



New South Wales

Child Protection (Offenders Registration) Amendment (Statutory Review) Act 2014 No 54

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Child Protection (Offenders Registration) Amendment (Statutory Review) Act 2014 No 54

Act No 54, 2014

An Act to make miscellaneous amendments to the *Child Protection (Offenders Registration) Act 2000* as a result of the statutory review of that Act; and for other purposes. [Assented to 23 October 2014]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Child Protection (Offenders Registration) Amendment (Statutory Review) Act 2014*.

2 Commencement

This Act commences on the date of assent to this Act.

Schedule 1 Amendment of Child Protection (Offenders Registration) Act 2000 No 42

[1] Section 2A

Insert after section 2:

2A Objects of Act

The objects of this Act are:

- (a) to protect children from serious harm (including physical and psychological harm caused by physical or sexual assault), and
- (b) to ensure the early detection of offences by recidivist child sex offenders, and
- (c) to monitor persons who are registrable persons, and
- (d) to ensure that registrable persons comply with this Act.

[2] Section 3 Definitions

Renumber paragraphs (a) and (a1) of the definition of *Class 2 offence* in section 3 (1) as paragraphs (a1) and (a3) respectively.

[3] Section 3 (1), definition of “Class 2 offence”

Insert before paragraph (a1) (as renumbered by item [2]):

- (a) the offence of manslaughter (other than manslaughter as a result of a motor vehicle accident), where the victim of the manslaughter is a child, or

[4] Section 3 (1), definition of “Class 2 offence”

Insert after paragraph (a1) (as renumbered by item [2]):

- (a2) an offence under section 33 (1) of the *Crimes Act 1900*, where the person against whom the offence is committed is a child under 10 years of age and the person committing the offence is not a child, or

[5] Section 3 (1), definition of “Class 2 offence”

Insert after paragraph (c):

- (c1) an offence under section 87 of the *Crimes Act 1900*, where the person committing the offence has never had parental responsibility (within the meaning of that section) for the child who is taken or detained, or

[6] Section 3 (1), definition of “Class 2 offence”

Omit paragraph (e).

[7] Section 3 (1), definition of “Class 2 offence”

Omit “section 272.9,” from paragraph (g). Insert instead “section 271.4, 271.7, 272.9,”.

[8] Section 3 (1), definition of “Class 2 offence”

Omit “272.14 or 272.15” from paragraph (g).

Insert instead “272.11, 272.12, 272.13, 272.14, 272.15, 273.5, 273.6, 273.7, 471.16, 471.17, 471.19, 471.20, 471.22, 471.24, 471.25, 471.26, 474.19, 474.20, 474.22, 474.23, 474.24A, 474.25A, 474.25B, 474.26, 474.27 or 474.27A”.

[9] Section 3 (1), definition of “corresponding registrable person”

Omit “section 3C”. Insert instead “section 19BB”.

[10] Section 3 (1), definition of “government custody”

Omit “order of detention under section 27 or 39” from paragraph (a).

Insert instead “order under section 24 (1) (b), 27 or 39”.

[11] Section 3 (1)

Omit the definitions of *forensic patient*, *relevant personal information* and *sentence*.

Insert in alphabetical order:

child abuse material has the same meaning as it has in section 91FB of the *Crimes Act 1900*.

forensic patient means a person who is subject to:

- (a) an order of detention under section 27 or 39 of the *Mental Health (Forensic Provisions) Act 1990*, or
- (b) an order under section 24 (1) (b) of that Act that causes the person to be kept in custody.

interstate Registrar means an authority responsible under a law of another State or a Territory for the registration of births, deaths and marriages.

NSW Registrar means the Registrar within the meaning of the *Births, Deaths and Marriages Registration Act 1995*.

relevant personal information—see section 9.

sentence includes the following:

- (a) any order under section 24 (1) (b) of the *Mental Health (Forensic Provisions) Act 1990* that causes a person to be kept in custody or any order of detention under section 27 or 39 of that Act,
- (b) any order under section 33 (1) of the *Children (Criminal Proceedings) Act 1987*,
- (c) any action taken under section 10A of the *Crimes (Sentencing Procedure) Act 1999*,
- (d) any undertaking under section 23 of the *Pre-Trial Diversion of Offenders Act 1985*,
- (e) any sentence or equivalent order or undertaking imposed under the laws of a foreign jurisdiction.

supervised sentence means:

- (a) a sentence of imprisonment the subject of an intensive correction order or home detention order, or
- (b) a community service order, or
- (c) a good behaviour bond under which the person is required to submit to strict supervision, or
- (d) an order of detention under section 27 or 39 of the *Mental Health (Forensic Provisions) Act 1990*, other than an order that, as originally made, requires the person to be kept in strict government custody, or
- (e) an order under section 24 (1) (b) of the *Mental Health (Forensic Provisions) Act 1990* that causes a person to be kept in custody, other than an order that, as originally made, requires the person to be kept in strict government custody.

[12] Section 3A Registrable persons

Omit “section 578B or 578C (2A)” from section 3A (2) (c) (ii).

Insert instead “section 91H”.

[13] Section 3A (2) (c) (ii)

Omit “possessing or publishing child pornography”.

Insert instead “producing, disseminating or possessing child abuse material”.

[14] Section 3A (2) (c) (iii)

Omit “section 21G (1) of the *Summary Offences Act 1988* or”.

[15] Section 3A (2) (c)

Insert at the end of the paragraph:

Note. Savings and transitional provisions in Schedule 2 provide that references to certain offences in this paragraph are taken to include references to certain earlier offences under provisions that have since been repealed.

[16] Section 3C Corresponding registrable persons

Omit the section.

[17] Section 3E Orders made after conclusion of criminal proceedings

Omit “21 days” from section 3E (3). Insert instead “60 days”.

[18] Section 3F Orders made in relation to foreign offences and old offences

Insert after section 3F (1) (b):

- (c) a person who has (at any time) been sentenced by a court for an offence referred to in paragraph (a), (a2) or (c1) of the definition of ***Class 2 offence*** in section 3 (1), of which the person was found guilty before the commencement of this paragraph, unless the person was a child at the time the offence was committed.

[19] Section 3H Risk to sexual safety of children—meaning

Insert after section 3H (2):

- (3) A court is to take the following into account in determining whether a person poses a risk to the lives or sexual safety of one or more children, or of children generally:
 - (a) the seriousness of each registrable offence committed by the person,
 - (b) the age of the person at the time each of those offences was committed,
 - (c) the age of each victim of each of those offences at the time that the offence was committed,
 - (d) the seriousness of any other offences committed by the person,
 - (e) the impact on the person if the order being sought is made compared with the likelihood that the person may commit a registrable offence,
 - (f) any other matter that the court considers to be relevant.

[20] Section 5 Notices to be given when registrable person commences supervised sentence for registrable offence

Omit section 5 (3).

[21] Section 6 Notices to be given when registrable person ceases to be in custody or under supervision of supervising authority

Omit “(within the meaning of section 5)” from section 6 (1) (c).

[22] Section 6 (1) (g)

Insert at the end of section 6 (1) (f):

or

- (g) becomes subject to an order under section 49 of the *Mental Health (Forensic Provisions) Act 1990* that allows the person to be absent from a mental health facility, correctional centre or other place on a regular and unsupervised basis,

[23] Section 6 (3) and (4)

Omit section 6 (3). Insert instead:

- (3) Notice is not required to be given under subsection (2) if the person ceases to be in government custody because of an order under section 49 of the *Mental Health (Forensic Provisions) Act 1990* that allows the person to be absent from a mental health facility, correctional centre or other place on a regular and unsupervised basis.
- (4) The regulations may make provision for or with respect to the following:
- (a) what constitutes absence on a regular and unsupervised basis,
- (b) the manner and form in which written notice must be given under this section.

[24] Section 9 Relevant personal information to be reported

Omit section 9 (1) (e). Insert instead:

- (e) the name and date of birth of each child who generally resides in the same household as that in which the person generally resides,

[25] Section 9 (1) (h)

Insert “or hired” after “owned”.

[26] Section 9 (1) (m)

Insert “including any phone numbers used, or intended to be used, by the person” after “the person”.

[27] Section 9 (1A)–(1E)

Insert after section 9 (1):

- (1A) For the purposes of this Act, the *relevant personal information* to be reported by a registrable person also includes the name, date of birth and address of each child (or other means of contacting each child) with whom the person has had contact, but only if the registrable person was:
- (a) supervising or caring for the child, or
- (b) visiting or staying at a household where the child is present, or
- (c) exchanging contact details with the child (including providing the person’s contact details to the child), or
- (d) attempting to befriend the child.

- (1B) For the purposes of subsection (1A), **contact** with a child, includes the registrable person having:
- (a) physical contact with the child (including by touching the child or being in very close physical proximity to the child), or
 - (b) oral communication with the child (including communication that takes place in person, by telephone or by electronic means such as via the internet), or
 - (c) written communication with the child (including communication that takes place by mail, by telephone or by electronic means such as email).
- (1C) The **sentencing court** (being the court that sentences a person in respect of a registrable offence or that imposes a child protection registration order on the person) may order that the person's reporting obligations in respect of contacts occurring before the person reaches 18 years of age be modified as set out in the order, if:
- (a) the person is under 18 years of age, and
 - (b) the court is of the view that the modification is appropriate in the circumstances taking into account the educational and other needs of the person.
- (1D) A person who, because of a modification under subsection (1C), was not required to report a contact occurring before the person was 18 years of age is not subsequently required to report that contact unless the person's reporting obligations are further modified so as to require the contact to be reported.
- (1E) Any such further modification may be made by the sentencing court, the Local Court or the Children's Court on the application of the Commissioner of Police.

[28] Section 9 (2) (c)

Omit the paragraph.

[29] Section 9A When initial report must be made

Omit the matter relating to a corresponding registrable person from Columns 1 and 2 of the Table to section 9A (1).

[30] Section 9B When new initial report must be made by person whose previous reporting obligations have ceased

Omit section 9B (2).

[31] Section 11 Registrable person must report changes to relevant personal information

Omit "14 days" wherever occurring in section 11 (1) (b) and (3). Insert instead "7 days".

[32] Section 11 (2)

Omit ", or as to when the registrable person has unsupervised contact with a child".

[33] Section 11 (4) (a)

Omit "28 days". Insert instead "7 days".

[34] Section 11C Registrable person to report return to New South Wales or decision not to leave

Omit "14 days" wherever occurring in section 11C (2) and (3). Insert instead "7 days".

[35] Section 14D Reporting period for corresponding registrable persons

Omit the section.

[36] Section 15 Suspension and extension of reporting obligations

Insert after section 15 (3):

- (4) The period for which a registrable person's reporting obligations continue is extended by any countable period during which the person is in breach of the person's reporting obligations.
- (5) For the purposes of subsection (4), a *countable period* occurs when a person fails to make an initial report under Division 2, or an annual report under section 10, within one month after the day on which the report was due to be made. In such a case the countable period:
 - (a) commences one month after the report was due to be made, and
 - (b) finishes when the person reports the person's relevant personal information to the Commissioner of Police, and
 - (c) does not include any period during which the person's reporting obligations are suspended.

[37] Section 16A Cessation of order

Omit "section 14D" from section 16A (1) (c). Insert instead "section 19BC".

[38] Part 3, Division 10

Insert after Division 9:

Division 10 Corresponding registrable persons—special provisions

19BB Corresponding registrable persons

- (1) A *corresponding registrable person* is a person who:
 - (a) has at any time been in a foreign jurisdiction and at that time was required to report to the corresponding registrar, and
 - (b) would, if the person were currently in that jurisdiction, still be required to report to that corresponding registrar.
- (2) Subject to the regulations, a person is a corresponding registrable person under subsection (1) even if the offence in respect of which he or she is required to report in the foreign jurisdiction is not a registrable offence for the purposes of this Act.
- (3) A *corresponding registrable person* includes a person who:
 - (a) has been found guilty of an offence under a law of a foreign jurisdiction that is a Class 1 offence or a Class 2 offence for the purposes of this Act, and
 - (b) as a consequence of having been found guilty of that offence has been required to report in that jurisdiction information about himself or herself to a person or body exercising functions substantially similar to those of the Commissioner of Police under this Act, and to keep that information current for a particular period, and
 - (c) would, if the person were currently in that jurisdiction, still be required to report that information.

- (4) The regulations may exclude any person or class of persons from being a corresponding registrable person.

19BC Reporting period for corresponding registrable person

The reporting period for a corresponding registrable person is the whole period during which the person is a corresponding registrable person.

19BD Initial report

- (1) A person who becomes a corresponding registrable person while the person is in New South Wales must report the person's relevant personal information to the Commissioner of Police within 7 days (not counting any days spent in government custody) after becoming a corresponding registrable person if:
- (a) the person has not previously reported the person's relevant personal information to the Commissioner of Police, or
 - (b) the person is a registrable person whose reporting period has expired.
- (2) Despite subsection (1), a corresponding registrable person who is proposing to leave New South Wales within those 7 days must report the person's relevant personal information to the Commissioner of Police before leaving New South Wales.

[39] Section 19D Definitions

Omit the section.

[40] Section 19E Applications for change of name by or on behalf of registrable person

Insert "without reasonable excuse" after "must not" wherever occurring.

[41] Section 19E

Omit "5 penalty units" wherever occurring.

Insert instead "500 penalty units or imprisonment for 5 years, or both".

[42] Section 19F Approval by Commissioner of Police

Insert before section 19F (1):

- (1A) This section applies to an application by or on behalf of a registrable person for registration of a change of the person's name in respect of which the written approval of the Commissioner of Police is required under section 19E.

[43] Section 19F

Omit "a change of name application" wherever occurring.

Insert instead "an application".

[44] Section 20A Application of reporting obligations to persons subject to child protection prohibition orders

Omit "a child protection prohibition order" from section 20A (1).

Insert instead "a prohibition order (within the meaning of the *Child Protection (Offenders Prohibition Orders) Act 2004*)".

[45] Section 20A (5)

Omit the subsection.

[46] Section 21 Proceedings for offences

Omit “or 18” wherever occurring. Insert instead “, 18 or 19E”.

[47] Schedule 1

Omit the Schedule. Insert instead:

Schedule 1 Scheduled agencies

(Section 19BA)

- 1** NSW Police Force.
- 2** Each of the following parts of the Department of Justice:
 - (a) Corrective Services NSW, being that part of the Department comprising the group of staff who are principally involved in the administration of the *Crimes (Administration of Sentences) Act 1999*,
 - (b) Juvenile Justice NSW, being that part of the Department comprising the group of staff who are principally involved in the administration of the following Acts:
 - (i) the *Children (Community Service Orders) Act 1987*,
 - (ii) the *Children (Detention Centres) Act 1987*,
 - (iii) the *Children (Interstate Transfer of Offenders) Act 1988*,and including the group of staff within the Department who are known as the Juvenile Justice Branch.
- 3** Department of Education and Communities.
- 4** Each of the following parts of the Department of Family and Community Services:
 - (a) Ageing, Disability and Home Care, being that part of the Department comprising the group of staff who are principally involved in the administration of the following Acts:
 - (i) the *Disability Services Act 1993*,
 - (ii) the *Home Care Service Act 1988*,and including the group of staff within the Department who are known as Ageing, Disability and Home Care,
 - (b) Community Services, being that part of the Department comprising the group of staff who are principally involved in the administration of the following Acts:
 - (i) the *Adoption Act 2000*,
 - (ii) the *Children and Young Persons (Care and Protection) Act 1998*,and including the group of staff within the Department who are known as Community Services,
 - (c) Housing NSW, being that part of the Department comprising the group of staff who are principally involved in the administration of the *Housing Act 2001* and including the group of staff within the Department who are known as Housing NSW.
- 5** Ministry of Health.
- 6** Office of the Children’s Guardian.

- 7 Each local health district constituted under the *Health Services Act 1997*.
- 8 The following statutory health corporations constituted under the *Health Services Act 1997*:
- (a) Justice Health and Forensic Mental Health Network,
 - (b) The Sydney Children's Hospitals Network (Randwick and Westmead) (incorporating The Royal Alexandra Hospital for Children).
- 9 St Vincent's Hospital, Darlinghurst (being the recognised establishment or recognised service of St Vincent's Hospital Sydney Limited in Schedule 3 (Affiliated health organisations) to the *Health Services Act 1997*).
- 10 Department of Immigration and Border Protection of the Commonwealth.

[48] Schedule 2 Savings, transitional and other provisions

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

Part Provisions consequent on enactment of Child Protection (Offenders Registration) Amendment (Statutory Review) Act 2014

Definition

In this Part:

amending Act means the *Child Protection (Offenders Registration) Amendment (Statutory Review) Act 2014*.

Reference to section 91H of the Crimes Act 1900 offence of production, dissemination or possession of child abuse material includes references to older offences

- (1) A reference in the definition of *Class 2 offence* in section 3 (1) to an offence under section 91H of the *Crimes Act 1900* includes a reference to an offence (committed before the commencement of section 91H) under section 578B of the *Crimes Act 1900*.
- (2) A reference in section 3A (2) (c) (ii) to an offence under section 91H of the *Crimes Act 1900* includes a reference to an offence (committed before the commencement of section 91H) under section 578B or 578C (2A) of the *Crimes Act 1900*.

Reference to section 91K of the Crimes Act 1900 offence of filming a person engaged in a private act includes reference to older offences

A reference in section 3A (2) (c) (iii) to an offence under section 91K (1) of the *Crimes Act 1900* includes a reference to an offence (committed before the commencement of section 91K) under section 21G (1) of the *Summary Offences Act 1988*.

Orders made after conclusion of criminal proceedings

Section 3E (3), as amended by the amending Act, applies so as to permit an application for an order to be made within 60 days after a person is sentenced for a relevant offence even if the sentence was imposed before that amendment.

Risk to sexual safety of children—meaning

Section 3H (3) applies to any determination made after the commencement of that subsection regardless of whether the determination is made in relation to proceedings that commenced before the commencement of that subsection.

Registrable person who ceases to be under supervision

- (1) Section 6 (1) (g) does not apply to an order under section 49 of the *Mental Health (Forensic Provisions) Act 1990* that was made before the commencement of that paragraph.
- (2) Section 6 (3), as substituted by the amending Act, applies in respect of an order under section 49 of the *Mental Health (Forensic Provisions) Act 1990* whether or not that order was made before the commencement of that subsection.

Relevant personal information

Section 9, as amended by the amending Act, applies in respect of a report made after those amendments regardless of whether the report relates to matters occurring before those amendments or the reporting obligations of the registrable person commenced before those amendments.

Time within which reports must be made

Sections 11 and 11C, as in force immediately before those sections were amended by the amending Act, continue to apply in respect of changes in circumstances that are required to be reported to the Commissioner of Police under those sections if the change occurred before those amendments commenced.

Extension of reporting period

Section 15 (4) does not apply in respect of a breach of reporting obligations occurring before the commencement of that subsection.

Schedule 2 Amendment of Criminal Procedure Act 1986 No 209

Schedule 1 Indictable offences triable summarily

Omit “or 18” from clause 23 in Table 2. Insert instead “, 18 or 19E”.

[Second reading speech made in—
Legislative Assembly on 6 August 2014
Legislative Council on 10 September 2014]