the characteristics of the alleged offenders in the review sample period and the comparative sample period.

Table 20: Comparison figures of the characteristics of alleged offenders who had NAPR conditions imposed upon them at bail by police in the sample periods

Characteristics of alleged offenders	Review sample period (May 2002–May 2004)		Comparative sample period (May 2000–May 2002)	
	NAPR conditions imposed	Percentage of all conditional bail for the review sample period	NAPR type conditions imposed	Percentage of all conditional bail for the comparative review period
Males	252	86%	238	80%
Females	42	14%	57	19%
Aboriginal Status	58	20%	48	16%
Juveniles*	52	18%	45	15%

Source: NSW Police COPS data, May 2000 – May 2002 and May 2002 – May 2004

* The age of the NAPR condition recipients refers to their age at the time of bail being imposed by police.

When comparing the age, Aboriginal status and gender of the persons imposed with non-association and place restriction conditions in the review sample period and the comparative sample period we found the following:

- there was an increase in the percentage of males who received non-association and place restriction bail conditions from 80% of all non-association and place restriction bail conditions in 2000 to 2002 to 86% in 2002 to 2004
- there was an increase in the percentage of Aboriginal persons receiving non-association and place restriction bail conditions from 16% to 20%
- there was an increase in the percentage of juveniles who received non-association and place restriction bail conditions from 15% to 18%.

7.4.3.2. Comparative analysis of the LAC and region data

When comparing the LAC and region data on the use of non-association and place restrictions in the review sample period and the comparative sample period we found that less LACs used non-association and place restriction conditions in the review period (63) when compared with the comparative sample period (73). There were some variations in individual commands.²³⁴

7.4.3.3. Comparative analysis of the conditions imposed for 'gang type' offences

When comparing the non-association and place restriction conditions imposed for 'gang type' offences in the review sample period and the comparative sample period we found that there was a decline in the number of non-association and place restriction bail conditions imposed for 'gang-type offences' from 73 (25%) in 2000 to 2002 to 64 (22%) in 2002 to 2004.

7.4.3.4. Comparative analysis of breaches of non-association and place restriction conditions

When comparing the non-association and place restriction conditions breached in the review sample period and the comparative sample period we found that there was a slight increase in the overall number of conditions breached from 30 (10%) in 2000 to 2002 to 33 (11%) in 2002 to 2004.

7.4.3.5. Comparative analysis of non-association and place restriction conditions imposed for the protection of the victim or witness

When comparing the non-association and place restriction conditions imposed for the protection of the victim or witness in the review sample period and the comparative sample period we found that there was a decrease in the use of these conditions in these circumstances from 152 (52%) in 2000 to 2002 to 123 (41%) in 2002 to 2004.

7.4.4. The broadcasting of information about person(s) named in a non-association order or bail condition

The Act also makes it an offence to publish or broadcast information as to the identity of any person with whom an offender is prohibited from associating pursuant to bail conditions imposed under this provision.²³⁵

Information obtained from NSW Local Courts and BOCSAR indicates that there have been no prosecutions of such offences during the review period.

7.5. Conditions of parole as to non-association and place restriction

7.5.1. Crimes (Administration of Sentences) Act 1999

An amendment by the Act to the *Crimes (Administration of Sentences) Act 1999* enables the State Parole Authority to impose non-association and place restriction conditions as part of a parole order.²³⁶

The State Parole Authority advised that there is no data available on the non-association and place restriction conditions imposed during the review period (May 2002 to May 2004), or any other conditions for that matter, as there were no systems in place during that time that enabled the Board to track conditions.²³⁷

Any conditions that were imposed were documented manually on the individual files.

The Director of the State Parole Authority made some general observations for the period:

The Parole Board does from time to time add special conditions to a parole order relating to 'association' and more regularly 'place restrictions'. As an example, the Board has on at least two occasions in the last two years

added a condition to an offender's parole order that they were not to contact or associate with any person who was a member of a motor cycle gang... More regularly the Board will make a special condition eg 'that an offender is not to travel within 100 kilometres of Broken Hill without the prior permission of his supervising Probation and Parole Officer...

If an estimate is of any value, I would say that the Board would be unlikely to make special conditions relating to 'associations' or 'place restrictions' on no more than twelve (12) occasions each year.²³⁸

There is no suggestion from the State Parole Authority that there has been any increase in the imposition of non-association or place restriction conditions during the review period.

Indeed, as was outlined in the Implementation Chapter, the State Parole Authority has indicated that there has been no change made by the State Parole Authority to the policies and procedures related to the imposition of conditions at parole since the introduction of the Act. The 'Standard Conditions' and 'Additional Conditions' form have not been changed in response to the introduction of the Act and there is no reference to the new non-association and place restriction provisions in any of the department's documentation related to parole.

There was also no change made during the review period to the Offender Integrated Management System (OIMS) to enable parole conditions imposed to be recorded, nor was there any publication or training undertaken regarding the new provisions.

In summary the introduction of the Act appears to have had no impact on the imposition of non-association and place restriction conditions as part of parole by the State Parole Authority.

However, the State Parole Authority did advise that a module of the OIMS has been put into operation recently which now enables the Board to track such conditions.

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

7.6.1. *Crimes (Administration of Sentences) Act 1999*

An amendment to the *Crimes (Administration of Sentences) Act 1999* enables the conditions of home detention to include non-association and place restriction provisions.²³⁹

As mentioned in previous chapters the State Parole Authority was already able to impose non-association and place restriction type conditions when imposing a home detention order.²⁴⁰ The State Parole Authority advised that the existing 'standard conditions' were used to impose non-association and place restriction conditions during the review period.

DCS and the State Parole Authority have advised that no amendments were made to the existing forms related to home detention to explicitly incorporate the provisions introduced by the Act.²⁴¹ There is minimal reference to the new non-association and place restriction provisions in the department's documentation related to home detention and in any publication or training provided to staff on the new provisions.

DCS advised that there is no data available on the non-association and place restriction conditions imposed when ordering home detention during the review period (May 2002 to May 2004), or any other conditions for that matter, as there are no systems in place that enable the department to track conditions. There was also no change made during the review period to the OIMS to enable conditions imposed when ordering home detention to be recorded.

Any conditions that were imposed were documented manually on the individual files.

Thus it appears unlikely that many, or perhaps any of the non-association or place restriction conditions imposed when ordering home detention since the Act's implementation have been imposed with reference to the Act.

7.7. Conditions of leave as to non-association and place restriction

7.7.1. *Crimes (Administration of Sentences) Act 1999*

An amendment by the Act to the *Crimes (Administration of Sentences) Act 1999*²⁴² enables the conditions of a local leave permit for inmates issued by DCS to include non-association and place restriction provisions (s26A).²⁴³

The department had previously been able to impose non-association and place restriction type conditions when granting a local leave permit.²⁴⁴ The regulations enable the Commissioner to set standard and additional conditions.²⁴⁵

DCS has advised that no amendments were made to the existing forms related to local leave permits to explicitly incorporate the provisions introduced by the Act and there is no reference to the new non-association and place restriction provisions in any of the department's documentation related to local leave permits.²⁴⁶

It also appears that apart from an article published in the *Corrective Services Bulletin* in 2002 referring to the new legislation, there has been no general instruction or training provided to staff on the new provisions. There was also no change made during the review period to the OIMS to enable conditions imposed when issuing local leave permits to be recorded.

Thus it appears unlikely that many, or perhaps any non-association or place restriction conditions imposed when issuing local leave permits since the Act's implementation have been imposed with reference to the Act.

7.7.2. Children (Detention Centres) Act 1987

An amendment by the Act to the *Children (Detention Centres) Act 1987* enables the conditions of leave for juveniles at detention centres to include non-association and place restriction provisions.²⁴⁷

As mentioned earlier the Director-General of DJJ had previously been able to impose non-association and place restriction type conditions when granting leave to a detainee.²⁴⁸

The department has advised that since the introduction of the Act there has been no changes to the policies and procedures related to the imposition of conditions at leave. No change has been made to the 'Order for Leave' forms and there is no reference to the new non-association and place restriction provision in any of the department's documentation related to leave.

There was also no change made during the review period to the Client Information Data System (CIDS) to enable leave conditions imposed to be recorded nor was there any publication or training provided to staff on the new provisions.

The department advised that there was no data available on the non-association and place restriction conditions imposed during the review period (May 2002 to May 2004), or any other conditions for that matter, as there are no systems in place to enable the department to track conditions.²⁴⁹

Any conditions that were imposed were documented manually on the individual files.

7.7.2.1. Examination of file sample

For the purposes of the review, we examined a sample of DJJ files of those persons eligible for leave during the review period.

DJJ advised that CIDS was not equipped to record which detainees were granted leave but CIDS could identify detainees eligible for leave, within a stated period.²⁵⁰

DJJ were able to identify that there were 2915 detainees in the state eligible for leave during the review period (May 2002 to May 2004).

We randomly selected a small sample of those files from across the review period for examination. We examined 28 detainee's files (1%) that were identified from the system as being eligible for leave during that period.

The detainees selected were located in detention centres throughout the state and included one female detainee and 27 male detainees. Of those 28 detainees randomly selected 10 were Aboriginal males (36%).

Five of those 28 detainee files (18%) examined had been granted leave in the review period.

All of those granted leave had conditions imposed upon them.

One of those detainees had place restriction conditions imposed upon him. Those conditions were detailed in the 'Other Special Conditions' section of the s24 'Order for Leave' form and read as follows:

- *Not to enter CBD Fairfield or Cabramatta*
- *Not to enter Fairfield or Cabramatta railway station.*

There was no reference to the new non-association and place restriction provisions on the 'Order for Leave' form or in the file.

7.7.2.2. Impact of legislation

Based on the information available it appears unlikely that many, or perhaps any non-association or place restriction conditions imposed when granting orders for leave within Juvenile Justice Centres have been imposed with reference to the Act.

Endnotes

- ¹⁶¹ s17A, *Crimes (Sentencing Procedure) Act 1999*.
- ¹⁶² As mentioned in Chapter 2 information on the use of non-association and place restriction orders in non-GLC Children's Courts in the review period was not provided. Children's court data in non-GLC courts is collected by the Department of Juvenile Justice. The Department was unable to provide data on non-association and place restriction orders imposed in non-GLC courts in the review period as it did not have the orders programmed as an 'outcome category' on its system. See related recommendation 2(i).
- ¹⁶³ Information provided by NSW Local Courts and BOCSAR. BOCSAR provided details of a further matter where it had been recorded that an order had been imposed at Wellington Local Court. However an examination by this Office of the transcript and court papers of the matter revealed that a data recording error had occurred and an order had not been imposed in this instance. This was confirmed by the court and BOCSAR. BOCSAR advised that there were no orders imposed in higher courts.
- ¹⁶⁴ These orders were imposed at Raymond Terrace and Casino Courts.
- ¹⁶⁵ s17A(4) Part 2A of the *Crimes (Sentencing Procedure) Act 1999*.
- ¹⁶⁶ Case No.14. Details obtained from the COPS event narrative and NSW Local Court papers.
- ¹⁶⁷ Rising of the court is a type of sentence where the court orders the defendant to 'remain in court until the next adjournment'. This is a symbolic way of saying that an offender is convicted but no formal sentence is imposed. Such an order is reserved for the least serious of offences.
- ¹⁶⁸ Case No.5. Details obtained from the COPS event narrative and NSW Local Court papers.
- ¹⁶⁹ Case No.7. Details obtained from the COPS event narrative and NSW Local Court papers.
- ¹⁷⁰ Case No.3. Details obtained from NSW Local Court papers.
- ¹⁷¹ Case No.4. Details obtained from the COPS event narrative and NSW Local Court papers.
- ¹⁷² Case No.17. Details obtained from NSW Local Court papers.
- ¹⁷³ Case No.12. Details obtained from NSW Local Court papers.
- ¹⁷⁴ Case No.13. Details obtained from NSW Local Court papers.
- ¹⁷⁵ Case No.17. Details obtained from the COPS event narratives and NSW Local Court papers.
- ¹⁷⁶ Case No.13. Details obtained from the COPS event narratives and NSW Local Court papers.
- ¹⁷⁷ s12, *Crimes (Sentencing Procedure) Act 1999*.
- ¹⁷⁸ Seven (7) of the bonds were imposed according to s9, *Crimes (Sentencing Procedure) Act 1999*; three (3) of the bonds were imposed according to s 33(1)(b), *Children (Criminal Proceedings) Act 1987*; and one (1) bond was imposed according to s(10)(1)(b), *Crimes (Sentencing Procedure) Act 1999*.
- ¹⁷⁹ s33(1)(e), *Children (Criminal Proceedings) Act 1987*.
- ¹⁸⁰ *Newcastle Herald*, Saturday 31 March 2001, p. 5.
- ¹⁸¹ *NSWPD*, 15 November 2001, p. 18755.
- ¹⁸² Interview with magistrate, July 2003.
- ¹⁸³ Interview with magistrate, July 2003.
- ¹⁸⁴ Interview with magistrate, July 2003.
- ¹⁸⁵ Interview with police prosecutor, December 2005.
- ¹⁸⁶ Interview with police prosecutor, December 2005.
- ¹⁸⁷ s100A(1), *Crimes (Sentencing Procedure) Act 1999*.
- ¹⁸⁸ s100A(2), *Crimes (Sentencing Procedure) Act 1999*.
- ¹⁸⁹ Case No.1. Details obtained from the COPS event narratives and NSW Local Court papers.
- ¹⁹⁰ Case No.6. Details obtained from the COPS event narratives and NSW Local Court papers.
- ¹⁹¹ Ultra vires means without authority. Thus in imposing such an order the magistrate would be acting beyond their lawful power.
- ¹⁹² Case No.15. Details obtained from the COPS event narratives and NSW Local Court papers.
- ¹⁹³ Case No.18. Details obtained from the COPS event narratives and NSW Local Court papers.
- ¹⁹⁴ s100B, *Crimes (Sentencing Procedure) Act 1999*.
- ¹⁹⁵ Case No.2. Details obtained from the COPS event narratives and NSW Local Court papers.
- ¹⁹⁶ s100C, *Crimes (Sentencing Procedure) Act 1999*.
- ¹⁹⁷ s100D, *Crimes (Sentencing Procedure) Act 1999*.
- ¹⁹⁸ Case No.1.
- ¹⁹⁹ Case No.6.
- ²⁰⁰ Case No.13.
- ²⁰¹ s100E, *Crimes (Sentencing Procedure) Act 1999*.
- ²⁰² s100F, *Crimes (Sentencing Procedure) Act 1999*.
- ²⁰³ s100G, *Crimes (Sentencing Procedure) Act 1999*.
- ²⁰⁴ s100H, *Crimes (Sentencing Procedure) Act 1999*.
- ²⁰⁵ s2(1), *Criminal Appeal Act 1912*.
- ²⁰⁶ s51A, *Crimes (Sentencing Procedure) Act 1999*.
- ²⁰⁷ s36B, *Bail Act 1978*.
- ²⁰⁸ s36(2)(a) *Bail Act 1978*, states that 'the accused person enter into an agreement to observe specified requirements as to his or her conduct while at liberty on bail, other than financial requirements.'
- ²⁰⁹ Clause 13 of the *Bail Regulation 1999*.
- ²¹⁰ See 9.2.1 for recommendations related to these findings.
- ²¹¹ An authorised police officer is an officer with the rank of sergeant or higher. 'Authorised officer' is the term used throughout the *Bail Act 1978* to refer to such a police officer.
- ²¹² s36B, *Bail Act 1978*.
- ²¹³ s36(2)(a), *Bail Act 1978* which states that 'the accused person enter into an agreement to observe specified requirements as to his or her conduct while at liberty on bail, other than financial requirements'.

- ²¹⁴ 'Amendments to the *Bail Act 1978*' *Tips and tricks: Online Newsletter for COPS and ICOPS*, Issue 38, July 2002.
- ²¹⁵ The days selected included Friday the 28/06/02, 30/08/02, 25/10/02, 27/12/02, 28/02/03, 25/04/03, 27/06/03, 29/08/03, 31/10/03, 26/12/03, 27/02/04 and 30/04/04. Friday was selected as it known to be high volume day for bails at NSW police stations.
- ²¹⁶ A telephone survey of 34 LACs highlighted that, whilst non-association and place restriction conditions were being used as a condition of a person's bail, they were not necessarily being imposed under the new provisions; rather they were being imposed under the general powers to make bail conditions provided under s36(2)(a) of the *Bail Act 1978*.
- ²¹⁷ The figures are adjusted for the review sample period.
- ²¹⁸ Case No. 21.
- ²¹⁹ These offences include use uninsured motor vehicle; use unregistered vehicle on road area; license expired 2 years or more and driver of vehicle displaying unauthorised number plates.
- ²²⁰ Case No. 21. Details obtained from the COPS event narratives.
- ²²¹ Case No. 22. Details obtained from the COPS event narratives.
- ²²² The imposition of these imprecise conditions is further discussed in 9.3.6.
- ²²³ Case No. 23. Details obtained from the COPS event narratives.
- ²²⁴ Case No. 24. Details obtained from the COPS event narratives.
- ²²⁵ Case No. 25. Details obtained from the COPS event narratives.
- ²²⁶ Case No. 26. Details obtained from the COPS event narratives.
- ²²⁷ Case No. 27. Details obtained from the COPS event narratives.
- ²²⁸ To determine the context in which the conditions had been imposed we made our own inquiries of the COPS database to obtain details of incidents such as 'event narratives' composed by operational police who dealt with particular incidents and court outcomes.
- ²²⁹ Case No. 28. Details obtained from the COPS event narratives.
- ²³⁰ Case No. 29. Details obtained from the COPS event narratives.
- ²³¹ Case No. 30. Details obtained from the COPS event narratives.
- ²³² Case No. 31. Details obtained from the COPS event narratives.
- ²³³ The days selected include Friday 30/06/00, 25/08/00, 27/10/00, 29/12/00, 23/02/01, 27/04/01, 29/06/01, 31/08/01, 26/10/01, 28/12/01, 22/02/02 and 26/04/02. Friday was selected as it known to be high volume days for bails at NSW police stations.
- ²³⁴ Increases in the use of non-association and place restriction conditions were identified in Redfern LAC (1 in 2000 to 2002 to 7 in 2002–2004), Brisbane Waters LAC (3 to 8) and Lower Hunter LAC (6 to 11). Decreases in the use of non-association and place restriction conditions were identified in Coffs/Clarence LAC (14 in 2000 to 2002 to 7 in 2002–2004), Ku-ring-gai LAC (6 to 0), Richmond LAC (13 to 7), City/Central (5 to 0), Griffith LAC (6 to 1) and North Shore LAC (8 to 3).
- ²³⁵ s36C, *Bail Act 1978*.
- ²³⁶ s128A, *Crimes (Administration of Sentences) Act 1999*.
- ²³⁷ Letter from the NSW Parole Board, NSW Department of Corrective Services, 22 March 2005.
- ²³⁸ Letter from the NSW Parole Board, NSW Department of Corrective Services, 22 March 2005.
- ²³⁹ s165A, *Crimes (Administration of Sentences) Act 1999*.
- ²⁴⁰ s165(2), *Crimes (Administration of Sentences) Act 1999*.
- ²⁴¹ Letter from NSW Department of Corrective Services, 19 September 2005.
- ²⁴² An amendment to the *Crimes (Administration of Sentences) Act 1999* inserts a new s26A.
- ²⁴³ s26A, *Crimes (Administration of Sentences) Act 1999*.
- ²⁴⁴ s26 of the *Crimes (Administration of Sentences) Act 1999* states that the conditions to which a local leave permit is subject must include such conditions as are required by the regulations and that the Commissioner may at any time vary or omit, substitute or add conditions of a local leave permit or revoke a local leave permit.
- ²⁴⁵ Clause 169 of the *Crimes (Administration of Sentences) Regulation 2001* stipulates an application under s26 for a local leave permit is to be made in the form approved by the Commissioner. The regulation stipulates that an inmate who is the subject of a local leave permit must not contravene any condition to which the order or permit is subject. Failure by an inmate to comply with the requirements of this clause is a correctional centre offence.
- ²⁴⁶ Discussions with NSW Department of Corrective Services representatives, October 2005.
- ²⁴⁷ s24A, *Children (Detention Centres) Act 1987*.
- ²⁴⁸ s24(1B), *Children (Detention Centres) Act 1987*.
- ²⁴⁹ Discussions with DJJ representatives, July 2005.
- ²⁵⁰ Discussions with DJJ representatives, July 2005.

Chapter 8. Sentencing issues

This chapter discusses the issues relating to non-association and place restriction orders imposed at sentencing that have been identified through our scrutiny of the Act.

8.1. Low level use of non-association and place restriction orders imposed at sentencing

8.1.1. Factors contributing to the low use of orders

The non-association and place restriction orders were used on only 20 occasions during the two year period of the review.

It appears a number of factors may have contributed to the low use of the orders including:

- that courts continue to use alternative means available for imposing non-association and place restriction conditions at sentencing
- lack of knowledge of the Act by the judiciary and other relevant officers.

8.1.1.1. Continued use of alternative means

The court had previously been able to impose non-association and place restriction type conditions at sentencing through good behaviour bonds²⁵¹ or a suspended sentence²⁵² and appears to continue to do so. A number of magistrates stated in interviews and in response to our survey:

Frequently I impose these types of orders as a condition of a bond or probation in the Children's Court. ... Non-association type conditions of bonds and probation in the children's courts have been made for years and years. Likewise but far less commonly place restriction type conditions.

*

There is a degree of habit and you tend to do what you have done before.

*

The pre-existing good behaviour bond provisions were adequate to address any real problems. However I have not used the provisions principally because the need/issue has simply never arisen at the Courts at which I sit.

*

A lot of us I know have used non-association and place restriction orders before this legislation ever came in. Either as a condition of bail or as a condition of good behaviour bond — and continue to do so.

In its submission to our discussion paper the Children's Court commented:

The Children's Court has had the experience of using orders of this type for decades so the legislation is very much a case of 'business as usual'... Experience confirms that courts continue to make such orders (especially non-association) as conditions of bonds or probation. Certainly in making recommendations to the court on sentence a suggestion of such conditions [the new provisions] is virtually unknown.²⁵³

Similarly the Department of Juvenile Justice commented:

It is the department's experience that such orders continue to be imposed under pre-existing legislation.²⁵⁴

8.1.1.2. Lack of knowledge of the Act

It also appears that the limited use of the orders may be related to a lack of knowledge by the judiciary and other relevant officers of the new provisions relating to sentencing. One police prosecutor observed:

It is an excellent idea but there seems to be either a lack of training, lack of awareness or unwillingness to impose conditions on behalf of the judiciary.

Those magistrates and public prosecutors who responded to our survey had not or could not recall receiving any training on the Act. Most advised that they had learnt of the Act through court circulars and journal articles. A number of magistrates advised as follows:

I knew of them [the orders] but you are constantly being told of new things and it does take a little bit of time to start using them and becoming accustomed to them.

*

I think from a magisterial perspective that they are aware of it and it is a tool, but a tool that was almost already there and I think as a result a lot of us, and I am one of them, haven't really put our minds to it.

*

I think it is something that a bit more education for judicial officers wouldn't go amiss.

A senior police officer reported that in the non-metropolitan region in which he worked a number of Outlaw Motorcycle Gangs had recently been prosecuted. He commented that, had police known of the legislation, these prosecutions would have provided an opportunity to use the non-association and place restriction orders. He noted that 'there are some defendants still to be prosecuted and I will endeavour to have these orders invoked through the prosecutor applying to the court.' He further added:

the education of all involved agencies is required to formally improve the appropriate use and interpretation of the non-association and place restriction orders.²⁵⁵

Another senior police officer observed that 'it would appear that the legislation in question is not widely known to operational police, if at all.'

The NSW Police Gangs Squad commented:

it appears that there is a lack of knowledge regarding the legislation and its use...the legislation is currently under-utilised by Police. This is no doubt attributable to the Police not being aware or familiar with the legislation and its use.²⁵⁶

The Shopfront Youth Legal Centre noted it was desirable:

for police, judicial officers, probation officers and juvenile justice officers to be trained in non-association and place restriction orders. In our view it is important for such training to emphasise that, whilst the powers to make such orders is very broad, the appropriateness of such orders need to be very carefully considered.²⁵⁷

DJJ outlined its involvement in the process:

It completes an assessment of the juvenile offender, identifies areas of concern and canvasses suitable options that the courts may wish to impose when sentencing a juvenile offender by way of background report, submissions and bail interventions.²⁵⁸

In our implementation chapter we detailed the information, education and training on the legislation that had been made available to the above officers to date by the various agencies with responsibilities in this area. So far, the strategies employed by these agencies to inform and train relevant officers about the legislation appear to have been quite limited.

The limited promotion of the legislation by the relevant agencies and the comments from magistrates and police prosecutors themselves are relevant in suggesting that, if the legislation is to continue, further strategies should be developed by the agencies responsible for the training of these officers to ensure they are appropriately informed about the legislative changes.

8.1.2. Is the Act meeting its objectives?

8.1.2.1. Stated objectives

In his second reading speech, Mr Stewart MP stated that the Bill aimed to 'target gangs, break down criminal associations, promote the rehabilitation of offenders and assist in preventing crime.' In particular, he stated the following in relation to the sentencing orders introduced by the Bill:

- the aim of such orders is to prevent crime and to assist the rehabilitation of the offender by severing their ties with people or places that make them more likely to engage in criminal activity
- the orders can be imposed by the court where it believes it is reasonably necessary to ensure the offender does not commit further offences.

Mr Stewart MP also stated that the orders may be made in addition to but not instead of, other sentencing options and thus give the courts increased flexibility in sentencing.²⁵⁹

8.1.2.2. Comments on low usage and ability to target gang activity

A number of community agencies responding to our discussion paper suggested that the Act had failed to meet its objectives given the small number of orders imposed in the review period and that few, if any, appeared to relate to gang activity.²⁶⁰

It is our view that with so few matters (20) where courts imposed the orders under the Act during the review period it is difficult to assess the effectiveness of these orders in preventing crime, assisting the rehabilitation of offenders and targeting criminal gang activity.

What we can say in relation to the impact of orders on re-offending is that, of the small number of offenders who had orders imposed upon them in the review period, an examination of their police records following the imposition of the orders reveals that no offenders breached the orders. However, the records reveal that 12 offenders (60%) have been convicted of further unconnected offences following the imposition of the orders.

Only five of the orders (20%) imposed during the review period appeared to have been imposed for 'gang type' offences or offences where there was evidence of criminal activity involving two or more people. However, none of these orders were imposed for offences that involved serious, organised criminal activity. The 'gang type offences' for which orders were imposed included shoplifting, affray, assault and robbery and were primarily committed by juveniles who appeared to be involved in loosely organised groups. Only two of the matters involved more than three offenders. Thus the criminal gang activity for which orders were imposed during the review period were at the lower end of the type of gang activity which Parliament intended to target through this legislation.

There were no prosecutions of offences to publish or broadcast the fact that a named person (other than the offender) is specified in a non-association order or any information calculated to identify any such person.²⁶¹

8.1.2.3. A sentencing alternative

As stated in the second reading speech, the orders were intended to supplement, not replace, other sentencing options and thus give courts increased flexibility in sentencing. Police prosecutors commented in relation to the legislation that:

It's a good tool to have in the box.

*

Having alternatives is good if they address re-offending and protect the community.

*

I believe it is a valuable tool for dealing with repeat offenders who commit offences whilst in the company of the same individuals. It is particularly valuable when the offenders are juvenile and as such are exposed to a greater degree of peer pressure (pack mentality). It is one factor in allowing an individual to maintain their liberty, but curtails their opportunity to commit similar offences.

Despite their comments, the low usage rates recorded in the review period indicate that the legislation is not being utilised effectively by prosecutors. If the legislation is to be retained we recommend that further education strategies be developed for prosecutors and other officers involved in making sentencing submissions to court. This may have some impact in promoting the use of the orders where appropriate.

8.1.2.4. Comments on the breach offence

A number of magistrates interviewed for the review were of the view that the Act's strength may lie in the fact that, unlike a breach of non-association and place restriction conditions imposed as part of a bond and suspended sentence, a breach of the orders is in itself an offence.²⁶² One magistrate commented:

The legislation has the teeth that you can say [to an offender] this is a non-association order if you don't comply then you are liable to this and if you understand that you can't go to X and then if you don't comply they are in big trouble. I think that is what it's handy for.

Similar comments were made by a senior police officer:

The advantage of this legislation is that breach is actually a criminal offence.

However one magistrate commented:

I doubt the penalties are any more of a deterrent than the prospect of being called up for breaching a bond.

Submissions received in response to our discussion paper commented that the risk inherent in the legislation is that the imposition of unrealistic conditions within orders, the breach of which is an offence, may lead to harsher consequences than were anticipated. It was suggested for example that orders may be imposed for a relatively minor offence, the breach of which carries a relatively heavy fine or six months imprisonment or both.

As no non-association and/or place restriction orders were reported as breached in the review period, we are unable to determine at this stage whether this will occur in practice.

Of the 20 offenders who had orders imposed on them, 19 were convicted of offences that attracted penalties of six months imprisonment or more. Seventeen of the offenders had previous criminal histories.

One 21 year old offender who had an order imposed upon him appears to have been convicted of minor offences that did not attract a penalty of more than three months imprisonment. This appears to have been in contravention of the Act.²⁶³ If the offender had been convicted of a breach of the order, the penalty for breach could have potentially exceeded the penalty for the original offence.

8.1.2.5. Other comments on the effectiveness of the legislation

The submission of the Children's Court commented that the objective of the legislation 'to break down an offender's association with persons and places that may increase their likelihood of re-offending' is 'supported as a measure protective of the public interest in the deterrence of crime.' The court further commented that the orders 'are readily justifiable both in terms of rehabilitation of the offender and the protection of the community by reducing the opportunity of re-offending.'²⁶⁴

One magistrate commented that:

the objectives [of the legislation] are laudable...It is likely to have some effect on juvenile offending because of the tendency for offences to be committed in company and by associates. In fact peer influence is often sighted by offenders and their families as a significant factor in offending, and while in the case of offenders such claims have a high element of self interest, there is probably a lot of truth in the claim.

Another magistrate also commented that one of the merits of the legislation was that it could be usefully employed for young people as 'You are getting people at a very critical age when they are young — trying to drag them out of the environment which is not beneficial to them'.

A police prosecutor located in the Raymond Terrace area who was involved in 11 of the matters where orders were imposed advised that he was of the view that the orders had been effective in reducing crime in the area. He advised that the place restriction orders prohibiting offenders from visiting licensed premises and shopping centres had been particularly useful in reducing criminal activity in and around those locations.

In relation to the impact of the orders on gang related activity in the area the police prosecutor commented that those offenders who had orders imposed upon them as a result of his submissions were often loosely involved with a group who consumed alcohol together. He commented that these groups did not have the 'cohesive nature of a gang'.

The police prosecutor was of the view that these orders were particularly suited for use in regional areas where police were more familiar with the offenders, persons named and locations connected with the orders.²⁶⁵

One magistrate did not think the legislation was helpful, commenting:

The amendments were the usual mindless, knee jerk political response to a perceived problem. The pre-existing Bail Act and Good Behaviour Bond provisions were adequate to address any real problems. However I have not used the provisions principally because the need/issue has simply never arisen at the courts at which I sit. I suggest that this is a reflection of the impropriety of the changes and the real lack of any need for them.

8.1.2.6. Summary

Our research has revealed that the orders have been used sparingly during the two year review period — only 20 orders were imposed. When used, the orders have not been imposed for serious organised criminal gang activity. Thus the legislation as it relates to orders, does not appear to be meeting its stated objectives. While some have commented on the usefulness of the orders as an alternative sentencing option, others have reflected on the availability of measures such as suspended sentences and bonds to achieve a similar result. These observations, in our view, point to the need for a review by Parliament of whether the legislation is required.

If the legislation is to be retained, further monitoring of the use of orders is required to enable an accurate and comprehensive analysis of the use of the provisions. In addition, there is a clear need for further information and training to be provided to relevant agency staff and judicial officers about the orders and their potential use.

8.2. Orders restricting certain associations or activities

8.2.1. Conditions which restrict an offender from associating with a member of their close family

8.2.1.1. Section 100A(1) and (3) of the *Crimes (Sentencing Procedure) Act 1999*

Section 100A(1) states that persons specified in a non-association order as persons with whom the offender must not associate may not include any member of the offender's close family.

Section 100A(3) of the Act defines 'close family' as:

- a) *the offender's spouse, de facto or same-sex partner, and*
- b) *the offender's parents, step-parents and grandparents, and*
- c) *the offender's children, step-children and grandchildren, and*
- d) *the offender's brothers and sisters, and step-brothers and step-sisters, and*
- e) *the offender's guardians or carers.*

The definition of 'close family' detailed in these Acts received commendation from stakeholders for recognising a number of issues in relation to the importance of culturally defined relationships.

However, it was explained by a number of stakeholders that, for Indigenous people, kinship ties extend beyond the immediate family of mother, father, brother and sisters, to include aunts, uncles and cousins. We were informed that for these communities, grandparents, aunts and uncles often play an important role in the development of a child in the community, and a person's relationship with their cousins can be as important as that with siblings.

It was asserted by a number of youth and legal centres and other agencies that, for certain groups of people, the definition in s100A(3) of the *Crimes (Sentencing Procedure) Act 1999* is inappropriately limited by failing to acknowledge the importance of belonging to a wider family network and community. One youth representative described the definition as '*a very white middle class way of looking at things*'.

8.2.1.2. Responses to the discussion paper and surveys

Our discussion paper asked whether there would be any benefits to amending the definition of close family as set out in s100A to reflect kinship ties which extend beyond the immediate family.

Submissions received were generally supportive of amending the definition of close family in s100A(3) to address the issue of 'kinship' in specific communities. The Minister for Community Services response is representative of those who supported the suggestion:

*There can be important family and kinship relationships that are not defined by the relatively narrow biological or legal relationships specified in the current definition. The relatively narrow definition of family could have adverse impacts on Aboriginal people who have very strong attachments to extended kinship groups.*²⁶⁶

Shopfront Youth Legal Centre stated it was essential for a definition of close family to reflect kinship ties 'to take account of the family structures of Aboriginal people'.²⁶⁷

However, NSW Police and the Children's Court did not support such an expansion of the definition. NSW Police commented:

*Restrictions regarding the application of orders on close family members are an unnecessary limitation when targeting organised crime gangs/groups, which are often based on familial connections.*²⁶⁸

The Children's Court commented:

*Any constraint upon the power of the court to make a non-association condition, which is otherwise appropriate, necessarily gives precedence to another public interest.*²⁶⁹

8.2.1.3. Inflexibility of conditions

NSW Police stated that the Act needed 'to be more flexible to address familial connections in organised criminal activities' and that introducing further restrictions on the application of orders under the Act would only serve to frustrate the work of police in disrupting criminal associations and thus reducing crime. The police suggested that one way to address this issue would be:

*to allow orders to be applied where there is evidence of an ongoing pattern of criminal behaviour which could be attributed to criminal activity conducted in partnership with specific family members.*²⁷⁰

The issue of the flexibility of orders was also raised by a number of magistrates and prosecutors surveyed for the review.

One magistrate questioned whether the orders could be made conditionally. The magistrate commented that he had a matter referred to him where he wished to impose a non-association order for a juvenile. However, the person named in the non-association order attended the same rehabilitation program the offender was required to attend. The magistrate imposed the order with an exception that the offender may associate with the named person for the purpose of attending a mandatory rehabilitation program but advised that he questioned whether it was entirely appropriate to do so in the circumstances.²⁷¹ The magistrate commented that the 'legislation seemed silent on the point' of whether exceptions were permitted when making the orders.

In one matter where a place restriction order and a non-association condition were imposed in the review period it appears the magistrate also had reservations as to whether an order could be made conditionally. In this matter a school age offender was caught shoplifting with a co-offender who attended the same school. As well as a place restriction order the offender was given a bond with a condition that the offender not associate with the co-offender except for school purposes. The details were as follows:

*A juvenile male, age 13 at time of the offence, was caught attempting to steal a wristwatch with the co-offender at a large retail store in the metropolitan area. The Children's Court ordered a six month bond with the condition that the offender was not to associate with the co-offender except for school purposes. The magistrate explained the condition to the offender by saying 'So if you have got to be in the same playground or if you have got to go to the same sports day, then it will not be breaching the condition if you are there with [the co-offender]. But if you are hanging around on the weekends or something with him, then it will be a breach of it. Do you understand that?' The court also imposed a place restriction order prohibiting him from frequenting or visiting the particular retail store unless accompanied by his brother or mother. These conditions were to last the duration of the six month bond.*²⁷²

It appears that the non-association condition was included as part of the bond and not as a non-association order because the court wished to include the 'school yard' exception and was of the view that such exceptions were not appropriate when imposing orders. Notably, however, the place restriction order included the exception that the offender not attend the retail store at Bonnyrigg unless accompanied by his brother or mother.

Another magistrate stated that he imposed non-association and place restrictions as conditions of a bond or suspended sentence as 'I have greater flexibility when imposing the restriction'.

Another magistrate believed the definitions of family set out in s100A(3) were too restrictive in the legislation. The magistrate went on to comment that 'you also have situations where people are offending with or against their family. You quite often see siblings doing break and enters together.' However s100A(3) would prevent the court from imposing a non-association order upon members of the same family. The magistrate advised that if he wished to make non-association conditions in situations like this he would 'find his way around it' by imposing the condition as part of a bond and not a non-association order.

8.2.1.4. Summary

Legislative restrictions and safeguards in respect of non-association have attracted critics from both sides of the fence — being too broad or narrow as regards family or kinship matters and not allowing for certain 'conditional' associations. This has impacted it appears, on the very limited use of these orders. In light of this, Parliament may wish to consider whether any amendment of s100A is required. A challenge in providing for increased flexibility will be to ensure that resulting orders are sufficiently precise such that they can be complied with and enforced.

8.2.2. Conditions which restrict an offender from attending specified places

8.2.2.1. Section 100A(2) of the Crimes (Sentencing Procedure) Act 1999

Section 100A(2) states that the places or districts specified in a place restriction order as places or districts that the offender must not frequent or visit may not include:

- a) *the offender's place of residence or the place of residence of any members of the offender's close family, or*
- b) *any place of work at which the offender is regularly employed, or*
- c) *any educational institution at which the offender is enrolled, or*
- d) *any place of worship at which the offender regularly attends.*

8.2.2.2. Inflexibility of conditions

Whilst s100A(2) provides a list of what should not be attached to a place restriction order, it has been suggested that such orders may inadvertently restrict access to a number of important services. These include health, legal and employment services, which offer support, particularly to youth who are marginalised or those not in mainstream education and employment.²⁷³ Place restriction orders may also inadvertently restrict access to close family in some circumstances.

One community stakeholder provided us with an example which illustrates the range of considerations which might be recognised when imposing place restriction orders or conditions. It was advised that a former heroin user was arrested attempting to sell small amounts of cannabis in a suburb. By virtue of a 'blanket' condition, that is a condition that prohibited the offender from visiting that particular suburb at any time for the duration of the order, the offender was prohibited from attending both her methadone clinic and her solicitor's office.²⁷⁴

Similar concerns were raised with regard to the use of the drug-move on powers in Cabramatta. Our review of the *Drug Premises Act 2001* examined the use of these powers and reported a range of public health concerns including that:

- move-on directions were impeding drug users' access to the Drug Intervention Service in Cabramatta (DISC) and to other services such as the needle and syringe exchange van
- the use of the Needle and Syringe van had declined since the drug move-on powers had been in place
- the intensive policing in Cabramatta had caused drug users to disperse to other areas, and this had made it more difficult for health services to access their client group
- new demands were being placed on health services, such as needle and syringe exchanges, in other parts of south-west Sydney, particularly Liverpool, because drug users had moved to other areas as a consequence of police activity in Cabramatta, and
- police had confiscated unused syringes from drug users.²⁷⁵

Other examples provided in submissions raised concerns where blanket conditions imposed as part of bonds, suspended sentences and bail excluded people, particularly Aboriginal people, from country towns.²⁷⁶ Of concern was that by imposing such conditions, the recipient is not only restricted from frequenting a specified area, but also from seeing family who may live there.

Conversely, one magistrate provided examples of where the definitions set out in s100A(2) were too broad. He explained, that in some situations, it may be necessary to impose a restriction to prohibit an offender from frequenting a place of worship or an educational institution where he or she is enrolled, and may be participating in criminal activity. However, s100A(2) prevents the court from imposing a place restriction condition. In these circumstances, the magistrate said that he would use a good behaviour bond to prohibit an offender from going to these establishments.

In one matter where a place restriction order was imposed in the review period an exception was detailed on the place restriction order:

The 21 year old offender sold a small portion of cannabis to an undercover operative in Nimbin, NSW. The offender was apprehended and charged with supply of a prohibited drug. The offender's lawyer advised the court that the defendant had a disadvantaged background and a history of bad influences in that area. The lawyer indicated that the offender had determined to make a fresh start and had moved from the town accordingly. The offender was sentenced to 12 months imprisonment, which was suspended for a period of 12 months on the condition that the offender enter into a good behaviour bond. The court also imposed a place restriction order on the offender prohibiting him from visiting or frequenting the township for 12 months. An exception on the order was included that the offender was allowed to enter the township 'for the sole purpose of driving through the said township for the purpose of visiting his mother and or sister who reside' just outside the town.²⁷⁷

8.2.2.3. Discussion paper responses

Our discussion paper asked for responses as to whether there would be any benefits to amending the definition of what a place restriction order can and cannot restrict and whether there would be any benefits to imposing 'blanket' place restriction conditions which excluded an offender from an entire area, allowing for no exceptions.

NSW Police commented that blanket place restriction conditions or orders can be favourable to both the community and the offender. For instance, by prohibiting a person involved in street level drug supply, 'the offender is removed from the area in which they are most likely to re-offend and the amount of street level drug dealing is decreased'.

NSW Police further commented that the circumstances of each particular case should dictate what the appropriate conditions or orders should be. So if an offender needed to attend an area for the purpose of obtaining methadone, then an order should be tailored for individual requirements.²⁷⁸

Similarly, the Children's Court commented that an alternative to blanket orders are 'conditional conditions' or exceptions. For example 'you are restricted from attending this place except between certain hours or days'.²⁷⁹

Several community legal centres suggested that the list of places which may not be included in a place restriction order should recognise the need for unemployed or homeless young people to access a variety of services, and the types of activities commonly undertaken by young people. They were of the view that place restriction orders should not be made in relation to employment services, welfare services, health services, government agencies, community/cultural centres, public transport routes and local services that a person has no realistic alternative to access. The Shopfront Youth Legal Centre commented:

*Young people, particularly those who are homeless or otherwise disadvantaged often find it very difficult to comply with...place restriction conditions. There are a range of legitimate activities which may cause them to fall foul of the condition — including seeking employment, looking for accommodation, using health and welfare services, and socialising with peers or extended family members. Although there are some restrictions on the types of orders that can be imposed, we suggest that this is based on a set of white, middle class, adult assumptions. It does not recognise...the need for unemployed and homeless young people to access a variety of services, and the types of activities commonly undertaken by young people.*²⁸⁰

There appears to be a consensus amongst those respondents to our discussion paper that place restriction orders should, when appropriate, be tailored to suit the individual circumstances of the offence and the offender.

8.2.2.4. Summary

In light of the above discussion, we are of the view that, if the legislation is to continue, Parliament should give consideration to amending s100A of the *Crimes (Sentencing Procedure) Act 1999* to address the apparent need for flexibility in the legislation when imposing place restriction orders at sentencing. This may include permitting an offender to visit a place at specified times, or in specified circumstances (such as in the company of a parent or guardian). It may also require consideration of limited access to those places which cannot presently be included in an order — for example attendance at a school during school hours. Again a challenge for any amendments is ensuring the precision of resulting orders, such that they can be complied with and enforced.

8.2.3. Places frequented by a particular gang

In its submission to our discussion paper, NSW Police commented that the legislation would be more beneficial if police could impose place restriction orders that prohibit a person's ability to go to places frequented by a particular gang. NSW Police advised:

*While attempts are made to disassociate an offender from a gang by imposing a place restriction, the restriction becomes obsolete when the offender simply moves from one location to another and continues to associate with other members of the same criminal organisation. The legislation would be of greater benefit if police could impose place restriction orders in terms such as: 'places frequented by members of the Big Circle Gang'.*²⁸¹

The NSW Police Gangs Squad also commented that:

*The legislation would be more effective if the non-association conditions were broadened and the name of the gang as opposed to a specified person was nominated in any condition.*²⁸²

This suggestion from police would be a significant departure from the current restrictions specified in the Act.

There is little information available in Australia about how many gangs exist, who the members are and what they do. Lozusic has emphasised that in the Australian context no matter how gangs are described they are invariably 'fairly transient, with members coming and going' and, in relation to gathering data on youth gangs that:

*Members come and go and groups can disintegrate or splinter off into small groups. Information would therefore need to be continually updated to keep pace with such changes.*²⁸³

There are not exhaustive mechanisms currently available to police that enable the 'continual update' of data on gangs in NSW to meet relevant standards of proof. There will inevitably be substantial difficulties defining a criminal gang and proving membership of a gang and establishing the places for which a gang may frequent.

Given the criminal consequence of a breach of an order, the activities and associations the orders are able to prohibit should have a definite, sound and detailed basis. A prohibition imposed on an offender 'not to frequent or associate with a particular gang' is, in our view, likely to be inexact and has the potential to cause injustice.

The Director of Public Prosecutions stated that as a general principle a law must possess characteristics of certainty, generality and equality.²⁸⁴ Certainty requires that the law be prospective, open, clear and relatively stable and of general application to all subjects and apply equally to all.²⁸⁵ The law must be sufficiently precise for people to be

able to regulate their conduct to avoid infringement. Inexact references to ‘places frequented by a particular gang’ do not, in our view, appear to satisfy this principle.

Therefore, if the legislation is to continue, we do not recommend any broadening of orders to include prohibitions from associating with named gangs or to encompass places where ‘a particular gang frequent’.

8.3. Offenders in custody whilst subject to a non-association and/or place restriction order

8.3.1. Suspension of non-association or place restriction order whilst an offender is in custody

The *Crimes (Sentencing Procedure) Act 1999* as amended by the Act provides, that whilst an offender is in custody, a non-association and place restriction order is suspended.²⁸⁶ Similarly the *Children (Detention Centres) Act 1987* as amended provides that whilst a juvenile is in detention an order is suspended.

8.3.1.1. Consideration of the suspension of orders whilst offender is in custody

In effect, although an order stipulates that an offender is not to associate with a named person(s), when the offender is in custody his/her order is suspended and therefore any association with that named person is not unlawful.

DCS officers compared this situation with apprehended violence orders (AVOs), which are also suspended whilst an offender is in custody. Prison officers are requested by the police to advise them if a person named in an AVO has been to visit a person protected by an AVO.²⁸⁷ Such practices, it was said, help the police to build up intelligence whilst an offender is in prison.

It was assumed that similar reporting requests would be expected for recipients of non-association orders. However, because very few offenders who have been subject to non-association orders have spent time in detention, it is understood this is not current practice.²⁸⁸

8.3.1.2. Submissions

Our discussion paper asked for responses as to whether the condition(s) in a non-association order should remain operational whilst an offender is in custody.

NSW Police indicated in its response that it supported the conditions of a non-association order remaining operational while an offender is in custody commenting that:

*While the offender cannot physically commit further offences outside gaol walls while in gaol, they can certainly encourage other people to do so and plan further offences for when they are released.*²⁸⁹

The NSW Children’s Court did not support the conditions of a non-association order remaining operational while an offender is in custody. The court identified that if correctional authorities felt it was necessary for themselves to avoid criticism for permitting such associations by segregating offenders in different facilities, then this would have the potential to seriously compromise their capacity to place offenders in an appropriate facility. It was pointed out that this was particularly the case with juvenile and female detainees and high-risk offenders as there were fewer facilities available to accommodate these offenders.²⁹⁰

DCS advised that it did not support the conditions remaining operational whilst an offender is in custody, commenting that the policing of non-association orders within correctional centres would be difficult and expensive, especially when extended to all forms of communication including letter writing and phone calls.²⁹¹

DCS also highlighted that the aim of the Act was to prohibit an offender’s association with persons and places that may increase the likelihood of their re-offending and ‘such likelihood arises when the offender is at liberty in the community rather than when the offender is in prison’.²⁹²

Mr Stewart MP’s comments in relation to s100D in the second reading speech confirm this view:

*These orders are meant to operate whilst an offender is in the community. Accordingly, new s100D of the Crimes (Sentencing Procedure) Act provides that an order is suspended whilst an offender is in custody or on escorted leave from custody.*²⁹³

8.3.1.3. Summary

Whilst we acknowledge that the absence of any powers to stop ‘associations’ between visitors and co-inmates is a genuine concern for authorities, we are of the view that enforcement of orders whilst in custody would generate a number of practical difficulties for correctional authorities, including placement and operational issues, and additional

expense. It is also noted that such enforcement would be inconsistent with procedures followed for other types of orders such as AVO's and does not appear to accord with Parliament's original intention.

For these reasons, if the legislation is to continue, we do not recommend the alteration of the legislation to enforce the orders whilst an offender is in custody.

8.3.2. Non-postponement of non-association and/or place restriction orders whilst an offender is in custody

An order commences at the time it was made by the court²⁹⁴ and is suspended if the offender is taken into custody. The suspension of an offender's order does not operate to postpone the date on which the order comes to an end.²⁹⁵

Therefore if a place restriction or non-association order is granted at the same time that a sentence of imprisonment is handed down to an offender, the order would be effective only for the period that the offender was outside a correctional facility rather than the actual length of the order.

Three of the 20 persons subject to orders in the review period spent time in custody whilst subject to orders.²⁹⁶

In circumstances where an offender is given a non-association or place restriction order and a short term of imprisonment, it was recommended by one magistrate that these orders should commence when a person's sentence is completed.

This occurs for those non-association orders granted under New Zealand's *Criminal Justice Act 1985*, s28E (2) which states:

Where a non-association order is cumulative on a sentence of imprisonment for a term of 12 months or less, the period of non-association specified by the non-association order commences on the day, which the offender is released from the penal institution [or from home detention (as the case may be)].

8.3.2.1. Submissions

Our discussion paper asked for responses to whether the date of a non-association order should cease, or be postponed, to reflect an offender's time in custody.

NSW Police supported the commencement of an order upon release, commenting as follows:

The commencement of an order upon release would, from a policing perspective, make it more difficult for an offender to engage in further criminal activity for a longer period. Thus, it is the NSW Police position that, while the order should remain in force when the offender is in custody (to ensure the offender is unable to continue any criminal associations), the time spent in custody should not reduce the period of the order.²⁹⁷

DCS and other agencies did not support the suggestion that the orders commence on release.²⁹⁸

The Children's Court questioned the practicality of the suggestion noting that a driving disqualification or an AVO is not extended to take account of a period in custody and it would be increasingly difficult for all involved (including the offenders) to calculate whether an order is still in force if an offender has gone in and out of custody or remand during the duration of the order.²⁹⁹

In order to assess the Children's Court assertion that postponement of the commencement of the order whilst an offender is in prison may cause calculation difficulties for authorities and offenders, we examined the records of those three offenders in the review period who were granted an order at the same time that a sentence of imprisonment was handed down to them.

The examination reveals that one offender, a juvenile subject to a 12 month place restriction order and a one month custodial sentence, was convicted of further offences four months after the order was imposed. This offender spent a further six months in detention whilst the order was operational.³⁰⁰ The second offender suffered from a mental illness and spent time in a mental health institution during the period the order was operational.³⁰¹ The third offender spent his initial time in custody but no further time in custody for the duration of the order.³⁰²

In relation to the first offender, if the commencement of the order was postponed for the juvenile offender whilst he spent time in detention this would have required two calculations of when the order was to commence or continue and result in the order being operational 19 months after it was originally imposed. Court, police and juvenile justice records would have to be amended to reflect this and authorities would have to ensure that the offender was advised of the adjustments to his order each time.

8.3.2.2. Summary

Postponement of commencement of the orders could be confusing for offenders. Such an approach would not be consistent with procedures followed for other types of orders such as AVOs or with suspension of driving licences.

It is also questionable whether the order would remain relevant if still operational a number of years after the original order was imposed.

Therefore, if the legislation is to continue, we do not recommend the alteration of the legislation to postpone the operation of the orders whilst an offender is in custody as it does not appear practicable.

8.4. Extension of the term of an order

The Act stipulates that an order must not exceed 12 months.³⁰³

NSW Police commented in their response to our discussion paper that in addition to an order being commenced upon an offender's release from custody, the period the order can be imposed should be extended to five years. NSW Police commented as follows:

*NSW Police believes the length of orders (12mths) to be insufficient. Consideration should be given to increasing the order to a period of 5 years.*³⁰⁴

NSW Police went on to explain that it holds this view because the organisations which the legislation seeks to dismantle 'contain many members who are career criminals engaging in various criminal enterprises. The increased period will be more effective in reducing the chance of associations reforming'.³⁰⁵

In the second reading speech Mr Stewart MP detailed the Government's rationale for limiting the length of the orders to 12 months as follows:

*The Government recognises that an offender's personal circumstances will change over time and that non-association and place restriction orders made at sentencing should not have an indefinite life, particularly as criminal penalties attach to a breach of an order.*³⁰⁶

The current legislation effectively allows for an order to be extended should an offender be convicted of a further crime. Section 100F of the *Crimes (Sentencing Procedure) Act 1999* as amended by the Act provides for the variation or revocation of a non-association and place restriction order following any subsequent conviction. Thus if an offender is sentenced for a new offence while subject to an order in respect of another offence, the court may vary or revoke that order. It is open to the court to impose a further order for another 12 months, if it determined this was appropriate.

Mr Stewart MP noted in the second reading speech that s100F:

*Gives the court maximum flexibility. It can change an order that is no longer appropriate, as well as impose a further order in respect of the new offence.*³⁰⁷

Offenders' circumstances often change substantially throughout a five-year period, rendering the circumstances for the imposition of a non-association or place restriction order no longer applicable or relevant. Should an offender remain engaged in 'criminal enterprises' and be convicted of a further crime when subject to the order, the legislation appears to adequately provide for the order to be revoked and for a further order to be imposed, effectively extending the length of the order.³⁰⁸

Therefore, if the legislation is to continue, we do not recommend that the period of time an order can be given should be increased from 12 months to 5 years.

8.5 Lack of data

8.5.1. Lack of data on variations, revocations and appeals against non-association and place restriction orders imposed at sentencing

NSW Local Courts advised that statistical reports containing information on variations, revocations or appeals against non-association and place restriction orders in the review period could not be generated under the current system.³⁰⁹

If the legislation is to continue, it is recommended that this data be collected and analysed in a systematic way by all courts to ensure appropriate monitoring of the use of the legislation.

8.5.2. Lack of data on non-association and place restriction orders imposed on juveniles at sentencing in non-GLC courts

DJJ was not able to provide data on non-association and place restriction orders imposed in non-GLC courts in the review period as the department did not have the orders programmed as an 'outcome category' on its system.³¹⁰

If the legislation is to continue, it is recommended that this data be collected and analysed to ensure appropriate monitoring of the legislation.

8.5.3. Inability to track use of court imposed conditions of parole as to non-association and place restriction

The Act amends the *Crimes (Sentencing Procedure) Act 1999* to enable the court to impose non-association and place restriction conditions as part of a parole order.³¹¹

As outlined previously, no changes were made to processes or systems to facilitate the implementation of court ordered non-association and place restriction parole conditions. Consequently it is not possible to determine the impact the new provisions have had on the non-association and place restriction conditions imposed on parole determined at court.

NSW Local Courts have advised that the NSW Attorney General's 'Courtlink' project, which is working towards implementing a new electronic case management system for NSW courts, will update and improve access to court information for purposes such as general inquiries, reporting and research. This will assist in the collection of data in relation to court imposed conditions of parole as to non-association and place restriction.³¹²

If the legislation is to continue, it is essential that data relating to court imposed parole conditions be collected and analysed to ensure appropriate monitoring of the legislation.

8.6. Summary

The objective of these sentencing orders was to target gangs, break down criminal associations, promote the rehabilitation of offenders and assist in preventing crime. Our research reveals that the legislation presently does not meet these objectives.

The orders have been infrequently used — only 20 times in the two year period of the review. When used, they have not been imposed for serious organised criminal gang activity. Only five of the 20 orders relate to criminal activity involving two or more persons.

Factors contributing to the low use appear to be that courts continue to use alternative means available for imposing non-association and place restriction conditions at sentencing and a lack of knowledge of the Act by the judiciary and other relevant officers.

The only substantive difference of the orders over the alternatives available appears to be that there are criminal sanctions available should the offender breach the order. However, our research has revealed that there were no breach charges prosecuted in the review period. In addition the consequences of breaches when other options (eg. suspended sentences) are used may also be grave.

We have also found that the list of associations and activities that the orders may not restrict is inflexible for certain circumstances. With non-association orders for example, it appears that the definition of close family requires broadening to accommodate kinship ties, which extend beyond the immediate family. Consideration should also be given to allowing restrictions of association with close family in certain exceptional circumstances where there is evidence of an ongoing pattern of criminal behaviour within families. Clearly such changes should be approached with extreme caution and with clear evidence of the inadequacy of other remedies.

In relation to place restriction orders, there is an apparent need to expand the list of places, which may not be included in a place restriction order, to accommodate an offender's access to vital services such as health, welfare and other such related services.

Furthermore, the legislation is silent on whether an order can be tailored for an individual offender. Our research indicates that, if the legislation is to continue, there is a need to clearly express in the legislation that exceptions are permitted (such as attendance at an educational institution but only during class hours) when deemed appropriate by the court.

In light of the observations above, we make the following recommendations:

Recommendation 1

That Parliament consider this report in reviewing the ongoing need for the non-association and place restriction orders, as an option to target gang activity.

Les Tree, the Director General of the Ministry of Police, responding on behalf of the Ministry and NSW Police, did not address this specific recommendation. Mr Tree did make the following general comment:

*Notwithstanding the infrequency of its use, the Police Portfolio considers that the Act should continue. The Government will shortly introduce further anti-gang legislation and in the light of some of the new offences contained in that bill, it is likely that there will be greater use made of the Act in the future.*³¹³

Recommendation 2

If the non-association and place restriction orders remain:

- a) Parliament give consideration to amending s100A of the *Crimes (Sentencing Procedure) Act 1999* to address the apparent need for flexibility in the legislation when imposing non-association orders and place restriction orders at sentencing. Such consideration should take account of the following issues:
 - i. the need to accommodate kinship ties which extend beyond the immediate family in any definition of close family
 - ii. in exceptional circumstances, allowing orders to be applied to close family where a court is satisfied of an ongoing pattern of criminal behaviour within the close family of an offender
 - iii. the need to expand the list of places which may not be included in a place restriction order to accommodate health, welfare and related services
 - iv. in exceptional circumstances, allowing orders to be applied to places that otherwise may not be included in a place restriction order, where a court is satisfied of an ongoing pattern of criminal behaviour (in which the offender is involved) occurring at that place
 - v. the need to clearly express in the legislation that exceptions are permitted when deemed appropriate by the court.
- b) The Attorney General continue to monitor the Act to ensure the proper, fair and effective use of the non-association and place restriction orders imposed at sentencing.
- c) The Attorney General make enhancements to the Local Court computer system to ensure that statistical reports can be generated containing information on variations, revocations or appeals against non-association and place restriction orders to enable the resulting data to be included in any further monitoring of the legislation undertaken by the Attorney General.
- d) The Attorney General make arrangements for the:
 - i. non-association and place restriction conditions imposed at parole to be recorded accurately on the available court computer systems to enable future monitoring of the provisions
 - ii. details of the non-association and place restriction conditions imposed at parole to be electronically transferred to COPS
 - iii. data recording requirements for court imposed non-association and place restriction provisions at parole to be considered in the design and implementation of the 'Courtlink' project.
- e) The Department of Corrective Services provide additional training and information to probation and parole officers and any other relevant personnel within the department about non-association and place restriction orders available at sentencing.
- f) The Judicial Commission of NSW provide additional training and information to judicial officers about non-association and place restriction orders available at sentencing.
- g) The NSW Police provide additional training and information to police prosecutors about non-association and place restriction orders available at sentencing.
- h) The Department of Juvenile Justice provide additional training and information to relevant juvenile justice officers about non-association and place restriction orders available at sentencing.
- i) The Department of Juvenile Justice include non-association and place restriction orders imposed at sentencing as an 'outcome category' on its system to enable the resulting data to be included in any further monitoring of the legislation undertaken by the Attorney General.

Ian McLean the A/Commissioner of the Department of Corrective Services offered the following comments in response to recommendation 2(e):

*It is questionable whether changes to training, policies, procedures etc. will have any impact on the use of NAPR-type conditions. Assuming that it would have some impact, it is my view that the cost involved would outweigh any benefit received.*³¹⁴

The Attorney General's Department advised, as regards recommendation 2(f) that the recommendation will be brought to the attention of the Judicial Commission's Education Committee and Research Department.³¹⁵

The Ministry for Police supports recommendation 2(g) and advised legal services will provide the necessary training.³¹⁶

Jennifer Mason, Director General of the Department of Juvenile Justice in response to our draft report advised with regard to recommendation 2(h):

*While the department was not able to implement training and information to relevant juvenile officers ('JJO's') in the review period about 'place restriction' and non-association' orders available at sentencing, the department will incorporate such training into its formal training program.*³¹⁷

The Department of Juvenile Justice offered the following comments in response to recommendation 2(i):

At the time of the implementation of the Act and during the review period the department operated a database known as the Client Information Data System (CIDS) that recorded information about supervised offenders.

Since late 2002, the department has been involved in the development of a new Client Information Management System known as CIMS. Stage 1 of CIMS went live in August 2005, and has progressively enabled better tracking and management reporting in a number of areas.

*While CIMS cannot currently record the imposition of orders imposed under s33D of the Children (Criminal Proceedings) Act 1987 at sentencing, the department will have the capacity to do so with the Stage 2 release of CIMS; presently scheduled for implementation in November 2006.*³¹⁸

Endnotes

²⁵¹ s95, Part 8 of the *Crimes (Sentencing Procedure) Act 1999*.

²⁵² s12, *Crimes (Sentencing Procedure) Act 1999*.

²⁵³ Children's Court of NSW submission, 22 March 2004.

²⁵⁴ NSW Department of Juvenile Justice submission, 4 March 2004.

²⁵⁵ NSW Police, Southern Region Command submission, 4 March 2004.

²⁵⁶ Letter from NSW Police Gangs Squad, State Crime Command, 7 December 2005.

²⁵⁷ The Shopfront Youth Legal Centre submission, 15 March 2004.

²⁵⁸ NSW Department of Juvenile Justice submission, 4 March 2004. The department further commented on the 13 October 2006 when responding to a draft of this report that:

It should be made clear that the department does not have a direct role in the imposition of sentences by Courts. Pre-sentence reports prepared by JJO's [Juvenile Justice Officers] address background issues relevant to sentencing but do not generally make specific recommendations as to sentence. While references relevant to decisions in respect of non-association and place restriction orders can be incorporated into such reports, it will ultimately be a matter for the Court to determine what orders, if any, will be made and under what provision of a particular Act of Parliament.

²⁵⁹ NSWPD, Legislative Assembly, 26 October 2001, pp. 18104–18107.

²⁶⁰ At the time of the discussion paper 12 orders had been imposed by courts.

²⁶¹ s100H, *Crimes (Sentencing Procedure) Act 1999*.

²⁶² Unlike orders under the Act, a breach of a good behaviour bond or a suspended sentence is not in itself an offence and there are no provisions which make it an offence to publish the identity of a non-offender named in such conditions. s98, *Crimes (Sentencing Procedure) Act 1999*.

²⁶³ s17A(1), *Crimes (Sentencing Procedure) Act 1999* states that the section applies to any offence that is punishable by imprisonment for 6 months or more, whether or not the offence is also punishable by fine.

²⁶⁴ Children's Court of NSW submission, 22 March 2004.

²⁶⁵ Interview with police prosecutor, December 2005.

²⁶⁶ Minister for Community Services submission, 27 April 2004.

²⁶⁷ The Shopfront Youth Legal Centre submission, 15 March 2004.

²⁶⁸ NSW Police submission, 8 March 2004.

²⁶⁹ Children's Court of NSW submission, 22 March 2004.

²⁷⁰ NSW Police submission, 8 March 2004.

²⁷¹ This matter appears to have occurred outside the review period.

²⁷² Case No. 3. Details obtained from the COPS event narrative and NSW Local Court papers.

²⁷³ Interviews with youth and Aboriginal legal services representatives, May 2003.

²⁷⁴ Submission received by the review from a youth legal service.

²⁷⁵ NSW Ombudsman final report on the *Review of the Police Powers (Drug Premises) Act 2001*, January 2005, pp. 206–216.

²⁷⁶ The review received information that this was prominent practice in country towns.

²⁷⁷ Case No.18. Details obtained from the COPS event narrative and NSW Local Court papers.

²⁷⁸ NSW Police submission, 8 March 2004.

²⁷⁹ Children's Court of NSW submission, 22 March 2004.

²⁸⁰ The Shopfront Youth Legal Centre submission, 15 March 2004.

²⁸¹ NSW Police submission, 8 March 2004.

²⁸² Letter from NSW Police Gangs Squad, State Crime Command, 7 December 2005.

²⁸³ R. Lozusic, *Gangs in NSW*, NSW Parliamentary Briefing Paper 16/2002, 30/12/2002, p. 3.

²⁸⁴ Australia's constitutional system is founded upon the rule of law. That doctrine requires that laws be clear, certain and widely understood.

- ²⁸⁵ N. Cowdery QC, Director of Public Prosecutions, NSW; President, International Association of Prosecutors 'The Rule of Law', Paper given at the Heads of Prosecutors Agencies Conference, Edinburgh, 4 May 2001. The paper comments 'the rule of law is in effect an institutional morality which requires certain ethical values to be observed by those who govern and those who administer public affairs'.
- ²⁸⁶ s100D of the Act states that an offender's non-association order or place restriction order is suspended while the offender is in lawful custody (otherwise than while unescorted as referred to in s38(2)(a) of the *Crimes (Administration of Sentences) Act 1999*, and while the offender is under the immediate supervision of a public servant employed within the Department of Juvenile Justice pursuant to a condition of leave imposed under s24 of the *Children (Detention Centres) Act 1987*.
- ²⁸⁷ Discussions with representatives from the Department of Corrective Services.
- ²⁸⁸ Only one offender subject to a non-association order during the review period spent time in custody. This offender served six months of periodic detention.
- ²⁸⁹ NSW Police submission, 8 March 2004.
- ²⁹⁰ Children's Court of NSW submission, 22 March 2004.
- ²⁹¹ NSW Department of Corrective Services submission, 4 March 2004.
- ²⁹² NSW Department of Corrective Services submission, 4 March 2004.
- ²⁹³ NSWPD, Legislative Assembly, 26 October 2001, p. 18105.
- ²⁹⁴ s100C, *Crimes (Sentencing Procedure) Act 1999*.
- ²⁹⁵ S100D, *Crimes (Sentencing Procedure) Act 1999*.
- ²⁹⁶ See 7.1.1.12.
- ²⁹⁷ NSW Police submission, 8 March 2006.
- ²⁹⁸ NSW Department of Corrective Services submission, 4 March 2004.
- ²⁹⁹ Children's Court of NSW submission, 22 March 2004.
- ³⁰⁰ Case No.1.
- ³⁰¹ Case No.6.
- ³⁰² Case No.13.
- ³⁰³ s17A(5), *Crimes (Sentencing Procedure) Act 1999*.
- ³⁰⁴ NSW Police submission, 8 March 2004.
- ³⁰⁵ NSW Police submission, 8 March 2004.
- ³⁰⁶ NSWPD, Legislative Assembly, 26 October 2001, p. 18106.
- ³⁰⁷ NSWPD, Legislative Assembly, 26 October 2001, p. 18106.
- ³⁰⁸ Letter from NSW Local Courts, 2 August 2005.
- ³⁰⁹ Letter from NSW Local Courts, 2 August 2005.
- ³¹⁰ Discussions with representatives from NSW Department of Juvenile Justice. See also 2.9.1.1.
- ³¹¹ s51A, *Crimes (Sentencing Procedure) Act 1999*.
- ³¹² Local Courts staff advised of the 'Courtlink' project in interviews. The 'Courtlink' project is discussed in L. Glanfield *Consistency in Court Rules — The NSW Partnership*, paper presented at the 'Proportionality — cost-effective justice?', Australian Institute for Judicial Administration Conference, 17–19 September 2004, Sydney, p. 3.
- ³¹³ Letter from the Ministry for Police, 8 August 2006.
- ³¹⁴ Letter from the NSW Department of Corrective Services, 14 September 2006.
- ³¹⁵ Letter from the Attorney General's Department of NSW, 28 August 2006.
- ³¹⁶ Letter from the Ministry for Police, 8 August 2006.
- ³¹⁷ Letter from the NSW Department of Juvenile Justice, 13 October 2006.
- ³¹⁸ Letter from the NSW Department of Juvenile Justice, 13 October 2006.

