

# Child Protection (Offenders Registration) Regulation 2001

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New South Wales

## Status Information

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Authorisation

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# Child Protection (Offenders Registration) Regulation 2001



New South Wales

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Child Protection (Offenders Registration) Act 2000*.

PAUL WHELAN, M.P., Minister for Police

## 1 Name of Regulation

This Regulation is the *Child Protection (Offenders Registration) Regulation 2001*.

## 2 Commencement

This Regulation commences on 15 October 2001.

## 3 Definitions

(1) In this Regulation:

**disability** has the same meaning as it has in the *Anti-Discrimination Act 1977*.

**statutory notice** means a written notice that, under section 4, 5, 6 or 7 of the Act, or under clause 6, 7, 8 or 9 of this Regulation, is required to be given to a registrable person in relation to:

- (a) the person's reporting obligations, and
- (b) the consequences that may arise if the person fails to comply with those obligations.

**the Act** means the *Child Protection (Offenders Registration) Act 2000*.

(2) For the purposes of this Regulation, a registrable person has a **special need** if:

- (a) the person has impaired intellectual functioning, that is, the person has:
  - (i) total or partial loss of the person's mental functions, or
  - (ii) a disorder or malfunction that results in the person learning differently from a

person without the disorder or malfunction, or

(iii) a disorder, illness or disease that affects the person's thought processes, perceptions of reality, emotions or judgment, or that results in disturbed behaviour, or

(b) the person is subject to a guardianship order (within the meaning of the *Guardianship Act 1987*), or

(c) the person is illiterate, or is not literate in the English language, or

(d) the person is visually impaired to the extent that the person is unable to read a written notice, or

(e) the person is subject to some other condition that may prevent the person from being able to understand a written notice.

#### 4 Notes

The explanatory note and table of contents do not form part of this Regulation.

#### 5 Definition of "supervising authority"

For the purposes of the definition of **supervising authority** in section 3 (1) of the Act, the following authorities are prescribed:

(a) the Director of the Pre-Trial Diversion of Offenders Program within the meaning of the *Pre-Trial Diversion of Offenders Act 1985*, in relation to any registrable person who is participating in that Program,

(b) the Director-General of the Department of Juvenile Justice, in relation to any registrable person who is:

(i) a detainee, or

(ii) subject to an order under section 33 of the *Children (Criminal Proceedings) Act 1987*, being an order under which the person is required to submit to the supervision of the Director-General or an officer of the Department, or

(iii) subject to a condition of parole under the *Crimes (Sentencing Procedure) Act 1999*, the *Crimes (Administration of Sentences) Act 1999* or the *Parole Orders (Transfer) Act 1983*, being a condition under which the person is required to submit to the supervision of the Director-General or an officer of the Department, or

(iv) subject to an order made by a foreign court under which the person is required to submit to the supervision of the Director-General or an officer of the Department,

(c) the Commissioner of Corrective Services, in relation to any registrable person who is:

- (i) an inmate, or
  - (ii) an existing licensee, or
  - (iii) subject to a periodic detention order, home detention order or community service order under the *Crimes (Sentencing Procedure) Act 1999*, or
  - (iv) subject to a good behaviour bond under the *Crimes (Sentencing Procedure) Act 1999*, being a bond under which the person is required to submit to the supervision of the Commissioner or of an officer of the Department of Corrective Services, or
  - (v) subject to a condition of parole under the *Crimes (Sentencing Procedure) Act 1999*, the *Crimes (Administration of Sentences) Act 1999* or the *Parole Orders (Transfer) Act 1983*, being a condition under which the person is required to submit to the supervision of the Commissioner or an officer of the Department of Corrective Services, or
  - (vi) subject to an order made by a foreign court under which the person is required to submit to the supervision of the Commissioner or an officer of the Department of Corrective Services,
- (d) the Director-General of the Department of Health, in relation to any registrable person who is a forensic patient within the meaning of the *Mental Health Act 1990*.

## **6 Exercise of sentencing court's functions by supervising authorities**

It is declared that the function of a sentencing court under section 4 (1) of the Act is to be exercised:

- (a) by the Director of the Pre-Trial Diversion of Offenders Program within the meaning of the *Pre-Trial Diversion of Offenders Act 1985*, in relation to any registrable person who is participating in that Program, and
- (b) by the Director-General of the Department of Health, in relation to any registrable person who is a forensic patient, and
- (c) by the Commissioner of Corrective Services, in relation to any registrable person who is an inmate, and
- (d) by the Director-General of the Department of Juvenile Justice, in relation to any registrable person who is a detainee.

## **7 Exercise of sentencing court's functions by the Commissioner of Police**

(1) It is declared that the function of a sentencing court under section 4 (1) of the Act with respect to the notification of a registrable person who is the subject of:

- (a) a supervised sentence referred to in section 5 (3) (a), (b) or (c) of the Act, or

(b) an order under section 12 of the *Crimes (Sentencing Procedure) Act 1999*, or

(c) an order under section 33 (1) (e) of the *Children (Criminal Proceedings) Act 1987*,

is to be exercised by the Commissioner of Police, but only as to notification of the period for which the person's reporting obligations continue.

- (2) Subject to section 4 (1) of the Act, the notification of a registrable person by the Commissioner of Police as to the matters referred to in subclause (1) may be done when the person first attends a police station for the purpose of complying with his or her reporting obligations.

### **8 Exercise of Commissioner of Corrective Services' functions by Commissioner of Police**

- (1) It is declared that the functions of the Commissioner of Corrective Services under section 5 of the Act are to be exercised by the Commissioner of Police.

- (2) Subject to section 5 (1) of the Act, the notification of a registrable person by the Commissioner of Police may be done when the person first attends a police station for the purpose of complying with his or her reporting obligations.

- (3) This clause does not apply if:

(a) the Commissioner of Police notifies the Commissioner of Corrective Services that a registrable person may not have been given a statutory notice by the sentencing court, or

(b) the Commissioner of Corrective Services is of the opinion that a registrable person:

(i) is a child, or has a special need, and

(ii) is incapable of understanding a statutory notice given by a sentencing court.

### **9 Additional written notices for certain forensic patients**

- (1) This clause applies to and in respect of a forensic patient to whom the Director-General of the Department of Health is required to give a statutory notice under section 5 of the Act or under clause 6 of this Regulation.

- (2) If the Director-General is of the opinion that the registrable person to whom such a notice relates is incapable of understanding the notice, the Director-General must cause a record of that fact to be kept.

- (3) As soon as practicable after forming the opinion that a registrable person in respect of whom such a record has been made is now capable of understanding a statutory notice, the Director-General must ensure that a copy of the notice is again given to the registrable person.

- (4) This clause does not cease to apply to a registrable person just because the Director-General takes measures in accordance with clause 12 to assist the person to understand:
- (a) the person's reporting obligations, and
  - (b) the consequences that may arise if the person fails to comply with those obligations,
- and the Director-General must comply with the requirements of this clause in addition to taking those measures.

## **10 Contents of written notices**

- (1) A statutory notice is to include the following:
- (a) the name and signature of the person giving the notice,
  - (b) the date on which the notice is given,
  - (c) the place at which the notice is given,
  - (d) the name of the registrable person,
  - (e) a space for the registrable person to provide his or her signature.
- (2) In the case of a statutory notice given by a sentencing court, the notice is to be signed by the registrar of the court or by some other member of staff of the court authorised by the registrar in that regard.
- (3) The registrable person, when given the notice, is to be asked to provide his or her signature in the appropriate space on a copy of the notice.
- (4) The person who gives such a written notice is to record on a copy of the notice if the registrable person, having been given the notice, refuses to provide his or her signature.
- (5) A written summary of the information referred to in subclauses (1)–(4) must be retained by a sentencing court, supervising authority or Commissioner of Police, as the case may be, by or on whose behalf the notice is given.
- (6) A sentencing court or supervising authority, if requested by the Commissioner of Police, is to give the Commissioner a copy of a document retained under subclause (5).

## **11 Matters relating to the giving of written notices**

- (1) A statutory notice is to be given personally, and not by post or other means.
- (2) As soon as practicable after a sentencing court or supervising authority gives a

statutory notice, it must ensure that information as to when the notice was given is sent to the Commissioner of Police.

- (3) The Commissioner of Police is to keep a record of the giving of statutory notices and the receipt of information under subclause (2).

## **12 Registrable persons who are children or who have special needs**

- (1) This clause applies to and in respect of any registrable person:
- (a) to whom a sentencing court, a supervising authority or the Commissioner of Police is required or empowered to give a statutory notice, and
  - (b) who, in the opinion of the court, authority or Commissioner:
    - (i) is a child, or has a special need, and
    - (ii) is incapable of understanding a statutory notice.
- (2) The supervising authority or Commissioner of Police must take such measures as are reasonably practicable to assist such a registrable person to understand:
- (a) the person's reporting obligations, and
  - (b) the consequences that may arise if the person fails to comply with those obligations.
- (3) Such measures may include, but are not limited to, the following:
- (a) providing an oral explanation to the registrable person of those obligations and consequences,
  - (b) providing an audio or video recorded explanation to the registrable person of those obligations and consequences,
  - (c) providing the registrable person with a translation of the relevant statutory notice in a language with which the registrable person is familiar,
  - (d) making available an interpreter to provide the registrable person with an oral explanation of the relevant statutory notice in a language with which the registrable person is familiar,
  - (e) making available a person (being a person with experience in communicating with persons who have similar special needs) to communicate those obligations and consequences to the registrable person in a manner with which the registrable person is familiar,
  - (f) providing additional written notice to the registrable person in a form that can be more readily understood by persons who have similar special needs,



- (g) arranging for a support person to be present when the relevant statutory notice is being given to the registrable person or when any other measure is being taken to communicate those obligations and consequences to the registrable person.
- (4) The obligations imposed by subclause (2) do not apply to a sentencing court.
- (5) In relation to each registrable person in respect of whom a sentencing court forms an opinion of the kind referred to in subclause (1) (b), the court must inform the Commissioner of Police and each relevant supervising authority of its opinion and of the reasons for its opinion.
- (6) In relation to each registrable person in respect of whom a supervising authority forms an opinion of the kind referred to in subclause (1) (b), the authority:
  - (a) must inform the Commissioner of Police of its opinion and of the reasons for its opinion, and
  - (b) must keep a record of any measures taken by the authority under this clause in relation to the registrable person, and
  - (c) must inform the Commissioner of Police as to each occasion on which any such measures are taken and the nature of the measures taken.
- (7) In relation to each registrable person in respect of whom the Commissioner of Police forms an opinion of the kind referred to in subclause (1) (b), the Commissioner:
  - (a) must inform each relevant supervising authority of the Commissioner's opinion and of the reasons for the Commissioner's opinion, and
  - (b) must keep a record of any measures taken by the Commissioner or by any relevant supervising authority under this clause in relation to the registrable person.

**13 Commissioner of Police may communicate information to registrable person's nominee and certain others**

- (1) This clause applies to and in respect of any registrable person who, in the opinion of the Commissioner of Police:
  - (a) is a child, or has a disability, and
  - (b) is incapable of understanding:
    - (i) the registrable person's reporting obligations, or
    - (ii) the consequences that may arise if the registrable person fails to comply with those obligations.
- (2) The Commissioner of Police may inform a support person of those obligations and

consequences, for the purpose only of enabling the support person to assist the registrable person to comply with them, but may not do so if of the opinion that the support person is unlikely to provide such assistance.

- (3) Any such information must be given to the support person personally or by means of “person-to-person” registered post.
- (4) Subclause (3) does not apply if the support person is a public authority that provides support, or supervises the provision of support, to the registrable person.
- (5) In this clause, **support person**, in relation to a registrable person, means:
  - (a) a person nominated by the registrable person for the purposes of this clause, or
  - (b) if no such person is nominated:
    - (i) a parent, guardian or carer of the registrable person, or
    - (ii) a public authority that provides support, or supervises the provision of support, to the registrable person.

#### **14 Verifying documentation to be provided by registrable persons**

- (1) When a registrable person attends a police station for the purpose of giving information pursuant to section 12 (1) of the Act, the person must, in order to verify his or her identity, produce a recent passport-size photograph of the person’s head and face, together with:
  - (a) a current driver photo licence issued in Australia and any one of the documents specified in subclause (2), or
  - (b) if the person does not have such a licence, two of the documents specified in subclause (2), at least one of which must be a document specified in paragraph (a), (b), (c) or (d) of that subclause.
- (2) The documents specified in this subclause are the following original documents:
  - (a) a full birth certificate,
  - (b) an Australian passport or document of identity issued by the Australian Passport Office that is current or has been expired for less than 2 years,
  - (c) a current overseas passport,
  - (d) an Australian naturalisation or citizenship document, or immigration papers issued by the Commonwealth Department of Immigration and Multicultural Affairs,
  - (e) a current Medicare card, pensioner concession card, Department of Veterans’ Affairs entitlement card or other entitlement card issued by the Commonwealth or

a State Government,

- (f) a current credit card or account from a bank, building society or credit union, or a passbook or statement of account up to one year old,
- (g) a telephone, gas or electricity bill up to one year old,
- (h) a notice of council rates, water service charges or land valuation up to 2 years old,
- (i) an electoral enrolment card or other evidence of enrolment as an elector up to 2 years old,
- (j) a current student identity card, or a certificate or statement of enrolment up to 2 years old from an educational institution.

(3) The police officer dealing with the registrable person under section 12 of the Act:

- (a) may waive the requirements of subclause (1) (a) and (b) if the registrable person provides the police officer with a full set of the person's fingerprints, in a manner to be determined by the police officer, or
- (b) may waive the requirements of subclause (1) if the police officer is otherwise satisfied as to the registrable person's identity.

(4) In the case of a registrable person to whom section 13 of the Act applies, it is sufficient compliance with subclause (1) (a) and (b) for copies of relevant documents, rather than original documents, to be sent as referred to in section 13 (2) of the Act.

(5) A person having possession of fingerprints provided by a registrable person as referred to in subclause (3) (a):

- (a) must not use them otherwise than for the purpose of confirming the registrable person's identity, and
- (b) must destroy them, together with any copies of them that have been made for that purpose, immediately after they have been used for that purpose.

Maximum penalty: 20 penalty units.

## **15 Verifying documentation to be provided by parents, guardians, carers and nominees**

(1) When a parent, guardian, carer or nominee of a registrable person attends a police station for the purpose of giving information pursuant to section 12 (5) of the Act, the person must advise the police officer concerned as to the capacity in which the person is attending and must produce the following documentation to verify his or her identity:

- (a) a current driver photo licence issued in Australia and any one of the documents specified in subclause (2), or

- (b) if the person does not have such a licence, two of the documents specified in subclause (2), at least one of which must be a document specified in paragraph (a), (b), (c) or (d) of that subclause.
- (2) The documents specified in this subclause are the following original documents:
- (a) a full birth certificate,
  - (b) an Australian passport or document of identity issued by the Australian Passport Office that is current or has been expired for less than 2 years,
  - (c) a current overseas passport,
  - (d) an Australian naturalisation or citizenship document, or immigration papers issued by the Commonwealth Department of Immigration and Multicultural Affairs,
  - (e) a current Medicare card, pensioner concession card, Department of Veterans' Affairs entitlement card or other entitlement card issued by the Commonwealth or a State Government,
  - (f) a current credit card or account from a bank, building society or credit union, or a passbook or statement of account up to one year old,
  - (g) a telephone, gas or electricity bill up to one year old,
  - (h) a notice of council rates, water service charges or land valuation up to 2 years old,
  - (i) an electoral enrolment card or other evidence of enrolment as an elector up to 2 years old,
  - (j) a current student identity card, or a certificate or statement of enrolment up to 2 years old from an educational institution.
- (3) The police officer dealing with the registrable person under section 12 of the Act may waive the requirements of subclause (1) if the police officer is otherwise satisfied as to the identity of the person concerned.

#### **16 Form of acknowledgment of information given**

- (1) The giving of information under section 10 or 11 of the Act must be acknowledged by means of a written notice given to the person by whom the information was given.
- (2) The written notice must contain particulars of the information that was given.
- (3) A copy of the written notice must be kept by the Commissioner of Police.
- (4) This clause does not apply to a registrable person to whom section 13 of the Act applies.

### **17 Excuses for failing to comply with reporting obligations**

For the purposes of section 17 (2) (c) of the Act, the court before which proceedings are brought in connection with a registrable person's failure to comply with the person's reporting obligations is to have regard to whether the information given to the person in relation to those obligations (whether under Division 1 of Part 2 of the Act or otherwise) has been sufficient to inform the person of those obligations, having regard to the person's circumstances.

### **18 Register of Offenders**

- (1) The Register of Offenders may be referred to as the New South Wales Police Service Child Protection Register.
- (2) The Register is to be in a form that enables a record to be made as to whether a registrable person is a child or has a special need or disability.