



New South Wales

# Child Protection (Offenders Prohibition Orders) Regulation 2018

under the

Child Protection (Offenders Prohibition Orders) Act 2004

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Child Protection (Offenders Prohibition Orders) Act 2004*.

MARK SPEAKMAN, MP  
Attorney General

## Explanatory note

The object of this Regulation is to remake, without any substantial changes, the *Child Protection (Offenders Prohibition Orders) Regulation 2013*, which is to be repealed on 1 September 2018 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation:

- (a) prescribes the police officer in charge of the Child Protection Register of the NSW Police Force as the only person to whom the Commissioner of Police may delegate certain functions in respect of child protection prohibition orders or contact prohibition orders against persons under 18 years of age, and
- (b) recognises and gives effect to certain orders made in other jurisdictions that are similar in nature to child protection prohibition orders made under section 5 of the *Child Protection (Offenders Prohibition Orders) Act 2004*, and
- (c) confers jurisdiction on the Local Court with respect to the variation or revocation of corresponding prohibition orders, and
- (d) restricts the publication of information identifying a person subject to a corresponding prohibition order or a person who is at risk because of the conduct prohibited by a corresponding prohibition order.

This Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*, namely matters of a machinery nature and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

This Regulation is made under the *Child Protection (Offenders Prohibition Orders) Act 2004*, including sections 17, 19 and 21 (the general regulation-making power).

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## Child Protection (Offenders Prohibition Orders) Regulation 2018

under the

Child Protection (Offenders Prohibition Orders) Act 2004

### 1 Name of Regulation

This Regulation is the *Child Protection (Offenders Prohibition Orders) Regulation 2018*.

### 2 Commencement

This Regulation commences on 1 September 2018 and is required to be published on the NSW legislation website.

**Note.** This Regulation replaces the *Child Protection (Offenders Prohibition Orders) Regulation 2013*, which is repealed on 1 September 2018 by section 10 (2) of the *Subordinate Legislation Act 1989*.

### 3 Definition

(1) In this Regulation:

*the Act* means the *Child Protection (Offenders Prohibition Orders) Act 2004*.

**Note.** The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

(2) Notes included in this Regulation do not form part of this Regulation.

### 4 Delegation of function of making applications in respect of orders against young registrable persons

For the purposes of section 17 of the Act, the police officer in charge of the Child Protection Register of the NSW Police Force is prescribed.

### 5 Corresponding prohibition orders

For the purposes of section 19 (2) (a) of the Act, the following orders are recognised in this State as *corresponding prohibition orders*:

- (a) an order under Chapter 5A of the *Crimes (Child Sex Offenders) Act 2005* of the Australian Capital Territory,
- (b) an order under Part 5 of the *Child Protection (Offender Reporting and Registration) Act* of the Northern Territory,
- (c) an order under Part 5 of the *Community Protection (Offender Reporting) Act 2004* of Western Australia,
- (d) an order under Part 2 of the *Sexual Offences Act 2003* of the United Kingdom,
- (e) an order under Part 3A of the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* of Queensland,
- (f) an order under section 99AA of the *Criminal Procedure Act 1921* of South Australia,

- (g) an order under Part 5C of the *Child Sex Offenders Registration Act 2006* of South Australia,
- (h) an order under Part 4A of the *Sex Offenders Registration Act 2004* of Victoria,
- (i) an order under section 10A of the *Community Protection (Offender Reporting) Act 2005* of Tasmania.

**Note.** Section 19 of the Act provides for the recognition of orders made by a court of a jurisdiction other than this State (including jurisdictions outside Australia) that are similar in nature to prohibition orders under the Act. These recognised orders are known as “corresponding prohibition orders”.

## **6 Effect of variation or revocation of corresponding prohibition orders by original jurisdiction**

For the purposes of section 19 (2) (d) of the Act, if a court of a jurisdiction other than this State varies or revokes a corresponding prohibition order made in that jurisdiction, the variation or revocation applies to the extent that the corresponding prohibition order has effect in this State.

## **7 Effect of corresponding prohibition orders in this State**

- (1) For the purposes of section 19 (2) (e) of the Act, a corresponding prohibition order:
  - (a) has the same effect as if it were a prohibition order made by the Local Court under the Act, and
  - (b) may be enforced in this State against the person in respect of whom it was made as if it were a prohibition order made under the Act, and
  - (c) has effect in this State for the term of the order.
- (2) Subclause (1) does not operate to enable an appeal under the *Crimes (Appeal and Review) Act 2001* in respect of the decision to make a corresponding prohibition order.

## **8 Variation or revocation of corresponding prohibition orders**

- (1) For the purposes of section 19 (2) (f) of the Act, an application may be made to the Local Court by the Commissioner of Police, or by a person subject to a corresponding prohibition order, for an order varying or revoking a corresponding prohibition order (other than for a variation as to the term of the order).
- (2) The application must be accompanied by:
  - (a) a copy of the corresponding prohibition order, and
  - (b) any variations to the corresponding prohibition order that have been made.
- (3) A person subject to a corresponding prohibition order may not make an application except by leave of the Local Court. Leave may be granted only if the Local Court 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 dispose of the application:
  - (a) by varying or revoking the corresponding prohibition order, but only to the extent that it has effect in this State, or
  - (b) by dismissing the application.
- (5) For the purposes of an application under this clause, the respondent to an application is:
  - (a) in the case of an application made by the Commissioner of Police, the person subject to the corresponding prohibition order concerned, and

- (b) in the case of an application made by a person subject to a corresponding prohibition order, the Commissioner of Police.

## **9 Restriction on publication of identity**

- (1) A person must not publish:
  - (a) any information that identifies or is reasonably likely to enable the identification of a person as a person who is subject to a corresponding prohibition order, or
  - (b) the name of any particular person referred to as a person at risk because of the conduct prohibited by a corresponding prohibition order, or
  - (c) any matter reasonably likely to enable a person referred to in paragraph (b) to be identified.

Maximum penalty: 50 penalty units.

- (2) This clause does not apply in relation to:
  - (a) the publication of any matter with the authority of the Local Court to which an application was made under clause 8, or
  - (b) any publication by a person of his or her name.
- (3) This clause does not apply in relation to the publication of any matter to any of the following persons:
  - (a) the person who is subject to the corresponding prohibition order to which the publication relates,
  - (b) any other person or class of persons specified in the corresponding prohibition order concerned,
  - (c) any member of the NSW Police Force or a member of a law enforcement agency of the Commonwealth or another State or Territory (including the Australian Crime Commission) in their official capacity,
  - (d) any person involved in the administration of the corresponding prohibition order concerned,
  - (e) any member of staff of a government agency involved in the assessment and management of persons who are subject to corresponding prohibition orders,
  - (f) any person for the purpose of an investigation of an alleged breach of a corresponding prohibition order or to any person involved in proceedings for any such breach,
  - (g) any other person to whom it is required or permitted to be disclosed pursuant to any other Act or law.

## **10 Savings**

Any act, matter or thing that, immediately before the repeal of the *Child Protection (Offenders Prohibition Orders) Regulation 2013*, had effect under that Regulation continues to have effect under this Regulation.