

Child Protection (Offenders Registration) Regulation 2001

[2001-810]



New South Wales

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Child Protection (Offenders Registration) Regulation 2001



New South Wales

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, 7 or 7B 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(2) (Repealed)

4 Notes

Notes included in this Regulation do not form part of this Regulation.

4A Definition of "Class 2 offence"

Pursuant to paragraph (k) of the definition of **Class 2 offence** in section 3 (1) of the Act, the following offences are stated to be Class 2 offences:

- (a) an offence against section 271.4 of the *Criminal Code Act 1995* of the Commonwealth,

- (b) an offence against section 271.7 of the *Criminal Code Act 1995* of the Commonwealth,
- (c) an offence against section 474.26 of the *Criminal Code Act 1995* of the Commonwealth,
- (d) an offence against section 474.27 of the *Criminal Code Act 1995* of the Commonwealth.

4B Definition of “corresponding Act”

Pursuant to paragraph (b) of the definition of **corresponding Act** in section 3 (1) of the Act, the following Acts are stated to be corresponding Acts:

- (a) the *Child Protection (Offender Reporting) Act 2004* of Queensland,
- (b) the *Child Protection (Offender Reporting and Registration) Act 2004* of the Northern Territory,
- (c) the *Community Protection (Offender Reporting) Act 2004* of Western Australia,
- (d) the *Sex Offenders Registration Act 2004* of Victoria.

4C Definition of “corresponding child protection registration order”

Pursuant to the definition of **corresponding child protection registration order** in section 3 (1) of the Act, the following orders are stated to be corresponding child protection registration orders:

- (a) orders under section 13 of the *Child Protection (Offender Reporting) Act 2004* of Queensland,
- (b) orders under section 13 of the *Child Protection (Offender Reporting and Registration) Act 2004* of the Northern Territory,
- (c) orders under section 13 of the *Community Protection (Offender Reporting) Act 2004* of Western Australia,
- (d) orders under section 11 of the *Sex Offenders Registration Act 2004* of Victoria.

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*.

5A Foreign witness protection laws

For the purposes of sections 3A (3) and 13 (1A) of the Act, the following foreign witness protection laws are specified:

- (a) the *Witness Protection Act 1994* of the Commonwealth,

- (b) the *Witness Protection Act 1996* of the Australian Capital Territory,
- (c) the *Witness Protection (Northern Territory) Act* of the Northern Territory,
- (d) the *Witness Protection Act 2000* of Queensland,
- (e) the *Witness Protection Act 1996* of South Australia,
- (f) the *Witness Protection Act 2000* of Tasmania,
- (g) the *Witness Protection Act 1991* of Victoria,
- (h) the *Witness Protection (Western Australia) Act 1996* of Western Australia.

5B Corresponding registrable persons

For the purposes of section 3C (c) of the Act, the following classes of persons are prescribed as corresponding registrable persons for the purposes of the Act:

- (a) persons who are **reportable offenders** within the meaning of the *Child Protection (Offender Reporting) Act 2004* of Queensland,
- (b) persons who are **reportable offenders** within the meaning of the *Child Protection (Offender Reporting and Registration) Act 2004* of the Northern Territory,
- (c) persons who are **reportable offenders** within the meaning of the *Community Protection (Offender Reporting) Act 2004* of Western Australia, other than those who are reportable offenders merely because they have been sentenced by a court for a class 3 offence within the meaning of that Act,
- (d) persons who are **registrable offenders** within the meaning of the *Sex Offenders Registration Act 2004* of Victoria, other than those who are registrable offenders merely because they have been sentenced by a court for a class 3 or class 4 offence within the meaning of that Act.

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 9 or 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.
- (1A) Each statutory notice must also contain a statement reminding the registrable person of his or her reporting period and specifying the date on which the reporting period ends.
- (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).

10A Change of travel plans while out of New South Wales

For the purposes of section 11B of the Act, a report made by a registrable person under that section may be sent by post to such person as the Commissioner of Police may from time to time notify to the registrable person as the person to whom such a report should be sent.

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 Manner in which registrable person may report

- (1) For the purposes of section 12A (2) of the Act, a report referred to in that subsection that is required to be made by a registrable person may be made by telephone to the Crime Manager for the Local Area Command within which the registrable person resides.
- (2) The report:

- (a) may be made by the registrable person, or
 - (b) may be made, on the registrable person's behalf, by the registrable person's supervisor.
- (3) A supervisor may not make a report on a registrable person's behalf unless the registrable person has presented for the supervisor's inspection the documents that he or she would have had to present under section 12D of the Act had he or she made the report to a police officer in person.
- (4) In this clause:

Crime Manager, in relation to a Local Area Command, means the police officer for the time being appointed by the Commissioner of Police to the position of Crime Manager for that Command, and includes any police officer acting in that position.

Local Area Command means an area designated by the Commissioner of Police as a Local Area Command.

supervisor, in relation to a registrable person, means the person from the person's supervising authority who is appointed for the time being to supervise the registrable person.

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 12A (4) or (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, 17 (Repealed)

18 Child Protection Register

For the purposes of section 19 (2) (i) of the Act, the following information is prescribed as information that the Register is to contain in respect of a registrable person:

- (a) the date of each occasion on which the registrable person has asked for the accuracy of his or her reporting period, as specified in the Register, to be checked,
- (b) the date of each occasion on which the registrable person has been notified of the results of any such check.

19 Transitional provisions concerning existing registrable persons

- (1) Without limiting clause 10, the first statutory notice under section 7B of the Act in respect of a person who was a registrable person immediately before the commencement of the 2004 amending Act must contain the following information:
- (a) the nature of the additional relevant personal information, within the meaning of the 2004 savings and transitional provisions, that must be provided to the Commissioner of Police pursuant to those provisions,
 - (b) the nature of the registrable person's reporting obligations, as applying under Part 3 of the Act following its amendment by the 2004 amending Act, including the fact that he or she is required to report annually,
 - (c) any extension of the period of the registrable person's reporting obligations under

subclause (2).

- (2) The reporting period for any registrable person whose reporting obligations commenced on or after 1 October 2004 is to be calculated in accordance with Division 6 of Part 3 of the Act, as inserted by the 2004 amending Act.

Note—

Pursuant to the 2004 savings and transitional provisions, the reporting period for any person whose reporting obligations commenced before 1 October 2004 remain as they were before the commencement of the 2004 amending Act.

- (3) In this clause:

the 2004 amending Act means the *Child Protection (Offenders Registration Amendment Act 2004*.

the 2004 savings and transitional provisions means the provisions of Schedule 2 to the Act that are consequent on the enactment of the 2004 amending Act.