WHAT TO DO WHEN STAFF ARE IN TROUBLE WITH THE LAW

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- Can police interview staff on school premises?
- Situations where it is not appropriate for the interview to take place on school grounds.
- What information recorded by your school can police access?
- A school's rights and responsibility if Police want to arrest a staff member at school.

1. CAN POLICE INTERVIEW STAFF ON SCHOOL PREMISES?

The simple answer is yes they can, but only if you let them.

From a criminal lawyer's perspective, the question of whether a police interview of a staff member *should* happen in the first place, and if so whether it should then take place on school premises, the answer is almost invariably ***no***.

This advice might seem counterintuitive to many otherwise upstanding community members, such as teachers, who have never previously been in trouble with the police or law and whose natural instinct invariably is to want to co-operate with those in authority and be seen to be doing the right thing. But while it might seem counter intuitive, refusing to take part in a police interview and choosing instead to exercise one's right to silence, represents the conservative and sensible approach advised by most criminal lawyers to clients accused of crimes.

It ought to be remembered that in criminal cases the police and DPP bear the onus of proving the crime *beyond reasonable doubt (BRD)*. That is a very high onus of proof. In a prosecution before a Court every single element of an offence must be proved *BRD*, absent which the case must fail. The accused on the other hand, bears no such onus. The accused has the right to remain silent throughout, and no adverse inference can be drawn because he or she chooses to do so.

It ought also be remembered when considering whether or not to take part in a police interview, is that very often the only available admissible evidence in a criminal case against

an accused and upon which they are subsequently convicted, are the accused's own answers given to police in an electronically recorded interview (ERISP).

The Privilege Against Self-Incrimination and the Right to Silence

Australia is a common law country operating an adversarial justice system which guarantees all citizens certain rights and immunities to protect themselves from prosecution and litigation. The most fundamental rights guaranteed by the adversarial system include the privilege against self-incrimination and the right to silence.

Privileges

In the House of Lords decision, *R v Director of Serious Fraud Office; Ex Parte Smith* [1993] AC 1 at 30-31, Lord Mustil highlighted that the right to silence creates "a disparate group of immunities, which differ in nature, origin, incidence and importance"; this includes, relevantly, the privilege against self-incrimination.

Lord Mustil explained that these rights and immunities include (amongst others);

- a right to not be "compelled on pain of punishment to answer all questions of any kind posed by other persons or bodies" including Police officers or persons in a similar position of authority;
- an immunity from answering questions which may incriminate oneself; and
- an immunity for an accused person undergoing trial, from:
  - being compelled to give evidence; and
  - from having adverse comment made on a failure to either answer questions before the trial or to give evidence at the trial.

What this actually means, is that every person who is subjected to a criminal investigation or proceeding has a right to silence, a privilege against self-incrimination, and the right to not have negative inferences drawn from the fact that they have not made a statement to Police, or they have not given evidence in a trial.

Privileges defined:

The privilege against self-incrimination has been described by the High Court of Australia as meaning that a "witness cannot be compelled to answer questions that *may* show the witness has committed a crime", because doing so would create a "real and appreciable danger of conviction"[1].

[1] *Sorby v The Commonwealth* (1983) 152 CLR 281, at p 294

High Court Justices Mason CJ, Deane, Toohey and McHugh JJ in *Petty v The Queen* (1991) 173 CLR 95, at 99, confirmed that;

"A person who believes on reasonable grounds that he or she is suspected of having [committed] an offence is entitled to remain silent when questioned or asked to provide any information by any person in authority about the occurrence of the offence, the identity of the participants and the roles which they played. That is a fundamental rule of the common law which, subject to some specific statutory modifications, is applied in the administration of the criminal law in this country. An incident of that right to silence is that no adverse inference can be drawn against an accused person by reason of his or her failure to answer such questions or to provide such information. To draw such an adverse inference would be to erode the right of silence and render it valueless"

So, the fundamental principal is that an accused person is entitled to remain silent and presumed innocent until the prosecution proves that the accused is guilty beyond reasonable doubt.

Application to Employees/Teachers

While these rights and privileges were established for the purposes of criminal and civil proceedings, they also have an application to all employees in the workplace.

The High Court of Australia has confirmed in *Police Service Board v Morris* (1985) 156 CLR 397, at 403, 408 & 411, that the privilege against self-incrimination can apply in respect of questions asked of an employee by an employer. Conversely, there is authority for the proposition that privilege against exposure to *civil penalties* can be excluded by necessary implication. In those specific circumstances, for example, a regulation requiring police officers to answer questions from their superiors about their on-duty activities extinguished that officer's privilege against exposure to civil penalties.

Police Service Board v Morris therefore drew the distinction between exposure to criminal offences as opposed to mere civil breaches of discipline. However, the abrogation of one privilege, against exposure to a civil penalty, does not without more, lead to the abrogation of the other, more substantive privilege against self-incrimination.

The Federal Court in *Grant v BHP Coal Pty Ltd* [2017] FCAFC 42, established its own test to determine whether an employee could claim the privilege against self-incrimination in the scope of their employment. The Court held, at [109], that if an employee seeks to claim privilege, they need to:

(a) Genuinely and reasonably apprehend a danger from being compelled to answer the question objected to;[2]
(b) Demonstrate that there is a real and appreciable risk of criminal prosecution if he or she answers the question;[3] and
(c) Assert and identify the precise basis, or justification, as to why the privilege applies.[4]

In *Grant v BHP* the employee had acted in a way that would expose him to a penalty for a criminal offence. Therefore, when the employer conducted a workplace interview with the employee, the court held that the privilege against self-incrimination applied to the questions asked by the employer in relation to the employee's conduct. Here, the employee genuinely feared danger of prosecution in relation to his conduct and he was able to demonstrate the real possibility of being charged by Police if he answered the questions during the interview. Therefore, after he identified and explained the basis for his assertion of the privilege, he was not obliged to answer the relevant questions posed by his employer.

However, there are situations and circumstances when the privilege against self-incrimination will *not* apply.

Firstly, if a person has *already made statements* that expose that person to criminal prosecution and is being asked to answer a question that would not further increase the likelihood of prosecution, then the privilege will not apply: *Gemmell v Le Roi Homestyle Cookies Pty Ltd* (in liq) [2014] VSCA 182 at [87].

Thus please note that if you voluntarily answer questions which are incriminating, and you do not try to assert the privilege against self-incrimination or a right to silence at the time of answering, then you cannot claim that privilege at a later date; by your actions you will have waived your right to do so.

Secondly, if Parliament creates a law that expressly and deliberately curtails the privilege against self-incrimination and the right to silence, then the privilege will not apply. For example, this regularly occurs in legislation establishing the powers and functions of royal commissions.

In such circumstances the courts endeavour to protect fundamental rights and freedoms and will never assume that Parliament would intend to abrogate these basic rights unless the

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[2] *Accident Insurance Mutual Holdings Ltd v McFadden* (1993) 31 NSWLR 412, at 421-422.
[3] *Re Australian Property Holdings (in liq) No 2*(2012) 93 ACSR 130, [115].
[4] *Re Trade Practices Commissioner v Arnotts Limited* [1989] FCA 256, [6]; *Heydon JD*, Cross on Evidence (LexisNexis) at [25100].

legislation clearly and unambiguously indicates otherwise: *Al Kateb v Godwin* (2004) 219 CLR 562 at [19].

Furthermore, if you are obliged to answer a question as a result of overriding legislation, generally any answers or evidence you provide will not necessarily be admissible in evidence for the purposes of criminal or civil proceeding, *provided* you claim privilege before each answer, and also that you answer honestly, failing which the examinee is exposed to criminal proceedings in respect of the falsity of any statement made.[5]

Far more protection is therefore afforded by the legislative framework to an examinee who is compelled by statutory notice to attend a compulsory examination and to answer questions and who claims privilege when doing so, than to the cooperative interviewee who voluntarily agrees to be interviewed following a request from the authorities, in the spirit of being seen to do *"the right thing"*. The interviewee's answers voluntarily given, will be admissible in evidence against him in Court. The answers given by the interviewee who is compelled to answer by statutory notice, generally will not, due to the corresponding statutory privilege available.

This occurred in *Lee v The Queen* (2014) 253 CLR 455, where a father and son were summoned before the NSW Crime Commission and compelled to answer questions as a result of statutory powers conferred on the commission to supersede any privilege. The answers provided by the father and son incriminated themselves in a crime and their evidence was passed on to the Police who subsequently charged and convicted both men *based upon their evidence before the crime commission.* The father and son appealed to the High Court of Australia who overturned their convictions on the basis that there was a miscarriage of justice and ordered a new trial, where the evidence from the crime commission could *not* be adduced.

There is of course generally no illegality in an employer, Police Officer or other person seeking to ask questions in an interview that may be incriminating: *Baff v NSW Commissioner of Police (NSW)* 234 A Crim R 346, at [95]-[97]; *R v Travers* (1957) 58 SR (NSW) 85. After all, obtaining incriminating evidence in the form of answers to leading questions is precisely what the Police are intending to do when they request to interview a suspect in the first place. The onus is on the person being asked and who claims the privilege, to decline to answer and to assert the privilege.

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[5] See for example s.68 of the *Australian Securities and Investments Commission Act 2001*. A claim of privilege is typically made by saying the word "privilege" before each answer.

In *Baff*, the plaintiff was a police officer involved in an incident in the course of which his gun discharged and a female passenger in a suspected stolen car was injured. Delegates of the Police Commissioner investigated, declared the shooting a "Critical Incident" and *directed* the plaintiff (the policeman) to answer questions about the incident, after providing him with a criminal caution. He refused, claiming the protection of the common law privilege against self-incrimination. The Police had sent a brief to the Director of Public Prosecutions based on its investigations. The Police issued a number of directions to the policeman to be interviewed, contending that the privilege against self-incrimination was abrogated by s 201 of the Police Act 1990 (NSW) and clause 8 of the Police Regulation 2008 (NSW). The Commissioner also argued that the policeman Baff had irrevocably relinquished his privilege against self-incrimination by taking his oath of office as a police officer and by signing an undertaking to abide by the Code of Ethics.

Baff continued to claim the privilege and refused to answer questions about the incident. He filed a Supreme Court Summons and sought declarations that none of the directions made to him by the Commissioner was a lawful order and that he was entitled, in the exercise of his privilege against self-incrimination, to refuse to answer questions asked of him. The Supreme Court agreed.

The principal issue in the proceedings was whether the privilege against self-incrimination, which would be available to the plaintiff under the common law, had been abrogated.

Justice Adamson found that the plaintiff was not obliged to answer questions put to him at interview and once the privilege had been claimed, the Commissioner was not entitled to direct him to answer *any* question in respect of which privilege had been claimed, regardless of whether or not the particular question would tend to incriminate him. Once privilege had been claimed, any order directing Constable Baff to answer would not be a lawful order, since it would amount to a breach of the privilege.

Further, *"the availability of the privilege did not depend on the purpose for which the questions are asked. Rather, it is available, relevantly, whenever someone who is suspected of a criminal offence is asked questions by a police officer or person in authority."*[6]

[6] *Baff v NSW Commissioner of Police (NSW)* 234 A Crim R 346, at [123] per Adamson J.

2. SITUATIONS WHERE IT IS NOT APPROPRIATE FOR INTERVIEWS TO TAKE PLACE ON SCHOOL GROUNDS

Perhaps surprisingly, there is actually no prohibition or restriction that prevents Police from interviewing staff while on school premises.

That said, for all the reasons discussed under topic 1 above, Police do not have the authority or power to compel a staff member to participate in an interview, whether or not they wish to conduct the interview on school grounds.

Having regard to my comments in the first topic, it will come as no surprise that my view and I expect that of most criminal lawyers, would be that it is generally not appropriate for a police interview of a staff member suspect (as distinct from a student) to take place on school grounds.

Compelling reasons as to why an interview should occur at school would need to be provided by Police or the Department of Communities and Justice (DCJ). Conceivably, if a matter is of an urgent nature and the safety of another person is at risk, then special or compelling circumstances might exist.

That said, the NSW Government Department of Education has created a legal bulletin that provides a guide as to what *should* happen in relation to interviews of students and staff by Police.[7] That bulletin is **attached**.

It is important to note that these guidelines are not the law and they are not enforceable.

The bulletin outlines that the Police should be asked **not** to conduct interviews of staff while on school premises unless:

- they've been called to the school in response to an incident; and
- no other suitable alternative is available; or
- there are special circumstances.

If the Police proceed to interview a staff member on campus, the school should implement a strategy that has regard to the privacy of the staff member and the sensitivity of students. The interviewee should at the very least be allowed the opportunity to telephone a lawyer to obtain advice in advance of any interview occurring, including as to whether or not it should.

[7] *NSW Government Department of Education, Legal Issues Bulletins and Guidelines: Bulletin 13 Interviews of students and staff by police and officers from Department of Communities and Justice in schools.*

The need for privacy is also paramount.

Regrettably the reality is that the privacy requirement has in the past been disregarded by some Police, replaced instead by the *tip off* to media who are waiting nearby to film the handcuffed staff member under arrest and being led from the grounds by police in disgrace, in time for the nightly news bulletin, with no mention whatsoever of the presumption of innocence that applies under the law.

The bulletin reinforces what we've already discussed in topic 1 above, namely that there is no compulsion for staff to provide a statement to Police in relation to a criminal investigation.

That said, the bulletin does encourage staff to provide support to Police and provide statements if they are requested to do so, hence my earlier remarks about exercising one's right to silence perhaps seeming counterintuitive to most school teachers. The actual wording of the bulletin is as follows:

"While there is no compulsion to provide a statement to the police, generally it will only be in unusual circumstances that such a request would be denied.

If police are conducting criminal investigations and staff are asked to provide a statement, the request for the statement should generally be supported."

Although not entirely clear from the bulletin, *presumably* this encouragement is directed towards staff who are potential witnesses to a third party's alleged offending, as opposed to where the staff member themselves are the suspect. I hope this is the intended interpretation for that comment. Reiterating, if despite this encouragement the staff member does not wish to provide a statement to police, they cannot be compelled to.

Police may instead ask a staff member, who is a suspect or a witness of a crime, to accompany them to a Police station for questioning, but there is no obligation to go with Police unless the person has been placed under arrest.

The only information that Police can compel a person to provide is that person's name and address, if they believe the person may be able to assist them in the investigation of an alleged indictable offence, because they were present or near the place of the alleged offence pursuant to section 11(1) of *Law Enforcement (Powers and Responsibilities) Act 2002*.

Ideally, if police have made a decision to arrest a staff member, arrangements would be made by telephone beforehand for that person to voluntarily attend the police station at an agreed time for processing of the charge and bail documentation, preferably accompanied by their lawyer and in the absence of media.

If any staff member or student is to take part in an interview, be it on school premises or not, they should be reminded of their rights to silence and privilege against self-incrimination as well as their right to contact a lawyer and a support person who can be present in the interview.

3. WHAT INFORMATION RECORDED BY SCHOOLS CAN POLICE ACCESS?

A school should not disclose any personal information relating to a student, staff member or other person *unless*:

(a) the disclosure relates to the purpose in which it was collected; or
(b) the individual concerned is aware that their information will be disclosed to another person or body; or
(c) the disclosure is reasonably necessary to prevent or lessen a serious imminent threat to the life or health of a person.

Additionally, teachers and schools may disclose personal information and other records held by the school regarding the personal information of a staff or student, if the disclosure of information to Police or other law enforcement agency (pursuant to s 23(5) of *Privacy and Personal Information Protection Act 1998*):

(a) is in connection with proceedings for an offence or for a law enforcement purposes;
(b) is to a law enforcement agency for the purposes of ascertaining the whereabouts of an individual who has been reported to police as a missing person; or
(c) is authorised by subpoena, search warrant, or other statutory instrument; or
(d) Is reasonably necessary:
    (i) For the protection of the public revenue, or
    (ii) to investigate an offence where there are reasonable grounds to believe that an offence may have been committed.

S 23 *Privacy and Personal Information Protection Act 1998* is **attached**.

Children and Young Persons (Care and Protection) Act 1998 (“CYPA”)

Section 248(6) **(attached)** defines a “prescribed body” to mean, relevantly:

(a) the NSW Police Force, a Public Service agency or a public authority, or
(b) a government school or a registered non-government school within the meaning of the Education Act 1990.

Prescribed body also includes a reference to the chief executive officer (however described) of the prescribed body.

Section 245C (1) of CYPA **(attached)** provides that the NSW Police and any school *may* provide information to each other, if the provider reasonably believes that the provision of the information would assist the recipient:

(a) to make any decision, assessment or plan to initiate or conduct any investigation, or to provide any service relating to the safety, welfare or well-being of a child, or
(b) to manage any risk to a child or young person that might arise in the recipient's capacity as an employer or designated agency.

This section *permits* disclosure in certain circumstances, rather than containing a mandatory disclosure obligation, provided the school believes the provision of information would assist the Police protect and guarantee the safety of a child or group of children: *S 245C Children and Young Persons (Care and Protection) Act 1998*.

The school may convey information to the Police without a request if they believe it would assist the Police assure the safety, welfare and well-being of a child: s 245C (2).

A mandatory disclosure obligation is however contained in s 245D of CYPA **(attached).** S 245D(3) provides that if a prescribed body receives a request under this section, the prescribed body ***is required to comply*** with the request if it reasonably believes, after being provided with sufficient information by the requesting agency to enable it to form that belief, that the information may assist the requesting agency for any purpose referred to in s 245D(2) (which replicates the purposes in s 245C(1) above).

Hence under s 245D *CYPA* if the Police make a request to a school for relevant information, the school is obliged to provide the information requested ***unless the disclosure would*** *(emphasis added)*;

(a) Prejudice the investigation of a contravention of a law, in any particular case, or
(b) Prejudice a coronial inquest or inquiry, or
(c) Prejudice any care proceedings, or
(d) Contravene any legal professional or client legal privilege, or
(e) Enable the existence or identity of a confidential source of information in relation to the enforcement or administration of a law to be ascertained, or
(f) Endanger a person's life or physical safety, or
(g) Prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention (or possible contravention) of a law; or
(h) Not be in the public interest.

If the school does refuse to provide the requested information under this section, but it must provide the Police (requesting agency) with reasons in writing for refusing the request.

If a school provides Police with personal information of a child under these provisions, it will not be breaching any law, code of ethics or professional conduct obligation. Additionally, the school (prescribed body) will be indemnified from civil or criminal action if they provided the information in good faith and in compliance with the rules of this section.

Outside of a specific legislative requirement, a school or a teacher is not obliged to provide any personal information to Police unless the school is presented with a lawfully obtained search warrant, or it has been subpoenaed to provide the necessary information in the course of legal proceedings on foot. In either case this would require a Court's approval.

4. A SCHOOL'S RIGHTS AND RESPONSIBILITIES IF POLICE WANT TO ARREST A STAFF MEMBER AT SCHOOL

If the Police have a warrant for a person's arrest issued by a Magistrate, they are entitled to arrest the person named on the warrant at any location, including a school.

Arrest where there is no warrant

Section 99(1) of the *Law Enforcement (Powers and Responsibilities) Act 2012* (NSW) (*LEPRA*) outlines the power of Police officers to arrest *without* a warrant (**attached**).

Under s 99(1), the Police may arrest a person (which therefore would include a staff member or student) if they suspect the person has committed or is committing an offence, and an arrest is necessary for any of the following reasons:[8]

(i) to stop the person committing or continuing to commit another offence;
(ii) to prevent the person fleeing Police or from the location of the offence;
(iii) to establish the person's identity;
(iv) to ensure the person appears before a court in relation to the offence;
(v) to obtain the property in the possession of the person connected with the offence;
(vi) to preserve evidence of the offence, or prevent the fabrication of evidence;
(vii) to prevent the harassment of, or interference with, any person who may give evidence in relation to the offence;
(viii) to protect the safety and welfare of any person, (including the arrested person); or
(ix) because of the nature and seriousness of the offence.

[8] *Law Enforcement (Powers and Responsibilities) Act 2012* (NSW) s 99(1).

LEPRA also provides that Police may stop, search and detain a person in a school without a warrant if the Police believe they are illegally in possession of a dangerous implement: s 23(1) LEPRA.

Additionally, LEPRA also provides that the Police may stop, search and detain a vehicle if they suspect that it may contain dangerous articles which may have been used in connection with an offence: s 36(1)(d) *LEPRA*.

The NSW Government Department of Education legal bulletin provides that if a staff member is to be arrested, then the school should make arrangements to minimise disturbance and distress to students and other staff.

Additionally, the school should attempt to preserve the staff member's right to confidentiality and privacy. Presumably the best way to successfully achieve this would be to convince the Police not to carry out the arrest at school in the first place, but to wait until the staff member concerned has attended the police station.

A SCHOOL'S RIGHTS AND RESPONSIBILITIES IF A STAFF MEMBER IS CHARGED WITH, OR FOUND GUILTY OF AN OFFENCE.

Teaching Service Act 1980 ("TSA")

If a *government* teacher has been ***charged with***, or is found guilty of, a criminal offence punishable by imprisonment for 12 months or more, both the teacher and the Principal of the school, when they become aware of the charge or conviction, must immediately report this information to the Secretary of the NSW Government Department of Education: *s 92C TSA*.

Aside from the obvious ramifications that come from being criminally charged with such an offence, namely having to now respond to the criminal justice system and the significant expense that comes with engaging lawyers and defending criminal proceedings, notwithstanding the presumption of innocence, the mere fact that one has been charged is likely to also have immediate and serious ramifications for a teacher's employment situation, thereby further exacerbating the potential financial dilemma.

For example the NSW Education Standards Authority ("Authority") or the Secretary of the NSW Government Department of Education, have jurisdiction to take disciplinary action, suspend the employee without pay or terminate the person's employment under various provisions of the Teaching Services Act: eg ss 93D, 93F, 93K, 93L, 93R, 93O, 93T and 93U.

Section 93K of the Act provides that if an officer (which means *a person employed in the Teaching Service of NSW other than as a temporary employee*) is convicted of an offence

punishable by 12 months gaol or more, the Secretary of Department of Education may take disciplinary and/or remedial action against that teacher.

Because an officer is considered to be any person employed in the *Teaching Service* other than as a temporary employee, it follows that the Act only covers teachers employed by the Government of New South Wales: ss 3, 44(2) *TSA*.

The Secretary is entitled to suspend an officer *without pay* if an allegation of misconduct has been made, until the allegation has been dealt with: s 93L(1). Additionally, the Secretary may suspend an officer if the officer;

- they are *charged* with an offence which is punishable by more than 12 months imprisonment;
- they have had their working with children check clearance suspended or cancelled pending the determination of criminal proceedings;
- they are the subject of an interim bar; or
- if they are refused or do not hold a working with children check clearance.

Unsurprisingly, being charged with certain more serious criminal offences (eg murder, manslaughter of a child, offences involving intentional infliction of harm particularly of a child, sexual offences particularly involving children, kidnapping and most other offences punishable by 12 months imprisonment or more) will result in your Working with Children Check Clearance being cancelled: s 23 *Child Protection (Working with Children) Act 2012*. (Full list of offences in schedule 2 of the Act - **attached**).

If a teacher has their Working with Children Check Clearance cancelled, they are charged or convicted of any of the offences listed in Schedule 2, or they don't hold a Working with Children Check Clearance, then they become an **unauthorised person** for the purposes of *The Teaching Service Act*: s 93R.

In accordance with section 93T of the *Teaching Service Act* a teacher who becomes an *unauthorised person*, but is employed in child-related work, will be automatically and immediately <u>dismissed from their employment</u> without any right to a hearing or requirement to comply with rules of procedural fairness: s 93T(1), 93T(3).

If a teacher becomes an unauthorised person for the purpose of the *Teaching Service Act* then the teacher, and the principal of the school they work at, must immediately notify the Secretary as soon as they are aware of this fact: ss 93U(1)-(2) *TSA 1980*.

Individual Employment Contracts

It is not uncommon for individual employment contracts to address consequences of general misconduct and the situation where a teacher is charged or convicted of a criminal offence. An employment contract may include a term that allows an employer to terminate the employment, without notice, in the event the teacher is charged with, or convicted of, a criminal offence. The rationale behind such a provision is that engaging in conduct that results in being charged with a criminal offence has the capacity to bring the school into disrepute, and may also amount to serious misconduct, which in turn may entitle the employer school to terminate the employment relationship.

In addition, the employment contract routinely contains a provision entitling the employer to suspend the employment, pending investigation into the alleged misconduct or criminal conduct. If so, such a clause in a contract may give the school the right to terminate the employment summarily, or at the very least suspend the employment, pending the outcome of an investigation or the court process.

Similarly, most non-government schools will contain guidelines and policies for professional conduct, and also for the protection of children and young people, which the employee teacher will be expected to agree and adhere to. In the event of an employee teacher being charged, the facts giving rise to the charge may at the same time amount to a breach of the policies, again giving the school the right to suspend the employment pending investigation, and also to terminate the employment.

Teacher Accreditation Act 2004 ("TAA")

Finally I refer to the *Teacher Accreditation Act 2004* which establishes the rules for Teaching Accreditations in NSW and authorises the NSW Education Standards Authority (the **Authority**) to suspend or revoke a teacher's accreditation in certain circumstances, including where a teacher has been charged with an offence that carries a sentence of 12 months imprisonment or more.

The Authority has the power (pursuant to s 24A) to suspend a teacher's accreditation for any of the reasons contained in s 24(1) (set out below) but also where proceedings against a person for an offence *are pending* and, were the person to be found guilty of the offence, the Authority would have grounds to revoke the accreditation.

This applies to situations where a person has been charged, but not yet convicted of a crime punishable by 12 months imprisonment or more (s 24A(1)(c)).

Section 24(1) of the *Teacher Accreditation Act* allows the Authority to revoke the teaching accreditation of a person where (among other reasons):

(a) The teacher is a disqualified person within the meaning of the *Child Protection (Working with Children) Act 2012*, meaning they're disqualified from holding a working with children check*;

  a. *A person becomes disqualified from holding a Working with Children Check by committing an indictable offence (full list in Sch 2 *Child Protection (Working with Children) Act 2012 (**attached**)*)

(b) The person is found guilty of an offence, which is punishable by 12 months imprisonment; or

(c) The person is found guilty of an offence under the TAA.

Conclusion

In conclusion, remember that the right to silence and the privilege against self-incrimination, are fundamental rights bestowed upon every person who is, or may reasonably become, subject to criminal proceedings.

The privilege against self-incrimination and the right to silence also have application and are exercisable by employees in the workplace if they are subjected to questioning about a potentially criminal matter by their employer and will entitle an employee to refuse to answer questions on the grounds of self-incrimination.

The privileges may be exercised by a staff member who is interviewed by Police on school premises (or wherever the interview occurs).

A staff member can be interviewed and arrested on school premises, although the Police should be discouraged from doing so. If it happens however, the Principal and the school should take reasonable measures to protect and maintain the privacy and confidentiality of the staff member involved.

Finally, a school may be required to provide Police with personal information if Police lawfully request personal information of students, in order to guarantee the safety and wellbeing of the student. Additionally, a school can lawfully disclose personal information and other records to Police if the disclosures are in connection with criminal proceedings or for a law enforcement purpose, or it is reasonably necessary to investigate an offence.

ATTACHMENTS

Department of Education Legal Issues Bulletin 13

Privacy and Personal Information Protection Act 1988 (NSW) s 23

Children and Young Persons (Care and Protection) Act 1998 (NSW) s 248

Children and Young Persons (Care and Protection) Act 1998 (NSW) s 245C

Children and Young Persons (Care and Protection) Act 1998 (NSW) s 245D

Law Enforcement (Powers and Responsibilities) Act 2002 (NSW) s 99

Child Protection (Working with Children) Act 2012 (NSW) Sch 2

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Police or DCJ - interviews in schools

Interviews of students and staff at school by police or officers from Department of Communities and Justice, legal issues bulletin 13, LIB13

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In carrying out their responsibility to investigate criminal matters and suspected child abuse and neglect, NSW Police and the officers of the Department of Communities and Justice (DCJ) may require information from schools or seek to interview students or staff at school. Principals should ensure that all staff are aware of the following matters.

For the purposes of this bulletin, "student" will also include children enrolled in government preschools, Children's Centres and those accessing playgroups and child minding services provided by AMES.

This bulletin replaces previous bulletin 13. Staff should refer to legal issues bulletin 47 – **Information requests from other government agencies** (https://education.nsw.gov.au/about-us/rights-and-accountability/legal-issues-bulletins/information-requests-from-other-government-agencies) LIB47 and legal issues bulletin 50 **Giving and getting information for the welfare of children** (https://education.nsw.gov.au/about-us/rights-and-accountability/legal-issues-bulletins/giving-and-getting-information-for-the-welfare-of-children) LIB50, when dealing with information

requests concerning the safety, welfare or well-being of children and young people. The **memorandum of understanding the department has with NSW Police** (/content/dam/main-education/inside-the-department/health-and-safety/media/documents/OTH092_MEMORANDUMSCHOOLSANDNSWPOLICE_V1.pdf) may also be referred to.

Can students be interviewed at schools?

Unless special circumstances exist, students should not be interviewed on school sites. "Special circumstances" has a wide meaning but will include the following:

- when police have been called to the school by the principal as a result of a student being found with a prohibited weapon, knife, firearm or substance or as a result of any other criminal activity relating to the school
- when students or their possessions are to be searched by police as a result of being suspected of being in possession of a prohibited weapon or substance
- when the matter being investigated concerns allegations involving other family members and it would be inappropriate to conduct the interview at the student's home
- when the matter being investigated is of an urgent nature and the immediate safety and wellbeing of the student or some other person will be at risk if the interview does not take place at the school site.

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Requirements if an interview is to occur at school

If special circumstances exist, principals should ensure the following occurs:

- DCJ and police should provide the principal with the reason why the interview must be conducted at the school.
- Parents or carers should be notified and requested to attend the school prior to the interview taking place unless there is an exceptional reason as to why they should not be informed. If the allegations involve a family member and the principal is satisfied, after receiving advice from DCJ or police, that parental or carer contact is inappropriate, the interview can proceed without contact being made. DCJ and police personnel should be asked to explain why it is inappropriate for the parents to be contacted. If there is disagreement between the principal and DCJ/NSW police officers about whether parents should be notified, the principal should contact the department's Legal Services and/or the School Response unit for advice.
- If it is a matter where parental or carer contact prior to the interview is appropriate and contact cannot be made or the parents or carers cannot attend, the student must be given the opportunity to have some other adult person present during the interview. This may include a member of staff and ideally, will be someone with whom the student is familiar and with whom they feel comfortable.
- If the principal forms the view on reasonable grounds that the student is not capable of deciding whether or not he or she should have a support person the principal will make that decision. In reaching this conclusion and determining who may be suitable to act as a support person for a student, principals should have regard to the age, maturity, developmental level and any relevant cultural issues of the student, together with their own knowledge of the student's individual circumstances.
- Similarly, if it is a matter where parental or carer contact prior to the interview is inappropriate, the student should be given the opportunity to have some other adult present during the interview. This may include a member of staff. Principals need to be aware that some students may not be comfortable having a member of staff who they identify as being in a position of authority as a support person.
- If the parents or carers are contacted and refuse permission for the student to be interviewed, or the student refuses to be interviewed, the principal must not allow the interview to take place at the school.
- Any interview must not take place until the relevant support person is present.
- Principals should plan with the officers conducting the interview to ensure a suitable location for the interview is identified, appropriate arrangements for the way the student will leave and return to the classroom are implemented and strategies for maintaining confidentiality are addressed.
- Before any interview takes place, the principal must confirm that the purpose of the interview will be explained to the student by the police or DCJ officers. This need not be done in the presence of the principal but should be undertaken in the presence of the support person.
- In relation to any interviews conducted by police in respect of criminal investigations, the principal must ensure the student is advised by police that he or she is not obliged to answer any questions asked by them. This is particularly important if the parents or carers are unable to be present during an interview held at the school.

- Any warning given by police must occur prior to the interview taking place. If Police decline to advise the student of his or her right not to answer any questions, the interview should not be allowed to occur on the school site.
- Principals should not allow other students who are under the age of 18 to act as a student's support person in interviews conducted on school premises.
- If police attend as a result of an incident at the school, principals should be careful not to allow any staff members to act as a support person if their presence may give rise to a conflict of interest.

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Interviews relating to criminal activity

NSW Police operational guidelines stipulate that police should avoid interviewing children at school. While the guidelines refer only to children, the same approach should be adopted in respect of all school students who are under the age of 18. Unless special circumstances exist, the police should be advised they will need to arrange to interview the student at a time and place outside of school hours.

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Interviews by members of JIRT

Interviews by JIRT personnel will usually be by way audio and or video recording. Aside from this aspect, the steps to be following by principals will be the same as previously outlined.

What if JIRT does not want the student to have a support person?

Any student who is required to be interviewed on school premises is entitled to be given the opportunity to have a support person present. If the JIRT indicates that this opportunity is not to be offered, then the principal should not consent to the interview taking place on the school site.

Parents or carers enquiring about an interview at school

DCJ or NSW Police are responsible for communicating with parents or carers about any matters related to an interview. Any person making an inquiry or complaint concerning an interview with a student should be referred to the relevant officer from DCJ or NSW Police.

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DCJ want to use the information at court

Sometimes DCJ officers will obtain statements or oral information from staff as part of their investigations into child protection issues. If the information provided by department staff is subsequently to be used as part of any legal proceedings, DCJ has agreed to the following process being followed:

- When DCJ contact departmental staff they will advise them of the potential use of the information and obtain their agreement to that happening.
- Care will be taken in relation to the content of any documents that are subsequently created by DCJ staff (e.g. the identification of names).
- Wherever practicable, any document that is to be used in legal proceedings and purports to record any conversation with Departmental staff will be provided to staff for comment and their agreement that it reflects the conversation between DCJ and the staff member or members prior to being used.
- Wherever practicable, education staff are to be given an opportunity to make amendments to the document.
- If an agreement cannot be reached about the contents of the document it will not be used by DCJ in legal proceedings.

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The police want to arrest the student

Principals must not interfere with any decision of the police to arrest a student. If arrested, the student must accompany the police and the principal must immediately notify the parents or caregivers unless instructed not to by the police.

If police do wish to arrest a student, as far as possible arrangements should be made to safeguard the privacy of the student concerned. Suitable arrangements should be made to minimize any disturbance and or distress to the student concerned and other students and staff at the school. Principals may contact the department's School Response unit for advice on what arrangements may be possible if a student is to be arrested.

Principals should ensure that students are aware that there is no obligation to accompany police from the school site unless they are formally arrested.

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DCJ want to remove a student from school

Again this situation should be treated to ensure as far as possible the student's right to confidentiality and privacy. Principals should ensure the procedures set out in the **Collection of students by the Department of Communities and Justice** (/content/dam/main-education/en/home/policy-library/associated-documents/ed-plan-proced-old.doc), procedures Department of Communities and Justice, procedures are complied with.

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The police want to interview a member of staff at the school

In the absence of special circumstances, police should be asked not to conduct interviews of staff on school premises unless they have been called to the school in response to an incident. If no other suitable alternative is available, principals should endeavour to implement strategies that have regard to the privacy considerations of the staff member and the sensitivity of students. Principals should also take into account the views of the relevant staff member concerned when determining whether an interview should take place at the school.

Having a support person during a police interview

Staff will generally be permitted to have a support person with them during any interview provided the presence of the support person does not interfere with the process. The support person is not permitted to answer or suggest answers to any questions. Staff should also be made aware by Police that they do not have to answer any question that may be asked by them.

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The police want a statement from a staff member

While there is no compulsion to provide a statement to the police, generally it will only be in unusual circumstances that such a request would be denied.

If police are conducting criminal investigations and staff are asked to provide a statement, the request for the statement should generally be supported.

In circumstances where police are conducting an investigation on behalf of the Coroner as a result of a death of a person during school activities, any request for a statement should be supported. It should be noted however that the ability of some members of staff to provide a statement on the same day as the relevant incident may be affected because they are distressed. In these circumstances police should be asked to defer obtaining any statement until a reasonable period of time has elapsed. Prior to making any statement to police in respect of coronial investigations, staff should seek advice from the department's Legal Services.

Amending a statement prepared by the police

Staff should be aware that they should not sign any statement until they have read through it and are completely happy with its contents. If changes are considered necessary, staff should bring this to the attention of the police. If staff are in any doubt about their obligations or rights in respect of providing statements to the police, they can seek advice from Legal Services.

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The police indicate they want to arrest the staff member

Staff need not accompany police away from the school site unless they are formally arrested or otherwise agree to leave. If police attend with the specific intent of arresting a staff member, the principal should ensure that suitable arrangements are made to minimize any disturbance and or distress to students and other staff as well as preserving as far as possible the staff member's right to confidentiality and privacy. principals can contact the department's School Response unit for further advice on what arrangements may be possible if a staff member is to be arrested.

Last updated: 04-May-2021

This information is current as at "24/5/2021 12:18:31 PM", AEDT. For the most up-to-date information, go to https://education.nsw.gov.au/about-us/rights-and-accountability/legal-issues-bulletins/bulletin-13-interviews-of-students-and-staff-by-police-and-officers-from-community-services-in-schools

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Privacy and Personal Information Protection Act 1998 No 133

Current version for 1 March 2020 to date (accessed 24 May 2021 at 12:28)

23 Exemptions relating to law enforcement and related matters

(1) A law enforcement agency is not required to comply with section 9 if compliance by the agency would prejudice the agency's law enforcement functions.

(2) A public sector agency (whether or not a law enforcement agency) is not required to comply with section 9 if the information concerned is collected in connection with proceedings (whether or not actually commenced) before any court or tribunal.

(3) A public sector agency (whether or not a law enforcement agency) is not required to comply with section 10 if the information concerned is collected for law enforcement purposes. However, this subsection does not remove any protection provided by any other law in relation to the rights of accused persons or persons suspected of having committed an offence.

(4) A public sector agency (whether or not a law enforcement agency) is not required to comply with section 17 if the use of the information concerned for a purpose other than the purpose for which it was collected is reasonably necessary for law enforcement purposes or for the protection of the public revenue.

(5) A public sector agency (whether or not a law enforcement agency) is not required to comply with section 18 if the disclosure of the information concerned—

(a) is made in connection with proceedings for an offence or for law enforcement purposes (including the exercising of functions under or in connection with the *Confiscation of Proceeds of Crime Act 1989* or the *Criminal Assets Recovery Act 1990*), or

(b) is to a law enforcement agency (or such other person or organisation as may be prescribed by the regulations) for the purposes of ascertaining the whereabouts of an individual who has been reported to a police officer as a missing person, or

(c) is authorised or required by subpoena or by search warrant or other statutory instrument, or

(d) is reasonably necessary—

(i) for the protection of the public revenue, or

(ii) in order to investigate an offence where there are reasonable grounds to believe that an offence may have been committed.

(6) Nothing in subsection (5) requires a public sector agency to disclose personal information to another person or body if the agency is entitled to refuse to disclose the information in the absence of a subpoena, warrant or other lawful requirement.

(6A) A public sector agency is not required to comply with the information protection principles with respect to the collection, use or disclosure of personal information if—

(a) the agency is providing the information to another public sector agency or the agency is being provided with the information by another public sector agency, and

(b) the collection, use or disclosure of the information is reasonably necessary for law enforcement purposes.

(7) A public sector agency (whether or not a law enforcement agency) is not required to comply with section 19 if the disclosure of the information concerned is reasonably necessary for the purposes of law enforcement in circumstances where there are reasonable grounds to believe that an offence may have been, or may be, committed.

(8) In this section—

(a) a reference to law enforcement purposes includes a reference to law enforcement purposes of another State or a Territory or the Commonwealth, and

(b) a reference to an offence includes a reference to an offence against a law of another State or a Territory or the Commonwealth, and

(c) a reference to the protection of the public revenue includes a reference to the protection of the public revenue of another State or a Territory or the Commonwealth.

Children and Young Persons (Care and Protection) Act 1998 No 157

Current version for 27 October 2020 to date (accessed 24 May 2021 at 12:31)

Chapter 17 > Section 248

248 Provision and exchange of information

(1AA) The functions referred to in subsection (1) may be exercised by the Secretary for any one or more of the following purposes—

(a) for the purposes of providing information to, or exchanging information with, a prescribed body,

(b) for the purpose of exercising the functions of the Secretary.

(1) The Secretary may do either or both of the following—

(a) the Secretary may, in accordance with the requirements (if any) prescribed by the regulations, furnish a prescribed body with information relating to the safety, welfare and well-being of a particular child or young person or class of children or young persons,

(b) the Secretary may, in accordance with the requirements (if any) prescribed by the regulations, direct a prescribed body to furnish the Secretary with information relating to the safety, welfare and well-being of a particular child or young person or class of children or young persons.

(1A) Information about the following may be furnished under this section in the same way as information about a child or young person or class of children or young persons may be furnished—

(a) an unborn child who is the subject of a pre-natal report under section 25,

(b) the family of an unborn child the subject of such a report,

(c) the expected date of birth of an unborn child the subject of such a report.

(2) It is the duty of a prescribed body to whom a direction is given under subsection (1)(b) to comply promptly with the requirements of the direction.

(3) If information is furnished under subsection (1) or (1A)—

(a) the furnishing of the information is not, in any proceedings before a court, tribunal or committee, to be held to constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct, and

(b) no liability for defamation is incurred because of the furnishing of the information, and

(c) the furnishing of the information does not constitute a ground for civil proceedings for malicious prosecution or for conspiracy.

(4) A reference in subsection (3) to information furnished under subsection (1) or (1A) extends to any information so furnished in good faith and with reasonable care.

(5) A provision of any Act or law that prohibits or restricts the disclosure of information does not operate to prevent the furnishing of information (or affect a duty to furnish information) under this section. Nothing in this subsection affects any obligation or power to provide information apart from this subsection.

(6) In this section—

prescribed body means—

(a) the NSW Police Force, a Public Service agency or a public authority, or

(b) a government school or a registered non-government school within the meaning of the *Education Act 1990*, or

(c) a TAFE establishment within the meaning of the *Technical and Further Education Commission Act 1990*, or

(d) a public health organisation within the meaning of the *Health Services Act 1997*, or

(e) a private health facility within the meaning of the *Private Health Facilities Act 2007*, or

(f) any other body or class of bodies (including an unincorporated body or bodies) prescribed by the regulations for the purposes of this section,

and a reference in this section to any such prescribed body includes a reference to any part (however described) of the prescribed body.

Children and Young Persons (Care and Protection) Act 1998 No 157

Current version for 27 October 2020 to date (accessed 24 May 2021 at 12:31)

Chapter 16A > Section 245C

245C Provision of information

(1) A prescribed body (the ***provider***) may provide information relating to the safety, welfare or well-being of a particular child or young person or class of children or young persons to another prescribed body (the ***recipient***) if the provider reasonably believes that the provision of the information would assist the recipient—

(a) to make any decision, assessment or plan or to initiate or conduct any investigation, or to provide any service, relating to the safety, welfare or well-being of the child or young person or class of children or young persons (including, where applicable, to provide prioritised access to any service to a child or young person or class of children or young persons at risk of significant harm), or

(b) to manage any risk to the child or young person (or class of children or young persons) that might arise in the recipient's capacity as an employer or designated agency.

(2) Information may be provided under this section regardless of whether the provider has been requested to provide the information.

Children and Young Persons (Care and Protection) Act 1998 No 157

Current version for 27 October 2020 to date (accessed 24 May 2021 at 12:31)

245D Request for information

(1) A prescribed body (the ***requesting agency***) may request another prescribed body to provide the requesting agency with any information held by the other body that relates to the safety, welfare or well-being of a particular child or young person or class of children or young persons.

(2) Any such request may be made for the purposes of assisting the requesting agency—

(a) to make any decision, assessment or plan or to initiate or conduct any investigation, or to provide any service, relating to the safety, welfare or well-being of the child or young person or class of children or young persons (including, where applicable, to provide prioritised access to any service to a child or young person or class of children or young persons at risk of significant harm), or

(b) to manage any risk to the child or young person (or class of children or young persons) that might arise in the agency's capacity as an employer or designated agency.

(3) If a prescribed body receives a request under this section, the prescribed body is required to comply with the request if it reasonably believes, after being provided with sufficient information by the requesting agency to enable the other body to form that belief, that the information may assist the requesting agency for any purpose referred to in subsection (2).

(4) A prescribed body is not required to provide any information that it has been requested to provide if the body reasonably believes that to do so would—

(a) prejudice the investigation of a contravention (or possible contravention) of a law in any particular case, or

(b) prejudice a coronial inquest or inquiry, or

(c) prejudice any care proceedings, or

(d) contravene any legal professional or client legal privilege, or

(e) enable the existence or identity of a confidential source of information in relation to the enforcement or administration of a law to be ascertained, or

(f) endanger a person's life or physical safety, or

(g) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention (or possible contravention) of a law, or

(h) not be in the public interest.

(5) If a prescribed body refuses to provide information in accordance with a request under this section, the prescribed body must, at the time it notifies the requesting agency of the refusal, provide the requesting agency with reasons in writing for refusing the request.

Law Enforcement (Powers and Responsibilities) Act 2002 No 103

Current version for 27 October 2020 to date (accessed 24 May 2021 at 12:40)

99 Power of police officers to arrest without warrant (cf *Crimes Act 1900*, s 352, Cth Act, s 3W)

(1) A police officer may, without a warrant, arrest a person if—

(a) the police officer suspects on reasonable grounds that the person is committing or has committed an offence, and

(b) the police officer is satisfied that the arrest is reasonably necessary for any one or more of the following reasons—

(i) to stop the person committing or repeating the offence or committing another offence,

(ii) to stop the person fleeing from a police officer or from the location of the offence,

(iii) to enable inquiries to be made to establish the person's identity if it cannot be readily established or if the police officer suspects on reasonable grounds that identity information provided is false,

(iv) to ensure that the person appears before a court in relation to the offence,

(v) to obtain property in the possession of the person that is connected with the offence,

(vi) to preserve evidence of the offence or prevent the fabrication of evidence,

(vii) to prevent the harassment of, or interference with, any person who may give evidence in relation to the offence,

(viii) to protect the safety or welfare of any person (including the person arrested),

(ix) because of the nature and seriousness of the offence.

(2) A police officer may also arrest a person without a warrant if directed to do so by another police officer. The other police officer is not to give such a direction unless the other officer may lawfully arrest the person without a warrant.

(3) A police officer who arrests a person under this section must, as soon as is reasonably practicable, take the person before an authorised officer to be dealt with according to law.

Note—

The police officer may discontinue the arrest at any time and without taking the arrested person before an authorised officer—see section 105.

(4) A person who has been lawfully arrested under this section may be detained by any police officer under Part 9 for the purpose of investigating whether the person committed the offence for which the person has been arrested and for any other purpose authorised by that Part.

(5) This section does not authorise a person to be arrested for an offence for which the person has already been tried.

(6) For the purposes of this section, property is connected with an offence if it is connected with the offence within the meaning of Part 5.

Child Protection (Working with Children) Act 2012 No 51

Current version for 24 March 2021 to date (accessed 24 May 2021 at 12:41)

Schedule 2

Schedule 2 Disqualifying offences

1 Specified offences

(1) The following offences are specified—

(a) murder,

(b) manslaughter of a child (other than as a result of a motor vehicle accident),

(c) an offence involving intentional wounding of, or intentional causing of grievous bodily harm to, a child by an adult who is more than 3 years older than the victim,

(d) an offence under section 61B, 61C, 61D, 61E or 61F of the *Crimes Act 1900*,

(e) an offence under section 61I, 61J, 61JA, 61K, 61KC, 61KD, 61KE, 61KF, 61L, 61M, 61N, 61O or 61P of the *Crimes Act 1900*,

(f) the common law offence of rape or attempted rape,

(g) an offence under section 65A of the *Crimes Act 1900*,

(g1) an offence under section 66, 71, 72, 73 (before its substitution by the *Crimes Amendment (Sexual Offences) Act 2003*) or 74 of the *Crimes Act 1900*, where the person against whom the offence is committed is a child under the age of 13 years or where the person found guilty of the offence received a sentence of full time custody for the offence,

(h) an offence under section 66A, 66B, 66C, 66D, 66DA, 66DB, 66DC, 66DD, 66DE, 66DF, 66EA, 66EB, 66EC, 66F, 73 or 73A of the *Crimes Act 1900*,

(i) an offence under section 67, 68, 76 or 76A of the *Crimes Act 1900*,

(j) an offence under section 78A, 78B or 79 of the *Crimes Act 1900*,

(k) an offence under section 78H, 78I, 78K, 78L, 78N, 78O, 78Q or 81 of the *Crimes Act 1900*,

(l) an offence under section 80A, 80D or 80E of the *Crimes Act 1900*,

(m) an offence under section 86 of the *Crimes Act 1900* where the person against whom the offence is committed is a child, except where the person found guilty of the offence was, when the offence was committed or at some earlier time, a parent or carer of the child,

(n) an offence under section 91D, 91E, 91F, 91G or 91H of the *Crimes Act 1900* (other than an offence committed by a child prostitute),

(o) an offence under section 42 or 43 of the *Crimes Act 1900*,

(o1) an offence under section 45 or 45A of the *Crimes Act 1900* where the person against whom the offence is committed is a child,

(p) an offence under section 91J, 91K or 91L of the *Crimes Act 1900*,

(q) an offence under section 21G of the *Summary Offences Act 1988* or section 91M of the *Crimes Act 1900* where the person intended to be observed or filmed was a child,

(r) an offence against section 272.8, 272.10 (if it relates to an underlying offence against section 272.8) or 272.11 of the *Criminal Code* of the Commonwealth,

(s) an offence against section 272.9, 272.10 (if it relates to an underlying offence against section 272.9), 272.14 or 272.15 of the *Criminal Code* of the Commonwealth,

(t) an offence against section 272.18, 272.19 or 272.20 of the *Criminal Code* of the Commonwealth if it relates to another offence listed in this Schedule,

(u) an offence against section 270.6A or 270.7 of the *Criminal Code* of the Commonwealth where the person against whom the offence is committed is a child,

(v) an offence against section 233BAB of the *Customs Act 1901* of the Commonwealth involving items of child pornography or of child abuse material,

(w) an offence against section 471.16, 471.17, 471.19, 471.20 or 471.22 of the *Criminal Code* of the Commonwealth,

(x) an offence against section 471.24, 471.25 or 471.26 of the *Criminal Code* of the Commonwealth,

(y) an offence under section 578B or 578C(2A) of the *Crimes Act 1900*,

(z) an offence under a law of another State or a Territory, the Commonwealth or a foreign jurisdiction that, if committed in New South Wales, would constitute an offence listed in this clause,

(aa) an offence an element of which is an intention to commit an offence of a kind listed in this clause,

(ab) an offence of attempting, or of conspiracy or incitement, to commit an offence of a kind listed in this clause,

(ac) any other offence that is a registrable offence within the meaning of the *Child Protection (Offenders Registration) Act 2000*, if the offence was committed as an adult.

(2) This clause applies to convictions or proceedings for offences whether occurring before, on or after the commencement of this clause.

2 Excluded offences

An offence is not specified for the purposes of this Schedule if it was an offence specified in this Schedule at the time of its commission and the conduct has ceased to be an offence in New South Wales.