

# Child Protection (Offenders Registration) Act 2000 No 42

[2000-42]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

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

### Notes—

- **Does not include amendments by**  
[Justices Legislation Repeal and Amendment Act 2001 No 121](#) (not commenced — to commence on 7.7.2003)

### Authorisation

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# Child Protection (Offenders Registration) Act 2000 No 42



New South Wales

An Act with respect to the registration of certain offenders; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Child Protection (Offenders Registration) Act 2000*.

### 2 Commencement

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

### 3 Definitions

(1) In this Act:

**child** means any person who is under the age of 18 years.

**Class 1 offence** means:

- (a) the offence of murder, where the person murdered is a child, or
- (b) an offence that involves sexual intercourse with a child, or
- (b1) an offence against section 66EA of the *Crimes Act 1900*, or
- (b2) an offence an element of which is an intention to commit an offence referred to in paragraph (a) or (b), or
- (c) an offence of attempting, or of conspiracy or incitement, to commit an offence referred to in paragraph (a), (b) or (b1), or
- (d) anything done outside New South Wales that, if done in New South Wales, would constitute an offence referred to in paragraph (a)–(c).

**Class 2 offence** means:

- (a) an offence that involves an act of indecency against or in respect of a child, being

- an offence that is punishable by imprisonment for 12 months or more, or
- (b) an offence under section 86 or 90A 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, or
  - (b1) an offence under section 80D or 80E of the *Crimes Act 1900*, where the person against whom the offence is committed is a child, or
  - (c) an offence under section 91D–91G of the *Crimes Act 1900* (other than an offence committed by a child prostitute), or
  - (d) an offence under section 578B or 578C (2A) of the *Crimes Act 1900*, or
  - (e) an offence that, at the time it was committed:
    - (i) was a Class 2 offence for the purposes of this Act, or
    - (ii) in the case of an offence occurring before the commencement of this section, was an offence of a kind referred to in paragraph (a)–(d), or
  - (e1) an offence an element of which is an intention to commit an offence referred to in paragraph (a), (b), (c), (d) or (e), or
  - (f) an offence of attempting, or of conspiracy or incitement, to commit an offence referred to in paragraph (a)–(e), or
  - (g) anything done outside New South Wales that, if done in New South Wales, would constitute an offence referred to in paragraph (a)–(f).

**community service order** means a community service order under the *Crimes (Sentencing Procedure) Act 1999* or a children’s community service order under the *Children (Community Service Orders) Act 1987*.

**court** includes any Justice exercising functions under the *Justices Act 1902*, and also includes a court (however described) of a foreign jurisdiction.

**detainee** means a person who:

- (a) is a detainee within the meaning of the *Children (Detention Centres) Act 1987*, or
- (b) is absent from a detention centre pursuant to an order in force under section 24 of that Act.

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

**existing controlled person** means a person who, immediately before the commencement of this section:

(a) was serving a term of imprisonment in respect of a registrable offence, including:

(i) a term of imprisonment the subject of a periodic detention order or home detention order, and

(ii) a term of imprisonment in respect of which the person was on release on parole under strict supervision,

whether or not the person had lodged an appeal against the conviction for the offence or the sentence imposed in respect of the offence, or both, but not including a term of imprisonment in respect of which the person was on release on parole otherwise than under strict supervision, or

(b) was a forensic patient in respect of a registrable offence, or

(c) was an existing licensee in respect of a registrable offence, or

(d) was participating in the Pre-Trial Diversion of Offenders Program under the *Pre-Trial Diversion of Offenders Act 1985* in respect of a registrable offence, or

(e) was the subject of a community service order in respect of a registrable offence, or

(f) was subject to a good behaviour bond in respect of a registrable offence, being a bond under which the person was required to submit to strict supervision,

whether under the laws of New South Wales or (in whatever terms expressed) under the laws of a foreign jurisdiction.

**existing licensee** means a person who is:

(a) the holder of an existing licence within the meaning of clause 22 of Schedule 2 to the *Crimes (Sentencing Procedure) Act 1999*, or

(b) the holder of a licence under section 7 of the *Habitual Criminals Act 1957*,

being a person who is for the time being required by the conditions of the licence to submit to strict supervision.

**finding of guilt**—see subsection (2).

**foreign jurisdiction** means a jurisdiction other than New South Wales.

**forensic patient** means a person who is the subject of an order of detention under section 27 or 39 of the *Mental Health (Criminal Procedure) Act 1990*.

**good behaviour bond** means a good behaviour bond under the *Crimes (Sentencing Procedure) Act 1999*, and includes a good behaviour bond referred to in section 33 (1) (b) of the *Children (Criminal Proceedings) Act 1987*.

**government custody** means custody as an inmate or detainee, and includes custody as a forensic patient where the order of detention under section 27 or 39 of the *Mental Health (Criminal Procedure) Act 1990*, as originally made, requires the patient to be kept in strict government custody.

**home detention order** means a home detention order under the *Crimes (Sentencing Procedure) Act 1999*.

**inmate** has the same meaning as it has in the *Crimes (Administration of Sentences) Act 1999*.

**periodic detention order** means a periodic detention order under the *Crimes (Sentencing Procedure) Act 1999*.

**Register of Offenders** means the Register of Offenders referred to in section 19.

**registrable offence** means a Class 1 offence or Class 2 offence.

**registrable person** means a person whom a court has at any time (whether before or after the commencement of this section) found guilty and sentenced in respect of a registrable offence, but does not include:

- (a) a person in respect of whom a court has made an order under section 10 of the *Crimes (Sentencing Procedure) Act 1999* or section 33 (1) (a) of the *Children (Criminal Proceedings) Act 1987* in respect of the offence, or
- (b) a person on whom a sentence has been imposed in respect of a single Class 2 offence, where the sentence did not include:
  - (i) a term of imprisonment, including a term of imprisonment the subject of a periodic detention order or home detention order, or
  - (ii) a community service order, or
  - (iii) a bond under which the person was required to submit to strict supervision, where a reference to a single offence includes a reference to more than one offence of the same kind arising from the same incident, or
- (c) a person whose conviction or finding of guilt has been quashed or set aside by a court, or
- (d) a child who has been found guilty of:
  - (i) a single offence involving an act of indecency, or
  - (ii) a single offence under section 578B or 578C (2A) of the *Crimes Act 1900*, where a reference to a single offence includes a reference to more than one

offence of the same kind arising from the same incident, or

- (e) a person whom a court has found guilty of a registrable offence before the commencement of this section unless the person is an existing controlled person, whether under the laws of New South Wales or (in whatever terms expressed) under the laws of a foreign jurisdiction.

**relevant personal information** means information of the kind referred to in section 9 (1).

**reporting obligations**, in relation to a registrable person, means the obligations imposed on the person by Division 2 of Part 2.

**sentence** includes any order of detention under section 27 or 39 of the *Mental Health (Criminal Procedure) Act 1990*, any order under section 33 (1) of the *Children (Criminal Proceedings) Act 1987* and any undertaking under section 23 of the *Pre-Trial Diversion of Offenders Act 1985*, and includes any sentence or equivalent order or undertaking imposed under the laws of a foreign jurisdiction.

**sexual intercourse** has the same meaning as it has in section 61H (1) of the *Crimes Act 1900*.

**strict government custody**, in relation to a registrable person, means custody as an inmate, detainee or forensic patient, but does not include such custody if the person:

- (a) is regularly permitted to be absent from a place of custody for any period, regardless of its length, whether on leave of absence or otherwise, and
- (b) is not at all such times under the immediate supervision of an officer of a supervising authority or other person having custody of the person.

**strict supervision** means supervision by:

- (a) the Commissioner of Corrective Services or an officer employed within the Department of Corrective Services, or
- (b) the Director-General of the Department of Juvenile Justice or an officer employed within that Department, or
- (c) the Director-General of the Department of Health or an officer employed within that Department,

or supervision by an authority of a foreign jurisdiction in the nature of an authority referred to in paragraph (a)-(c).

**supervising authority**, in relation to a registrable person, means an authority prescribed by the regulations as the authority having control of the person.



- (2) For the purposes of this Act, a reference to a **finding of guilt** in relation to an offence (however expressed) committed by a person is a reference to any of the following:
  - (a) a court making a formal finding of guilt in relation to the offence,
  - (b) a court convicting the person of the offence, where there has been no formal finding of guilt before conviction,
  - (c) a court accepting a plea of guilty from the person in relation to the offence,
  - (d) a court accepting an admission of guilt from the person in relation to the offence for the purpose of the offence being taken into account under Division 3 of Part 3 of the *Crimes (Sentencing Procedure) Act 1999*, or under equivalent provisions of the laws of a foreign jurisdiction,
  - (e) a verdict under section 22 (1) (b), (c) or (d) or section 38 of the *Mental Health (Criminal Procedure) Act 1990*, or under equivalent provisions of the laws of a foreign jurisdiction.
- (3) For the purposes of this Act, offences arise from the same incident only if they are committed within a single period of 24 hours and are committed against the same person.
- (4) For the purposes of this Act, a person who is absent from a detention centre pursuant to an order in force under section 23 or 24 of the *Children (Detention Centres) Act 1987* is taken to be in custody.
- (5) For the purposes of this Act, section 579 of the *Crimes Act 1900* does not apply to or in respect of a registrable offence.

## **Part 2 Registration of offenders**

### **Division 1 Notices to be given**

#### **4 Notices to be given when persons sentenced for registrable offences**

- (1) As soon as practicable after a registrable person is sentenced, the sentencing court is to give written notice to the person of:
  - (a) the person's reporting obligations, and
  - (b) the consequences that may arise if the person fails to comply with those obligations.
- (2) As soon as practicable after a registrable person is sentenced, the sentencing court is to give written notice of that fact to:
  - (a) the Commissioner of Police, and

(b) the supervising authority for the person.

(3) The regulations may make provision for or with respect to the manner and form in which written notice must be given under this section.

(4) In this section, **court** does not include a court of a foreign jurisdiction.

#### **5 Notices to be given when registrable person commences supervised sentence**

(1) As soon as practicable after a registrable person commences a supervised sentence, the supervising authority for the person is to give written notice to the person of:

(a) the person's reporting obligations, and

(b) the consequences that may arise if the person fails to comply with those obligations.

(2) The regulations may make provision for or with respect to the manner and form in which written notice must be given under this section.

(3) In this section, **supervised sentence** means:

(a) a sentence of imprisonment the subject of a periodic detention 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 \(Criminal Procedure\) Act 1990](#), other than an order that, as originally made, requires the person to be kept in strict government custody.

#### **6 Notices to be given when registrable person ceases to be in custody of supervising authority**

(1) As soon as practicable before or after a registrable person:

(a) ceases to be in strict government custody, or

(b) ceases to be in government custody, or

(c) ceases to be subject to a supervised sentence (within the meaning of section 5),  
or

(d) ceases to participate in the Pre-Trial Diversion of Offenders Program under the [Pre-Trial Diversion of Offenders Act 1985](#), or

(e) ceases to be subject to a condition of parole requiring the person to be subject to

supervision, or

(f) ceases to be an existing licensee,

the supervising authority for the person is to give written notice of that fact to the Commissioner of Police.

(2) As soon as practicable before or after a registrable person ceases to be in government custody, the supervising authority for the person is to give written notice to the person of:

(a) the person's reporting obligations, and

(b) the consequences that may arise if the person fails to comply with those obligations.

(3) The regulations may make provision for or with respect to the manner and form in which written notice must be given under this section.

#### **7 Notices may be given by Commissioner of Police**

(1) The Commissioner of Police may cause written notice to be given to a registrable person of:

(a) the person's reporting obligations, and

(b) the consequences that may arise if the person fails to comply with those obligations,

if the Commissioner suspects that the person may not have received notice, or may otherwise be unaware, of those obligations.

(2) The regulations may make provision for or with respect to the manner and form in which written notice must be given under this section.

#### **8 Failure to comply with procedural requirements does not affect registrable person's obligations**

A failure to comply with the requirements of this Division does not affect a registrable person's reporting obligations.

### **Division 2 Reporting obligations**

#### **9 Relevant personal information**

(1) Such of the following information as is applicable to a registrable person is **relevant personal information** in relation to the person:

(a) the person's name, together with any other name by which the person is or has previously been known,

- (b) the person's date of birth,
- (c) the address of each of the premises at which the person generally resides or, if the person does not generally reside at any particular premises, the name of each of the localities in which the person can generally be found,
- (d) if the person is employed:
  - (i) the nature of the person's employment, and
  - (ii) the name of the person's employer (if any), and
  - (iii) the address of each of the premises at which the person is generally employed or, if the person is not generally employed at any particular premises, the name of each of the localities in which the person is generally employed,
- (e) the make, model, colour and registration number of any motor vehicle owned by, or generally driven by, the person,
- (f) the nature of the offences by reason of which the person is a registrable person, including particulars of the court by which the person was found guilty of each such offence and the date of each occasion on which the person was found guilty of such an offence.

(2) For the purposes of this section:

- (a) a registrable person does not generally reside at any particular premises unless the person resides at those premises for at least 14 days (whether consecutive or not) in any period of 12 months, and
- (b) a registrable person is not generally employed at any particular premises unless the person is employed at those premises for at least 14 days (whether consecutive or not) in any period of 12 months, and
- (c) a registrable person does not generally drive a particular motor vehicle unless the person drives that vehicle for at least 14 days (whether consecutive or not) in any period of 12 months.

(3) In this section, **employer** and **employment** have the same meanings as they have, respectively, in the [Child Protection \(Prohibited Employment\) Act 1998](#).

## **10 Registrable person to notify Commissioner of Police of relevant personal information**

- (1) A registrable person must notify the Commissioner of Police of the relevant personal information for the person:
  - (a) in the case of a registrable person who becomes an inmate, a detainee or a forensic patient as a consequence of having been found guilty of a registrable

offence, within 28 days after the person ceases to be in government custody, or

- (b) in the case of a registrable person who is outside New South Wales at the time the person is found guilty of a registrable offence, within 28 days after the person next enters New South Wales, or
- (c) in the case of an existing controlled person:
  - (i) within 90 days after the commencement of this section, or
  - (ii) if the person was outside New South Wales immediately before that commencement, within 28 days after the person next enters New South Wales, whichever is the later, or
- (d) in any other case, within 28 days after the person is sentenced in respect of the registrable offence by reason of which the person is a registrable person.

- (2) A registrable person must notify the Commissioner of Police of any change in the relevant personal information for the person within 14 days after that change occurs.
- (3) A registrable person who leaves New South Wales for more than 28 days must notify the Commissioner of Police of the person's return within 14 days after the person next enters New South Wales.
- (4) The regulations may make provision for or with respect to the manner and form in which notice must be given under this section.
- (5) Subsection (3) does not apply if the person has been absent from New South Wales for 28 days or less and, for the whole of the period of absence, has been in some other State or Territory within Australia.

#### **11 Registrable person to notify Commissioner of Police of intended absence from New South Wales**

- (1) Before leaving New South Wales, a registrable person must notify the Commissioner of Police of that fact.
- (2) The notice must indicate:
  - (a) each State, Territory or country to which the person intends to go during the period of absence from New South Wales, and
  - (b) the approximate dates during which the person intends to be in each such State, Territory or country, and
  - (c) if the person intends to return to New South Wales, the approximate date on which the person intends to return.

- (3) The regulations may make provision for or with respect to the manner and form in which notice must be given under this section.
- (4) This section does not apply if the person intends to be absent from New South Wales for 28 days or less for the purpose of going only to some other State or Territory within Australia.

## **12 Manner in which relevant personal information to be given**

- (1) The information that is required to be given to the Commissioner of Police under this Division is to be given to a police officer:
  - (a) at any police station in the locality in which the registrable person is currently residing, or
  - (b) if a direction is given in accordance with the regulations as to the police station at which the information is to be given, at the police station so directed, or
  - (c) at some other place approved (either generally or in a particular case) by the Commissioner of Police.
- (2) The giving of the information must be acknowledged by the police officer to whom it is given.
- (3) The acknowledgment must be in writing and must include:
  - (a) the name of the police officer to whom the information was given, and
  - (b) the date and time when the information was given, and
  - (c) if the information was given at a place other than a police station, the address of the place at which the information was given.
- (4) The regulations may make provision for or with respect to:
  - (a) the manner and form in which information must be given under this section, and
  - (b) the nature of any verifying documentation to be produced in support of any such information, and
  - (c) the form in which the giving of any such information must be acknowledged.
- (5) The registrable person must give the information in person, unless:
  - (a) the registrable person is a child, or
  - (b) the registrable person has a disability that renders it impracticable for the information to be given in person,in which case it may be given by the registrable person's parent, guardian, carer or

other person nominated by the registrable person.

- (6) When giving information as referred to in subsection (5), the person's parent, guardian, carer or nominee must be accompanied by the person, unless the person has a disability that renders it impracticable for the person to accompany the parent, guardian, carer or nominee.
- (7) When giving information for the purposes of this section, the person giving the information:
  - (a) is entitled to do so in a place where no members of the public are present, and
  - (b) is entitled to be accompanied by a support person of the person's own choosing.

### **13 Modified reporting procedures for participants in witness protection programs**

- (1) This section applies to each of the following persons:
  - (a) any registrable person who is currently a participant in a witness protection program,
  - (b) any registrable person who has been a participant in a witness protection program but in respect of whom an order under this section is yet to be made,
  - (c) any registrable person the subject of an order in force under this section declaring that the person is a person to whom this section applies.
- (2) It is sufficient compliance with the requirements of section 12:
  - (a) if a person to whom this section applies provides the relevant personal information, at the required times, by means of a written document addressed to a police officer authorised by the Commissioner of Police for the purposes of this section, and
  - (b) if the acknowledgment of the giving of the information is given verbally.
- (3) The Commissioner of Police must make an order declaring that a registrable person who is or has been a participant in a witness protection program either is, or is not, a person to whom this section applies:
  - (a) when the person ceases to be a participant in the program as a consequence of a request under section 11 (1) of the *Witness Protection Act 1995*, or
  - (b) when the Commissioner makes a decision under section 11 (2) of the *Witness Protection Act 1995* that the protection and assistance given to the person under the program be terminated.
- (4) On making such an order, the Commissioner of Police must take reasonable steps to notify the person concerned of the terms of the order.

- (5) A person who receives such a notification may, within 28 days after receiving it, apply in writing to the Commissioner of Police for a review of the decision.
- (6) On receiving an application referred to in subsection (5), the Commissioner of Police:
  - (a) must review the order, and confirm or reverse it, and
  - (b) before making a decision on the matter, must give the applicant a reasonable opportunity to state his or her case, and
  - (c) after making a decision on the matter, must give written notice of the decision to the applicant.
- (7) If the decision of the Commissioner of Police is to confirm the order, the notice referred to in subsection (6) (c) must inform the applicant of the applicant's rights under subsection (8).
- (8) A person who is aggrieved by a decision of the Commissioner of Police in relation to an order under this section may appeal to the Ombudsman against the decision within 3 days after receiving notice of the decision.
- (9) The Ombudsman's decision in respect of the appeal has effect according to its terms.
- (10) An order under this section takes effect:
  - (a) at the end of 28 days after notice is given to the person concerned as referred to in subsection (4), or
  - (b) if an application referred to in subsection (5) is made before the end of that period, at the end of 3 days after notice is given to the applicant as referred to in subsection (6) (c), or
  - (c) if an appeal referred to in subsection (8) is made before the end of that period, on the date on which the Ombudsman determines the appeal.
- (11) In this section, **witness protection program** has the same meaning as it has in the [Witness Protection Act 1995](#).

#### **14 Period for which reporting obligations continue**

- (1) A registrable person's reporting obligations in respect of a registrable offence begin:
  - (a) when the registrable person is sentenced for the offence, or
  - (b) when the registrable person ceases to be in government custody in relation to the offence,whichever is the later.
- (2) In the case of a registrable person found guilty of a Class 1 offence (the **primary**



**offence**), the registrable person's reporting obligations continue:

(a) for 10 years:

- (i) if the finding of guilt relates to a single Class 1 offence, other than an offence against section 66EA of the *Crimes Act 1900*, or
- (ii) if the registrable person has at the same time or at any earlier time been found guilty of another Class 1 offence or a Class 2 offence, being an offence arising from the same incident as the primary offence, or

(b) for 15 years:

- (i) if the registrable person has at the same time or at any earlier time been found guilty of a Class 2 offence, where the other offence is not an offence arising from the same incident as the primary offence, or
- (ii) if the registrable person has at the same time been found guilty of another Class 1 offence, where the other offence is not an offence arising from the same incident as the primary offence, or
- (iii) if the registrable person has at any earlier time been found guilty of another Class 1 offence, where the primary offence was committed before the finding of guilt for the other offence, or
- (iv) if the finding of guilt relates to a single offence against section 66EA of the *Crimes Act 1900*, or

(c) for the rest of the registrable person's life, if the registrable person has at any earlier time been found guilty of another Class 1 offence, where the primary offence was committed after the finding of guilt for the other offence.

(3) In the case of a registrable person found guilty of a Class 2 offence (the **primary offence**), the registrable person's reporting obligations continue:

(a) for 8 years:

- (i) if the finding of guilt relates to a single Class 2 offence, or
- (ii) if the registrable person has at the same time or at any earlier time been found guilty of another Class 2 offence, being an offence arising from the same incident as the primary offence, or

(b) for 12 years, if the registrable person has at the same time or at any earlier time been found guilty of another Class 2 offence, where the other offence is not an offence arising from the same incident as the primary offence.

(4) A reference in subsection (2) or (3) to another offence extends to an offence committed before the commencement of this section.

(5) Where:

- (a) the other offence referred to in subsection (2) (c) was committed before the commencement of this section, and
- (b) the registrable person is not an existing controlled person in respect of that other offence,

the reference in subsection (2) (c) to the rest of the registrable person's life is to be read instead as a reference to 15 years.

(6) Despite subsections (2) and (3), a registrable person's reporting obligations continue:

- (a) for half the period calculated in accordance with those provisions, or
- (b) in the case of a registrable person to whom (but for this paragraph) subsection (2) (c) would apply, for seven and a half years,

if the relevant findings of guilt relate to registrable offences committed while the registrable person was a child.

(7) Despite subsections (2)-(6), the reporting obligations of a registrable person who is on parole, or who is an existing licensee, continue:

- (a) until the end of the period ascertained in accordance with those subsections, or
- (b) until the expiry of the sentence of imprisonment to which the parole or existing licence relates,

whichever ends later.

## **15 Suspension and extension of reporting obligations**

(1) A registrable person's reporting obligations are suspended for any period during which:

- (a) the person is in custody, or
- (b) the person is outside New South Wales, or
- (c) the person is the subject of an order in force under section 16.

(2) The period for which a registrable person's reporting obligations continue is extended by the length of time for which those obligations are suspended from time to time under subsection (1) (a).

## **16 ADT may exempt persons from compliance with reporting obligations**

(1) This section applies to a registrable person whose reporting obligations:

- (a) have continued for the prescribed period, and

- (b) will continue for the rest of the person's life unless an order is made under this section.
- (2) On the application of a registrable person, the Administrative Decisions Tribunal may make an order suspending the registrable person's reporting obligations.
- (3) The Administrative Decisions Tribunal is not to make an order under this section unless it considers that the person the subject of the proposed order does not pose a risk to the safety of children.
- (4) In deciding whether to make an order under this section, the Administrative Decisions Tribunal is to take the following matters into account:
  - (a) the seriousness of the offences as a result of which the person is a registrable person,
  - (b) the period of time since those offences were committed,
  - (c) the age of the registrable person, the age of the victims of those offences and the difference in age between the registrable person and the victims of those offences, as at the time those offences were committed,
  - (d) the registrable person's present age,
  - (e) the registrable person's total criminal record,
  - (f) any other matter the Tribunal considers appropriate.
- (5) If a registrable person who has made an application under this section so requests, the Administrative Decisions Tribunal may suspend the registrable person's reporting obligations pending its determination of the application.
- (6) The Commission for Children and Young People is to be a party to any proceedings for an order under this section. The Commission may make submissions in opposition to, or in support of, the making of the order.
- (7) The Administrative Decisions Tribunal must notify the Commissioner of Police of the terms of any order made under this section.
- (8) The Administrative Decisions Tribunal does not have the power to award costs in respect of proceedings under this section.
- (9) A party to proceedings under this section may appeal to the Supreme Court, on a question of law, from any decision of the Administrative Decisions Tribunal in the proceedings.
- (10) An applicant in respect of whom the Administrative Decisions Tribunal refuses to make an order under this section is not entitled to make a further application to the

Tribunal until 5 years have elapsed from the date of the refusal, unless the Tribunal otherwise orders at the time of the refusal.

- (11) In this section, **prescribed period**, in relation to a registrable person's reporting obligations, means:
- (a) the period of 15 years from the date on which those obligations commenced, or
  - (b) if that period has been extended as referred to in section 15 (2), that period as so extended.

## **Division 3 Offences**

### **17 Offence of failing to comply with reporting obligations**

- (1) A registrable person must not fail to comply with any of the person's reporting obligations without reasonable excuse.

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

- (2) In determining whether a registrable person had a reasonable excuse for failing to comply with the person's reporting obligations, the court before which the proceedings are being heard is to have regard to the following matters:
- (a) the person's age,
  - (b) whether the person has a disability that affects the person's ability to understand, or to comply with, those obligations,
  - (c) any matter prescribed by the regulations,
  - (d) any other matter the court considers appropriate.
- (3) It is a defence to proceedings for an offence arising under this section if it is established by or on behalf of the registrable person charged with the offence that, at the time the offence is alleged to have occurred, the person had not received notice, and was otherwise unaware, of the person's reporting obligations.

### **18 Offence of furnishing false or misleading information**

A person must not, in purported compliance with this Part, furnish information that the person knows to be false or misleading in a material particular.

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

## **Division 4 Register of Offenders**

### **19 Register of Offenders**

- (1) The Commissioner of Police is to establish and maintain a Register of Offenders.

- (2) The Commissioner of Police is to ensure that the following information is recorded in the Register of Offenders for each person in respect of whom the Commissioner receives a notice under Division 1:
  - (a) the person's name and other identifying particulars,
  - (b) the date on which the person ceased to be in government custody,
  - (c) any relevant personal information provided to the Commissioner in respect of the person,
  - (d) details of any proposed absence from New South Wales provided to the Commissioner in respect of the person.
- (3) The Register of Offenders may include such other information as the Commissioner of Police considers appropriate to include in the Register.
- (4) The regulations may make provision for or with respect to the manner and form in which the Register of Offenders is to be established and maintained.

## **Part 3 Miscellaneous**

### **20 Exclusion of personal liability**

An act or omission that a person does or omits to do in good faith in the administration or execution of this Act does not subject the person personally to any action, liability, claim or demand.

### **21 Proceedings for offences**

Proceedings for an offence against this Act or the regulations are to be disposed of summarily by a Local Court constituted by a Magistrate sitting alone.

#### **21A Certificate evidence**

- (1) In proceedings under this Act, a certificate signed by the Commissioner of Police, or a member of NSW Police holding a position designated in writing by the Commissioner of Police for the purposes of this section, certifying that the Register of Offenders:
  - (a) at any particular date contained information specified in the certificate, or
  - (b) indicated that, during any particular period, a specified person failed to notify information as required by this Act,is evidence (unless evidence to the contrary is adduced) of the particulars certified in the certificate.
- (2) Not more than 3 positions are to be designated at any one time under subsection (1).

## 22 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) A regulation may create an offence punishable by a penalty not exceeding 20 penalty units.
- (3) The regulations may require the functions under section 4, 5 or 6 of a sentencing court or supervising authority (a **primary authority**) to be exercised:
  - (a) in relation to the functions of a sentencing court:
    - (i) by a supervising authority, or
    - (ii) by the Commissioner of Police, or
  - (b) in relation to the functions of a supervising authority:
    - (i) by the sentencing court, or
    - (ii) by some other supervising authority, or
    - (iii) by the Commissioner of Police,(the **secondary authority**), but only with the concurrence of the Minister responsible for the primary authority and the Minister responsible for the secondary authority.

## 23 Amendment of Acts

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

## 24 Savings, transitional and other provisions

Schedule 2 has effect.

## 25 Monitoring of operation of Act 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 provisions of this Act and the regulations.
- (2) For that purpose, the Ombudsman may require any public authority to provide information concerning the authority's participation in the operation of those provisions.
- (3) The Ombudsman must, as soon as practicable after the expiration of the period of 2 years referred to in subsection (1), furnish a report to the Minister of the Ombudsman's work and activities under this section.

## 26 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the Minister receives the Ombudsman's report under section 25.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament as soon as possible after the review is completed.

## Schedule 1 Amendment of Acts

(Section 23)

### 1.1 Child Protection (Prohibited Employment) Act 1998 No 147

#### [1] Section 5 Prohibited persons

Insert “, or a person who is a registrable person within the meaning of the *Child Protection (Offenders Registration) Act 2000*” after “subsection” in section 5 (1).

#### [2] Section 9 IRC and ADT may make declarations concerning prohibited persons

Insert after section 9 (5) (a):

- (a1) the period of time since those offences were committed,

#### [3] Section 9 (5) (d1)

Insert after section 9 (5) (d):

- (d1) the prohibited person's present age,

### 1.2 Commission for Children and Young People Act 1998 No 146

#### [1] Section 14A

Insert after section 14:

#### **14A Powers of Commission for Children and Young People to compel production of information**

- (1) For the purpose of preparing submissions to the Industrial Relations Commission or Administrative Decisions Tribunal under:
  - (a) section 9 of the *Child Protection (Prohibited Employment) Act 1998*, or

(b) section 16 of the *Child Protection (Offenders Registration) Act 2000*,  
the Commission for Children and Young People may direct any government agency to provide the Commission with information relevant to an assessment of whether the applicant poses a risk to the safety of children.

- (2) A government agency to which such a direction is given is by this section authorised and required to provide the Commission for Children and Young People with the information sought by the direction.

## [2] Section 33 Definitions

Insert “and includes the criminal record of a registrable person within the meaning of the *Child Protection (Offenders Registration) Act 2000*, but only in relation to registrable offences within the meaning of that Act.” at the end of the definition of **relevant criminal record** in section 33 (1).

## Schedule 2 Savings, transitional and other provisions

(Section 24)

### 1 Savings and transitional regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

*Child Protection Legislation Amendment Act 2002*

- (2) Such a provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.
- (3) To the extent to which such a provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of that publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of that publication.

### 2 Registrable offences

- (1) In this clause:

**amending Act** means the *Child Protection Legislation Amendment Act 2002*.



**new registrable person** means a person who becomes a registrable person on the commencement of an amendment made by the amending Act because of that amendment.

- (2) The amendments made by Schedule 1 [1], [2] and [3] to the amending Act are taken to have had effect from 15 October 2001.
- (3) A new registrable person is taken to have complied with any reporting obligations the person may have had for the period commencing on 15 October 2001 and ending on the commencement of this clause.
- (4) Division 1 of Part 2 (except section 7) and section 10 (1) do not apply to a new registrable person who is not in government custody at the commencement of this clause.
- (5) A new registrable person who is not in government custody at the commencement of this clause must notify the Commissioner of Police of the relevant personal information within 28 days after the person is given written notice under section 7.
- (6) Division 1 of Part 2 (except sections 6, 7 and 8) and section 10 (1) do not apply to a new registrable person who is in government custody at the commencement of this clause.
- (7) A new registrable person who is in government custody at the commencement of this clause must notify the Commissioner of Police of the relevant personal information within 28 days after the person ceases to be in government custody.
- (8) A reference in:
  - (a) the definition of **reporting obligations** in section 3 (1) to Division 2 of Part 2 includes a reference to this clause, and
  - (b) section 12 (1) to “information that is required to be given to the Commissioner of Police under this Division” includes a reference to information that is required to be given to the Commissioner of Police under this clause.