

Passed by both Houses



New South Wales

# Justice Legislation Amendment (Non-association and Place Restriction) Bill 2001

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*I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.*

*Clerk of the Legislative Assembly.  
Legislative Assembly,  
Sydney, , 2001*



New South Wales

## **Justice Legislation Amendment (Non-association and Place Restriction) Bill 2001**

Act No , 2001

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An Act to amend various Acts relating to sentencing, bail and sentence administration to reduce certain kinds of criminal activity; and for other purposes.

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*I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.*

*Chairman of Committees of the Legislative Assembly.*

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Justice Legislation Amendment (Non-association and Place Restriction) Act 2001*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

**3 Amendment of Acts relating to sentencing procedure**

Each Act listed in Schedule 1 is amended as set out in that Schedule.

**4 Amendment of Acts relating to bail and sentence administration**

Each Act listed in Schedule 2 is amended as set out in that Schedule.

**5 Monitoring of operation of amendments by Ombudsman**

- (1) For the period of 2 years from the commencement of this section, the Ombudsman is to keep under scrutiny the operation of the amendments made by this Act.
- (2) For that purpose, the Ombudsman may require any public authority to provide information concerning the authority's participation in the operation of the statutory provisions affected by those amendments.
- (3) As soon as practicable after the expiry of the period of 2 years, the Ombudsman must furnish a report to each Minister administering the statutory provisions affected by those amendments as to the operation and effect of those amendments during that period.
- (4) The Minister to whom such a report is furnished is to lay (or cause to be laid) a copy of the report before both Houses of Parliament as soon as practicable after the Minister receives the report.
- (5) If a House of Parliament is not sitting when the Minister seeks to furnish a report to it, the Minister may present copies of the report to the Clerk of the House.

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- (6) The report:
- (a) on presentation, and for all purposes, is taken to have been laid before the House, and
  - (b) may be printed by authority of the Clerk of the House, and
  - (c) if so printed, is for all purposes taken to be a document published by or under the authority of the House, and
  - (d) is to be recorded:
    - (i) in the case of the Legislative Council, in the Minutes of the Proceedings of the Legislative Council, and
    - (ii) in the case of the Legislative Assembly, in the Votes and Proceedings of the Legislative Assembly,on the first sitting day of the House after receipt of the report by the Clerk.

## **Schedule 1 Amendment of Acts relating to sentencing procedure**

(Section 3)

### **1.1 Crimes (Sentencing Procedure) Act 1999 No 92**

#### **[1] Section 3 Interpretation**

Insert in alphabetical order in section 3 (1):

*associate with* means:

- (a) to be in company with, or
- (b) to communicate with by any means (including post, facsimile, telephone and email).

*non-association order* means an order referred to in section 17A (2) (a).

*place restriction order* means an order referred to in section 17A (2) (b).

#### **[2] Part 2, Division 4A**

Insert after Division 4:

### **Division 4A Non-association and place restriction orders**

#### **17A Non-association and place restriction orders**

- (1) This 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.
- (2) When sentencing an offender for an offence to which this section applies, a court may make either or both of the following orders in respect of the offender:
  - (a) a non-association order, being an order prohibiting the offender from associating with a specified person for a specified term, or

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- (b) a place restriction order, being an order prohibiting the offender from frequenting or visiting a specified place or district for a specified term,

if it is satisfied that it is reasonably necessary to do so to ensure that the offender does not commit any further offences to which this section applies.

- (3) An order under subsection (2) (a) is to be one of the following:
- (a) a limited non-association order, being an order prohibiting the offender from being in company with a specified person,
- (b) an unlimited non-association order, being an order prohibiting the offender:
- (i) from being in company with a specified person, and
- (ii) from communicating with that person by any means.
- (4) An order under this section is to be made in addition to, and not instead of, any other penalty for the offence, but may not be made if the only other penalty for the offence is an order under section 10 or 11.
- (5) The term of an order under this section is not limited by any term of imprisonment imposed for the offence, but must not exceed 12 months.
- (6) This section does not limit the kinds of prohibition or restriction that may be imposed on an offender by means of any other order or direction under this or any other Act, so that such an order or direction may include prohibitions of the kind referred to in subsections (2) and (3).
- (7) This section is subject to the provisions of Part 8A.

**[3] Section 25 Local Court not to impose certain penalties if offender is absent**

Insert after section 25 (1) (e):

- (f) a non-association order or place restriction order.

**[4] Section 31 Definitions**

Insert after paragraph (c) of the definition of *impose a penalty*:

- (c1) make a non-association order or place restriction order,  
or

**[5] Section 43 Court may reopen proceedings to correct sentencing errors**

Insert after paragraph (c) of the definition of *impose a penalty* in section 43 (6):

- (c1) make a non-association order or place restriction order,  
or

**[6] Sections 51A and 51B**

Insert after section 51:

**51A Conditions of parole as to non-association and place restriction**

- (1) The conditions to which a parole order is subject may include either or both of the following:
  - (a) provisions prohibiting or restricting the offender from associating with a specified person,
  - (b) provisions prohibiting or restricting the offender from frequenting or visiting a specified place or district.
- (2) A condition referred to in subsection (1) (a) or (b) is suspended:
  - (a) while the offender is in lawful custody (otherwise than while unescorted as referred to in section 38 (2) (a) of the *Crimes (Administration of Sentences) Act 1999*), and
  - (b) 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 section 24 of the *Children (Detention Centres) Act 1987*.
- (3) An offender does not contravene a prohibition or restriction as to his or her association with a specified person:
  - (a) if the offender does so in compliance with an order of a court, or

- 
- (b) if, having associated with the person unintentionally, the offender immediately terminates the association.
  - (4) An offender does not contravene a requirement not to frequent or visit a specified place or district if the offender does so in compliance with an order of a court.

**51B Certain information not to be published or broadcast**

- (1) A person must not publish or broadcast:
  - (a) the fact that a named person (other than the offender) is specified in a condition of a parole order referred to in section 51A (1) (a), or
  - (b) any information calculated to identify any such person.Maximum penalty: 10 penalty units.
- (2) Subsection (1) does not apply to the disclosure of information to any of the following persons:
  - (a) the offender,
  - (b) any person specified in the parole order as a person with whom the offender is prohibited or restricted from associating,
  - (c) any member of the Police Service,
  - (d) any person involved in the administration of the parole order or of any penalty to which the offender is subject while on parole,
  - (e) any person involved in proceedings for an alleged breach of the parole order,
  - (f) any other person specified in the parole order as a person to whom such information may be disclosed,
  - (g) any other person to whom such information is required to be disclosed pursuant to any other Act or law,

and does not apply to the publication or broadcasting of an official report of the proceedings of the court.



**[7] Part 8A**

Insert after Part 8:

**Part 8A Non-association and place restriction orders**

**100A Non-association and place restriction orders not to restrict certain associations or activities**

- (1) The 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.
- (2) 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 member 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,as at the time the order is made.
- (3) In this section, an offender's *close family* includes:
  - (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.

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**100B Explanation of non-association and place restriction orders to offenders**

- (1) Having made a non-association order or place restriction order in relation to an offender, a court must ensure that all reasonable steps are taken to explain to the offender (in language that the offender can readily understand):
  - (a) the offender's obligations under the order, and
  - (b) the consequences that may follow if the offender fails to comply with those obligations.
- (2) A non-association order or place restriction order is not invalidated by a failure to comply with this section.

**100C Commencement of non-association and place restriction orders**

A non-association order or place restriction order commences:

- (a) on the date on which it is made, or
- (b) if it is stayed as a consequence of appeal proceedings but confirmed on appeal, whether expressly or impliedly, on the date on which it is confirmed.

**100D Suspension of non-association and place restriction orders while offenders in custody**

- (1) An offender's non-association order or place restriction order is suspended:
  - (a) while the offender is in lawful custody (otherwise than while unescorted as referred to in section 38 (2) (a) of the *Crimes (Administration of Sentences) Act 1999*), and
  - (b) 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 section 24 of the *Children (Detention Centres) Act 1987*.
- (2) The suspension of an offender's non-association order or place restriction order does not operate to postpone the date on which the order comes to an end.

**100E Contravention of non-association and place restriction orders**

- (1) An offender must not, without reasonable excuse, contravene a non-association order or place restriction order.

Maximum penalty: 10 penalty units or imprisonment for 6 months, or both.

- (2) Without limiting subsection (1), it is a reasonable excuse for associating with a specified person in contravention of a non-association order if:
- (a) the offender did so in compliance with an order of a court, or
  - (b) having associated with the specified person unintentionally, the offender immediately terminated the association.
- (3) Without limiting subsection (1), it is a reasonable excuse for frequenting or visiting a specified place or district in contravention of a place restriction order if the offender did so in compliance with an order of a court.

**100F Variation or revocation of non-association and place restriction orders following subsequent conviction**

- (1) This section applies to an offender who is sentenced in respect of an offence (the *new offence*) while subject to a non-association order or place restriction order in respect of some other offence (the *old offence*).
- (2) When sentencing the offender for the new offence, the court may vary or revoke the non-association order or place restriction order for the old offence, regardless of whether the order was made by it or by some other court.

**100G Variation or revocation of non-association and place restriction orders on application**

- (1) An offender who is subject to a non-association order or place restriction order may apply to a Local Court for variation or revocation of the order, regardless of whether the order was made by a Local Court or by some other court.

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- (2) Such an application must be accompanied by a copy of the relevant order, together with any variations to it that have been made under this Part.
  - (3) Such an application may not be made except by leave of the Local Court, which leave may be granted only if it is satisfied that, having regard to changes in the applicant's circumstances since the order was made or last varied, it is in the interests of justice that leave be granted.
  - (4) The Local Court may refuse to entertain an application for leave if it is satisfied that the application is frivolous or vexatious.
  - (5) If leave to make an application for variation or revocation of a non-association order is granted:
    - (a) the Local Court must cause notice of the application to be served on the Commissioner of Police, and
    - (b) the Commissioner of Police is entitled to appear and be heard in any proceedings on the application.
  - (6) The Local Court may, at its discretion, deal with the application with or without the parties being present and in open court or in chambers.
  - (7) The Local Court may dispose of the application:
    - (a) by varying or revoking the non-association order or place restriction order in accordance with the application, or
    - (b) by dismissing the application.
  - (8) The Local Court's decision on the application is final.

**100H Certain information not to be published or broadcast**

- (1) A person must not publish or broadcast:
  - (a) the fact that a named person (other than the offender) is specified in a non-association order pursuant to section 17A (2) (a), or
  - (b) any information calculated to identify any such person.

Maximum penalty: 10 penalty units.

- (2) Subsection (1) does not apply to the disclosure of information to any of the following persons:
- (a) the offender,
  - (b) any person specified in the non-association order as a person with whom the offender is prohibited or restricted from associating,
  - (c) any member of the Police Service,
  - (d) any person involved in the administration of the non-association order or of any other penalty to which the offender is subject in relation to the same offence,
  - (e) any person involved in proceedings for an alleged breach of the non-association order,
  - (f) any other person specified in the non-association order as a person to whom such information may be disclosed,
  - (g) any other person to whom such information is required to be disclosed pursuant to any other Act or law,
- and does not apply to the publication or broadcasting of an official report of the proceedings of the court.

**[8] Schedule 2 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*Justice Legislation Amendment (Non-association and Place Restriction) Act 2001* (to the extent only to which it amends this Act)

**[9] Schedule 2**

Insert at the end of the Schedule, with appropriate Part and clause numbers:

**Part Provisions consequent on enactment of  
Justice Legislation Amendment (Non-  
association and Place Restriction) Act 2001**

**Application of section 17A**

Section 17A, as inserted by the *Justice Legislation Amendment (Non-association and Place Restriction) Act 2001*, does not apply to any offence committed before the commencement of that section.

**1.2 Criminal Appeal Act 1912 No 16**

**Section 2 Definitions**

Omit “11 or 12” from paragraph (c) of the definition of *Sentence* in section 2 (1).

Insert instead “11, 12 or 17A”.

**1.3 Children (Criminal Proceedings) Act 1987 No 55**

**[1] Section 33D**

Insert after section 33C:

**33D Non-association and place restriction orders**

- (1) This 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.

- (2) When sentencing a person for an offence to which this section applies, a court that has made an order under section 33 (1) (paragraphs (a), (c1) and (c2) excepted) may make either or both of the following orders in respect of the person:
- (a) a non-association order, being an order prohibiting the person from associating with a specified person for a specified term, or
  - (b) a place restriction order, being an order prohibiting the person from frequenting or visiting a specified place or district for a specified term,
- if it is satisfied that it is reasonably necessary to do so to ensure that the person does not commit any further offences to which this section applies.
- (3) An order under subsection (2) (a) is to be one of the following:
- (a) a limited non-association order, being an order prohibiting the person from being in company with a specified person,
  - (b) an unlimited non-association order, being an order prohibiting the person:
    - (i) from being in company with a specified person, and
    - (ii) from communicating with that person by any means.
- (4) The term of an order under this section is not limited by any term of detention imposed for the offence, but must not exceed 12 months.
- (5) This section does not limit the kinds of prohibition or restriction that may be imposed on a person by means of any other order or direction under this or any other Act (such as an order referred to in section 33 (1) (b) or (e)), so that such an order or direction may include prohibitions of the kind referred to in subsections (2) and (3).
- (6) Part 8A of the *Crimes (Sentencing Procedure) Act 1999* applies to and in respect of a non-association order or place restriction order under this section in the same way as it applies to and in respect of a non-association order or place restriction order under that Act.

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- (7) In the application of section 100G of the *Crimes (Sentencing Procedure) Act 1999* to or in respect of a non-association order or place restriction order under this section, a reference in that section to a Local Court is to be read as a reference to the Children's Court.
- (8) In this section, *associate with* means:
- (a) to be in company with, or
  - (b) to communicate with by any means (including post, facsimile, telephone and email).

**[2] Schedule 2 Savings and transitional provisions**

Insert at the end of clause 1 (1):

Schedule 1.3 to the *Justice Legislation Amendment (Non-association and Place Restriction) Act 2001*

**[3] Schedule 2**

Insert at the end of the Schedule, with appropriate Part and clause numbers:

**Part Provisions consequent on enactment of  
Justice Legislation Amendment (Non-  
association and Place Restriction) Act 2001**

**Application of section 33D**

Section 33D, as inserted by the *Justice Legislation Amendment (Non-association and Place Restriction) Act 2001*, does not apply to any offence committed before the commencement of that section.



## **Schedule 2 Amendment of Acts relating to bail and sentence administration**

(Section 4)

### **2.1 Bail Act 1978 No 161**

#### **[1] Section 4 Definitions**

Omit “36 or 36A” from the definition of *bail condition* in section 4 (1).  
Insert instead “36, 36A or 36B”.

#### **[2] Section 4 (3) (a)**

Omit “or section 36A (2) (a) or (b)”.  
Insert instead “, section 36A (2) (a) or (b) or section 36B (1) (a) or (b)”.

#### **[3] Section 36 Conditions of bail**

Omit “One or more” from section 36 (2).  
Insert instead “Subject to sections 36A and 36B, one or more”.

#### **[4] Section 36 (7)**

Omit the subsection.

#### **[5] Section 36A Additional bail conditions for persons requiring drug or alcohol assessment, treatment or rehabilitation**

Insert “or 36B” after “36” in section 36A (3).

#### **[6] Sections 36B and 36C**

Insert after section 36A:

#### **36B Additional bail conditions as to non-association and place restriction**

- (1) Either or both of the following conditions may be imposed on the grant of bail:

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- (a) that the accused person enter into an agreement to comply with specified requirements prohibiting or restricting the person from associating with a specified person,
  - (b) that the accused person enter into an agreement to comply with specified requirements prohibiting or restricting the person from frequenting or visiting a specified place or district.
- (2) Conditions of the kind referred to in subsection (1) may be imposed in addition to, or instead of, any condition imposed under section 36 or 36A.
- (3) An agreement under this section must be in writing.
- (4) A condition or agreement under this section may be entered into in respect of more than one offence.
- (5) A condition referred to in subsection (1) (a) or (b) is suspended while the accused person is in lawful custody.
- (6) The accused person does not contravene a condition not to associate with a specified person:
- (a) if the accused person does so in compliance with an order of a court, or
  - (b) if, having associated with the specified person unintentionally, the accused person immediately terminates the association.
- (7) The accused person does not contravene a requirement not to frequent or visit a specified place or district if the accused person does so in compliance with an order of a court.
- (8) In this section, *associate with* means:
- (a) to be in company with, or
  - (b) to communicate with by any means (including post, facsimile, telephone and email).

**36C Certain information not to be published or broadcast**

- (1) A person must not publish or broadcast:
- (a) the fact that a named person (other than the accused person) is specified in a condition imposed on the grant of bail referred to in section 36B (1) (a), or
  - (b) any information calculated to identify any such person.

Maximum penalty: 10 penalty units.

- (2) Subsection (1) does not apply to the disclosure of information to any of the following persons:
- (a) the accused person,
  - (b) any person specified in the bail agreement as a person with whom the accused person is prohibited or restricted from associating,
  - (c) any member of the Police Service,
  - (d) any person involved in the administration of the bail agreement or of any penalty to which the accused person is subject while on release on bail,
  - (e) any person involved in proceedings for an alleged breach of the bail agreement,
  - (f) any other person specified in the bail agreement as a person to whom such information may be disclosed,
  - (g) any other person to whom such information is required to be disclosed pursuant to any other Act or law,

and (in the case of bail granted by a court) does not apply to the publication or broadcasting of an official report of the proceedings of the court.

**[7] Section 39 Entry into agreement and acceptance of acknowledgment or security**

Omit “36 or 36A”. Insert instead “36, 36A or 36B”.

**[8] Section 39B**

Insert after section 39A:

**39B Explanation of bail agreement to persons affected**

The authorised officer or court to whom a bail undertaking is given must take all reasonable steps to ensure that any person (including the accused person) who enters into an agreement in compliance with the accused person's bail conditions is made aware of:

- (a) the obligations incurred by the person under that agreement, and
- (b) in particular, the consequences that may follow if the accused person fails to comply with that undertaking.

**2.2 Crimes (Administration of Sentences) Act 1999 No 93**

**[1] Section 26A**

Insert after section 26:

**26A Conditions of leave as to non-association and place restriction**

- (1) The conditions to which a local leave permit is subject may include either or both of the following:
  - (a) provisions prohibiting or restricting the inmate from associating with a specified person,
  - (b) provisions prohibiting or restricting the inmate from frequenting or visiting a specified place or district.
- (2) A condition referred to in subsection (1) (a) or (b) is suspended while the inmate is in lawful custody (otherwise than while unescorted as referred to in section 38 (2) (a)).
- (3) An inmate does not contravene a prohibition or restriction as to his or her association with a specified person:
  - (a) if the inmate does so in compliance with an order of a court, or

- (b) if, having associated with the person unintentionally, the inmate immediately terminates the association.
- (4) An inmate does not contravene a requirement not to frequent or visit a specified place or district if the inmate does so in compliance with an order of a court.
- (5) In this section, *associate with* means:
  - (a) to be in company with, or
  - (b) to communicate with by any means (including post, facsimile, telephone and email).

**[2] Section 128A**

Insert after section 128:

**128A Conditions of parole as to non-association and place restriction**

- (1) The conditions to which a parole order is subject may include either or both of the following:
  - (a) provisions prohibiting or restricting the offender from associating with a specified person,
  - (b) provisions prohibiting or restricting the offender from frequenting or visiting a specified place or district.
- (2) A condition referred to in subsection (1) (a) or (b) is suspended:
  - (a) while the offender is in lawful custody (otherwise than while unescorted as referred to in section 38 (2) (a)), and
  - (b) 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 section 24 of the *Children (Detention Centres) Act 1987*.
- (3) An offender does not contravene a prohibition or restriction as to his or her association with a specified person:
  - (a) if the offender does so in compliance with an order of a court, or

- (b) if, having associated with the person unintentionally, the offender immediately terminates the association.
- (4) An offender does not contravene a requirement not to frequent or visit a specified place or district if the offender does so in compliance with an order of a court.
- (5) In this section, *associate with* means:
  - (a) to be in company with, or
  - (b) to communicate with by any means (including post, facsimile, telephone and email).

**[3] Section 165A**

Insert after section 165:

**165A Conditions of home detention as to non-association and place restriction**

- (1) The conditions to which a home detention order under section 165 is subject may include either or both of the following:
  - (a) provisions prohibiting or restricting the offender from associating with a specified person,
  - (b) provisions prohibiting or restricting the offender from frequenting or visiting a specified place or district.
- (2) A condition referred to in subsection (1) (a) or (b) is suspended while the offender is in lawful custody.
- (3) An offender does not contravene a prohibition or restriction as to his or her association with a specified person:
  - (a) if the offender does so in compliance with an order of a court, or
  - (b) if, having associated with the person unintentionally, the offender immediately terminates the association.
- (4) An offender does not contravene a requirement not to frequent or visit a specified place or district if the offender does so in compliance with an order of a court.

- (5) In this section, *associate with* means:
- (a) to be in company with, or
  - (b) to communicate with by any means (including post, facsimile, telephone and email).

## 2.3 Children (Detention Centres) Act 1987 No 57

### Section 24A

Insert after section 24:

#### **24A Conditions of leave as to non-association and place restriction**

- (1) The conditions of leave that may be imposed under section 24 on a person subject to control may include either or both of the following:
- (a) provisions prohibiting or restricting the person subject to control from associating with a specified person,
  - (b) provisions prohibiting or restricting the person subject to control from frequenting or visiting a specified place or district.
- (2) A condition referred to in subsection (1) (a) or (b) is suspended:
- (a) while the person subject to control is in lawful custody, and
  - (b) while the person subject to control is under the immediate supervision of a public servant employed within the Department of Juvenile Justice.
- (3) A person subject to control does not contravene a prohibition or restriction as to his or her association with a specified person:
- (a) if the person subject to control does so in compliance with an order of a court, or
  - (b) if, having associated with the specified person unintentionally, the person subject to control immediately terminates the association.

- (4) A person subject to control does not contravene a requirement not to frequent or visit a specified place or district if the person does so in compliance with an order of a court.
- (5) In this section, *associate with* means:
  - (a) to be in company with, or
  - (b) to communicate with by any means (including post, facsimile, telephone and email).