

# 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**
  - [Commission for Children and Young People Amendment Act 2005 No 108](#) (not commenced)
  - [Police Amendment \(Miscellaneous\) Act 2006 No 94](#) (not commenced)

### Authorisation

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# Child Protection (Offenders Registration) Act 2000 No 42



New South Wales

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# Child Protection (Offenders Registration) Act 2000 No 42



New South Wales

An Act with respect to registration and reporting requirements for certain offenders who commit sexual and other serious offences against children; 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.

**child protection registration order** means an order made under section 3D, and includes a corresponding child protection registration order.

**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 (other than an offence that is a Class 2 offence), or
- (c) an offence against section 66EA of the *Crimes Act 1900*, or
- (d) an offence against section 50BA or 50BB of the *Crimes Act 1914* of the Commonwealth, or
- (e) any offence under a law of a foreign jurisdiction that, if it had been committed in New South Wales, would have constituted an offence of a kind listed in this definition, or

- (f) an offence under a law of a foreign jurisdiction that the regulations state is a Class 1 offence, or
- (g) an offence an element of which is an intention to commit an offence of a kind listed in this definition, or
- (h) an offence of attempting, or of conspiracy or incitement, to commit an offence of a kind listed in this definition, or
- (i) an offence that, at the time it was committed:
  - (i) was a Class 1 offence for the purposes of this Act, or
  - (ii) in the case of an offence occurring before the commencement of this definition, was an offence of a kind listed in this definition.

**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 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
- (c) 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
- (d) an offence under section 91D, 91E, 91F, 91G or 91H of the *Crimes Act 1900* (other than an offence committed by a child prostitute), or
- (e) an offence under section 578B of the *Crimes Act 1900*, or
- (f) an offence under section 21G (1) of the *Summary Offences Act 1988*, where the person who was being filmed as referred to in that subsection was then a child, or
- (g) an offence against section 50BC, 50BD, 50DA or 50DB of the *Crimes Act 1914* of the Commonwealth, or
- (h) an offence against section 270.6 or 270.7 of the *Criminal Code* of the Commonwealth where the person against whom the offence is committed is a child, or
- (i) an offence against section 233BAB of the *Customs Act 1901* of the Commonwealth involving items of child pornography or of child abuse material, or
- (j) any offence under a law of a foreign jurisdiction that, if it had been committed in New South Wales, would have constituted an offence of a kind listed in this

definition, or

- (k) an offence under a law of a foreign jurisdiction that the regulations state is a Class 2 offence, or
- (l) an offence an element of which is an intention to commit an offence of a kind listed in this definition, or
- (m) an offence of attempting, or of conspiracy or incitement, to commit an offence of a kind listed in this definition, or
- (n) 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 definition, was an offence of a kind listed in this definition.

**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](#).

**corresponding Act** means a law of a foreign jurisdiction:

- (a) that provides for people who have committed specified offences to report in that jurisdiction information about themselves and to keep that information current for a specified period, and
- (b) that the regulations state is a corresponding Act for the purposes of this Act.

**corresponding child protection registration order** means an order made under a corresponding Act that falls within a class of order that the regulations state is a corresponding child protection registration order for the purposes of this Act.

**corresponding registrable offence** means an offence that is a registrable offence for the purposes of a corresponding Act but is not a registrable offence within the meaning of this Act.

**corresponding registrable person**—see section 3C.

**corresponding registrar** means the person whose functions under a corresponding Act most closely correspond to the functions of the Commissioner of Police under this Act.

**court** includes any Magistrate exercising functions under the [Criminal Procedure Act 1986](#), 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,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*, or
- (c) the holder of any equivalent licence granted under the laws of a foreign jurisdiction,

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 (including jurisdictions outside Australia).

**foreign witness protection law** means a law of a foreign jurisdiction that provides for the protection of witnesses.

**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:

- (a) 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, or
- (b) custody under a law of a foreign jurisdiction in the nature of custody referred to in paragraph (a).

**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*.

**parole order** means a parole order within the meaning of the *Crimes (Administration of Sentences) Act 1999*, and includes any equivalent order made under the laws of a foreign jurisdiction.

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

**Register** means the Child Protection Register established under section 19.

**registrable offence** means an offence that is:

- (a) a Class 1 offence, or
- (b) a Class 2 offence, or
- (c) an offence that results in the making of a child protection registration order.

**registrable person**—see section 3A.

**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 Part 3.

**reporting period** means the period, as determined under Division 6 of Part 3, during which a registrable person must comply with the person's reporting obligations.

**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.

**witness protection program** has the same meaning as it has in the [Witness Protection Act 1995](#).

- (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.

(2A) A reference to a finding of guilt in this Act does not include a finding of guilt that is subsequently quashed or set aside by a court.

(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.

(6) For the purposes of this Act, 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.
- (7) A reference to an act of indecency in this Act does not include a reference to an offence that only involves indecent exposure.
- (8) A reference to doing a thing “in person” in this Act is a reference to doing the thing by personal attendance at a place, it is not sufficient to attend the place by telephone or by any other electronic means.
- (9) Notes included in this Act do not form part of this Act.

## Part 2 Offenders to whom Act applies

### 3A Registrable persons

- (1) A **registrable person** is a person whom a court has at any time (whether before, on or after the commencement of this section) sentenced in respect of a registrable offence, and includes a corresponding registrable person.
- (2) Unless a person is a corresponding registrable person, a person is not a registrable person merely because the person:
- (a) is 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* (or an equivalent order under the laws of a foreign jurisdiction) in respect of a Class 1 or Class 2 offence, or
  - (b) is a person on whom a sentence has been imposed in respect of a single Class 2 offence, if 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 an equivalent order under the laws of a foreign jurisdiction, or
    - (ii) a requirement that the person be under the supervision of a supervising authority or any other person or body, or
  - (c) as a child committed:
    - (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* or an offence of possessing or publishing child pornography (in whatever terms expressed) under the laws of a foreign jurisdiction, or

- (iii) a single offence under section 21G (1) of the *Summary Offences Act 1988*, or
  - (iv) a single offence (including an offence committed under the laws of a foreign jurisdiction) that falls within a class of offence the regulations prescribe for the purposes of this subparagraph, or
  - (v) a single offence an element of which is an intention to commit an offence of a kind listed in this paragraph, or
  - (vi) a single offence of attempting, or of conspiracy or incitement, to commit an offence of a kind listed in this paragraph, or
- (d) is a person whom a court has found guilty of a registrable offence before 15 October 2001, unless the person is an existing controlled person.
- (3) A person is not a registrable person if the person is receiving protection under a foreign witness protection law specified by the regulations for the purposes of this subsection, or has the same status as such a person under an order made under a corresponding Act specified by the regulations for the purposes of this section.
- (4) For the purposes of this section, it is irrelevant whether or not a person may lodge, or has lodged, an appeal in respect of a finding of guilt, sentence or child protection registration order.
- (5) A reference to a single offence in this section includes a reference to more than one offence of the same kind arising from the same incident.

### **3B Circumstances in which person ceases to be registrable person**

A person ceases to be a registrable person if:

- (a) the finding of guilt against the person for the only offence that makes the person a registrable person is quashed or set aside by a court, or
- (b) the person's sentence in respect of that offence is reduced or altered so that the person would not have been a registrable person had the amended sentence been the original sentence, or
- (c) the person is a registrable person only because the person is subject to a child protection registration order and that order is quashed on appeal.

### **3C Corresponding registrable persons**

A **corresponding registrable person** is a person who:

- (a) had at any time (whether before, on or after the commencement of this section) been in a foreign jurisdiction and at that time had been required to report to the corresponding registrar in that jurisdiction for a longer period than the person would have been required to report under this Act, and

- (b) would, if the person were currently in that jurisdiction, be required to report to the corresponding registrar in that jurisdiction for a longer period (the **corresponding foreign reporting period**) than the person would be required to report under this Act, and
- (c) falls within a class of person whom the regulations prescribe as corresponding registrable persons for the purposes of this Act.

### **3D Child protection registration orders**

- (1) If a court finds a person guilty of an offence that is not a Class 1 or a Class 2 offence, it may order that the person comply with the reporting obligations of this Act.
- (2) The court may only make the order if it is satisfied that the person poses a risk to the lives or sexual safety of one or more children, or of children generally.
- (3) For the purposes of subsection (2), it is not necessary that the court be able to identify a risk to particular children, or a particular class of children.
- (4) The court may only make an order if it imposes a sentence in relation to the offence (other than an order under section 10 of the *Crimes (Sentencing Procedure) Act 1999* or section 33 (1) (a) of the *Children (Criminal Proceedings) Act 1987*) and must make the order concurrently with that sentence.

#### **Note—**

The effect of this subsection is to prevent a child protection registration order being made concurrently with an order dismissing the charge or conditionally discharging the offender.

- (5) The court may make an order only if an application for the imposition of the order is made by the prosecution.
- (6) For the purposes of Division 6 of Part 3, a person subject to an order under this section is deemed to have been found guilty of a Class 2 offence.
- (7) For the purposes of this section, a person poses a **risk to the lives or sexual safety of one or more children, or children generally** if there is a risk that the person will engage in conduct that may constitute a Class 1 or Class 2 offence against or in respect of a child or children.

### **3E Review of provisions relating to child protection registration orders**

- (1) The Minister is to review section 3D to determine whether the policy objectives of that section 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 expiration of 2 years after the commencement of section 3D.
- (3) A report on the outcome is to be tabled in each House of Parliament as soon as

possible after the review is completed.

## **Part 3 Reporting obligations**

### **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 for registrable offence**

- (1) As soon as practicable after a registrable person commences a supervised sentence for a registrable offence, 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 or under supervision 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,

whether in respect of a registrable offence or otherwise, 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 who has been in government custody for 14 or more consecutive days ceases to be in government custody, whether in respect of a registrable offence or otherwise, 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.

**7A Notices to be given to registrable persons who enter New South Wales or are corresponding registrable persons**

(1) This section applies to a registrable person:

(a) who enters New South Wales, if the person has not previously been given notice of the person's reporting obligations in New South Wales, or

(b) who becomes a corresponding registrable person, if the person is in New South Wales at that time.

(2) The Commissioner of Police must, as soon as practicable after the registrable person becomes a person to whom this section applies, cause written notice to be given to the person in accordance with the requirements of section 7.

**7B Notice to be given when reporting obligations change**

(1) This section applies to a registrable person whose reporting obligations have changed since the person was last notified of them in New South Wales.

(2) The Commissioner of Police must cause written notice to be given to the registrable person as soon as practicable after the change and in no case later than the time the person next reports in accordance with this Act.

(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.

**7C Power of detention to enable notice to be given**

(1) A police officer may exercise a power of detention under this section only if:

(a) there are reasonable grounds to suspect that a person is a registrable person and that the person has not been given notice, or is otherwise unaware, of the person's reporting obligations, and

(b) all other reasonably appropriate means of determining whether the person is a registrable person, or of notifying the person of reporting obligations, as the case requires, have been taken.

(2) A police officer may detain the person if it is reasonably necessary to do so:

- (a) to enable a determination as to whether or not the person is a registrable person or, if the person is a registrable person, as to whether or not the person has been given notice, or is aware, of the person's reporting obligations, or
  - (b) to enable the person to be given notice of those obligations if the person is not aware of them.
- (3) In detaining the person, the police officer must tell the person:
- (a) why the person is being detained, and
  - (b) that the detention is authorised under this Act, and
  - (c) that the person will be released immediately after the purpose of the detention is fulfilled.
- (4) The detained person:
- (a) must not be held for a period that is longer than is reasonably necessary to enable the purpose of the detention to be fulfilled, and
  - (b) must not be held merely because the person has refused to sign an acknowledgement that the person has been given notice of the person's reporting obligations, and
  - (c) must be released immediately after the purpose of the detention is fulfilled.

## **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 Initial report**

### **9 Relevant personal information to be reported**

- (1) For the purposes of this Act, the **relevant personal information** to be reported by a registrable person consists of the following information:
- (a) the person's name, together with any other name by which the person is or has previously been known,
  - (b) in respect of each name other than the person's current name, the period during which the person was known by that other name,
  - (c) the person's date of birth,
  - (d) 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,

- (e) the names and ages of any children who generally reside in the same household as that in which the person generally resides, or with whom the person has regular unsupervised contact,
  - (f) 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,
  - (g) details of the person's affiliation with any club or organisation that has child membership or child participation in its activities,
  - (h) the make, model, colour and registration number of any motor vehicle owned by, or generally driven by, the person,
  - (i) details of any tattoos or permanent distinguishing marks that the person has (including details of any tattoo or mark that has been removed),
  - (j) whether the person has ever been found guilty in any foreign jurisdiction of a registrable offence or of an offence that required the person to report to a corresponding registrar or been subject to a corresponding child protection registration order and, if so, where that finding occurred or that order was made,
  - (k) if the person has been in government custody since the person was sentenced or released from government custody (as the case may be) in respect of a registrable offence or corresponding registrable offence, details of when or where that government custody occurred,
  - (l) if, at the time of making a report under this Division, the person leaves, or intends to leave, New South Wales to travel elsewhere in Australia on an average of at least once a month (irrespective of the length of any such absence):
    - (i) in general terms, the reason for travelling, and
    - (ii) in general terms, the frequency and destinations of the travel.
- (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 child does not generally reside in the same household as a registrable person unless they reside together in that household for at least 14 days (whether consecutive or not) in any period of 12 months, and
- (c) a registrable person does not have regular unsupervised contact with a child unless the person has unsupervised contact with the child for at least 14 days (whether consecutive or not) in any period of 12 months, and
- (d) 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
- (e) a registrable person does not generally drive a particular motor vehicle unless the person drives that motor vehicle on 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*.

**9A When initial report must be made**

- (1) A registrable person of a kind referred to in Column 1 of the Table to this subsection must report the person's relevant personal information to the Commissioner of Police within the period specified in relation to the person in Column 2 of the Table.

**Table**

<b>Column 1</b>	<b>Column 2</b>
<b>Registrable person</b>	<b>Period for initial report</b>
A registrable person (other than a corresponding registrable person) who enters government custody in New South Wales before, on or after the commencement of this section as a consequence of having being sentenced for a registrable offence and who ceases to be in government custody while in New South Wales	Within 28 days after the registrable person ceases to be in government custody
Any other registrable person who is sentenced for a registrable offence in New South Wales	Within 28 days after the registrable person is sentenced for the registrable offence

A registrable person who enters New South Wales from a foreign jurisdiction and who has not previously been required under this Act to report his or her relevant personal information to the Commissioner of Police	Within 14 days after entering and remaining in New South Wales for 14 or more consecutive days, not counting any days spent in government custody
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A corresponding registrable person who has not previously reported the person's relevant personal information to the Commissioner of Police and who is in New South Wales on the date on which the person becomes a corresponding registrable person	Within 28 days after the person becomes a corresponding registrable person or 28 days after the person ceases to be in government custody whichever is the later
--	--

- (2) Despite subsection (1), a registrable person must report the person's relevant personal information to the Commissioner of Police before leaving New South Wales unless the person entered New South Wales from a foreign jurisdiction and remained in New South Wales for less than 14 consecutive days, not counting any days spent in government custody.

**9B When new initial report must be made by person whose previous reporting obligations have ceased**

- (1) If a registrable person's reporting period expires but the person is then sentenced for a registrable offence, the person must report the person's relevant personal information to the Commissioner of Police:
- (a) within 28 days after the person is sentenced for the registrable offence, or
  - (b) if the registrable person is in government custody, within 28 days after the person ceases to be in government custody,
- whichever is the later.
- (2) If a registrable person's reporting period expires but the person then becomes a corresponding registrable person who must under section 14D continue to comply with the reporting obligations imposed by this Part for any period, the person must report the person's relevant personal information to the Commissioner of Police:
- (a) within 28 days after the person becomes a corresponding registrable person, or
  - (b) if the person is in government custody, within 28 days after the person ceases to be in government custody,
- whichever is the later.
- (3) If a registrable person's reporting obligations are suspended by an order under

section 16 (or an equivalent order in a foreign jurisdiction) and that order ceases to have effect under section 16A (or an equivalent provision of the laws of a foreign jurisdiction), the person must report the person's relevant personal information to the Commissioner of Police:

- (a) within 28 days after the order ceases to have effect, or
- (b) if the person is in government custody, within 28 days after the person ceases to be in government custody,

whichever is the later.

- (4) If a registrable person is not in New South Wales at the time the person would be required under subsection (1), (2) or (3) to report relevant personal information to the Commissioner of Police, then the person must report that information within 14 days after entering and remaining in New South Wales for 14 or more consecutive days, not counting any days spent in government custody.
- (5) Despite subsections (1)–(3), a registrable person must report the person's relevant personal information to the Commissioner of Police before leaving New South Wales unless the person entered New South Wales from a foreign jurisdiction and remained in New South Wales for less than 14 consecutive days, not counting any days spent in government custody.

### **9C Persons required to report under corresponding Act**

- (1) This section applies to a person (other than one to whom Division 5 applies) who has been required to report to a corresponding registrar, irrespective of whether the person is a registrable person for the purposes of this Act.
- (2) Unless the person has previously complied with the obligation imposed by this section, the person must, within 7 days after entering and remaining in New South Wales, contact (by telephone or another prescribed means) a person nominated by the Commissioner of Police for the purposes of this section.
- (3) The contacted nominated person must advise the person whether the person is a registrable person for the purposes of this Act and of any reporting obligations that the person has under this Act.
- (4) A person is not guilty of an offence against section 17 because of a failure to comply with the reporting obligations imposed by subsection (2) if the person:
  - (a) is not a registrable person for the purposes of this Act, or
  - (b) has not been notified of that reporting obligation, or
  - (c) does not remain in New South Wales for 14 or more consecutive days, not counting any days spent in government custody, or

(d) reports in accordance with section 9A.

### **Division 3 Ongoing reporting obligations**

#### **10 Registrable person must report annually**

- (1) A registrable person must report the person's relevant personal information to the Commissioner of Police each year.
- (2) The registrable person must make the report by the end of the calendar month in which the anniversary of the date on which the person first reported in accordance with this Act or a corresponding Act falls.
- (3) If the registrable person has been in government custody since the person last reported the person's relevant personal information under this section, the information the person must report must include details of when and where that custody occurred.
- (4) If a registrable person's reporting period expires, but the person is then required to report again under section 9A, the reference to the date on which the person first reported is to be read as a reference to the date on which the person first reported in respect of the current reporting period.

#### **11 Registrable person must report changes to relevant personal information**

- (1) A registrable person must report to the Commissioner of Police any change in the person's relevant personal information within 14 days after that change occurs.
- (2) For the purposes of subsection (1), a change occurs in the place where the registrable person or a child generally resides, or as to when the registrable person has unsupervised contact with a child, or in the place where the registrable person is generally employed, or the motor vehicle that the person generally drives, only on the expiry of the relevant 14-day period referred to in section 9 (2).
- (3) If the relevant personal information for a registrable person (other than one to whom Division 5 applies) changes while the person is not in New South Wales, the person must report the change to the Commissioner of Police within 14 days after entering and remaining in New South Wales for 14 or more consecutive days, not counting any days spent in government custody.
- (4) A registrable person who is in government custody for 14 or more consecutive days must report the person's relevant personal information to the Commissioner of Police:
  - (a) within 28 days after the person ceases to be in government custody, or
  - (b) before leaving New South Wales,whichever is the sooner.



**11A Intended absence from New South Wales to be reported**

- (1) This section applies if a registrable person:
  - (a) intends to leave New South Wales for 14 or more consecutive days to travel elsewhere in Australia, or
  - (b) intends to leave New South Wales to travel out of Australia.
- (2) At least 7 days before leaving New South Wales, the registrable person must report the intended travel to the Commissioner of Police and must provide details of:
  - (a) each State, Territory or country to which the person intends to go while out of New South Wales, and
  - (b) the approximate dates during which the person intends to be in each of those States, Territories or countries, and
  - (c) each address or location within each State, Territory or country at which the person intends to reside (to the extent that they are known) and the approximate dates during which the person intends to reside at those addresses or locations, and
  - (d) if the person intends to return to New South Wales, the approximate date on which the person intends to return, and
  - (e) if the person does not intend to return to New South Wales, a statement of that intention.
- (3) If circumstances arise making it impracticable for a registrable person to make the report 7 days before the person leaves, it is sufficient compliance with subsection (2) if the registrable person reports the required information to the Commissioner of Police at least 24 hours before the intended travel.

**11B Change of travel plans while out of New South Wales to be reported**

- (1) This section applies if a registrable person who is out of New South Wales decides:
  - (a) to extend a stay elsewhere in Australia beyond 13 days, or
  - (b) to change any details given to the Commissioner of Police under section 11A.
- (2) As soon as is practicable after making the decision, the registrable person must:
  - (a) if subsection (1) (a) applies, report the details required by section 11A (2) to the Commissioner of Police (including those details as they relate to the travel that has already been completed), or
  - (b) if subsection (1) (b) applies, report the changed details to the Commissioner of Police.

- (3) The registrable person must make the report:
  - (a) by facsimile or email sent to the Commissioner of Police or to any other address permitted by the regulations, or
  - (b) in any other manner permitted by the regulations.

**11C Registrable person to report return to New South Wales or decision not to leave**

- (1) This section applies if a registrable person was required to report that the person intended to leave New South Wales under section 11A.
- (2) If the registrable person left New South Wales, the person must report the person's return to New South Wales to the Commissioner of Police within 14 days after entering and remaining in New South Wales for 14 or more consecutive days, not counting any days spent in government custody.
- (3) If the registrable person decides not to leave New South Wales, the person must report the change of intention to the Commissioner of Police within 14 days of deciding not to leave.

**11D Report of other absences from New South Wales**

- (1) This section applies if a registrable person, at the time of making a report under this Division, leaves, or intends to leave, New South Wales to travel elsewhere in Australia on an average of at least once a month (irrespective of the length of any such absence).
- (2) The registrable person must report the following details to the Commissioner of Police:
  - (a) in general terms, the reason for travelling,
  - (b) in general terms, the frequency and destinations of the travel.

**11E Information concerning international travel to be given to the Australian Federal Police**

As soon as practicable after receiving a report under this Division concerning a registrable person's intentions in relation to travel out of Australia, the Commissioner of Police must ensure that a copy of the report is given to the Commissioner of the Australian Federal Police.

**Division 4 Provisions applying to all reporting obligations**

**12 Where report is to be made**

- (1) A report under this Part is to be made:
  - (a) at any police station in the locality in which the registrable person is currently residing (subject to subsection (2)), or

- (b) if a direction is given in accordance with the regulations as to the police station at which the report is to be made, 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) If a police station in the locality in which a registrable person is currently residing is a restricted police station, the registrable person:
- (a) with the consent of the Commissioner of Police, may make the report at that station, and
  - (b) may make the report at the next nearest police station that is not a restricted police station.
- (3) For the purposes of subsection (2), a **restricted police station** is a police station that is a police station, or that falls within a class of police station, that the regulations state is not to be used as a venue for the purposes of this section without the consent of the Commissioner of Police.
- (4) This section does not apply if, under section 12A (2), a report is permitted to be made in a way that is inconsistent with this section.

#### **12A How reports to be made**

- (1) A registrable person must make the following reports under this Part in person:
- (a) a report required by Division 2 (initial report),
  - (b) a report required by section 10 (annual report),
  - (c) a report of a change of address of the premises at which the person generally resides or, if the person does not generally reside at any particular premises, of the localities in which the person can generally be found,
  - (d) a report of the acquisition of, removal of, or change to, any tattoo or distinguishing mark.
- (2) A registrable person may make any other report that the person is required to make in person or in any other way permitted by the regulations or by the Commissioner of Police, either generally or in a particular case.
- (3) Only a police officer may receive a report made in person and only a police officer or a person approved for the purpose by the Commissioner of Police may receive a report made in another way in accordance with subsection (2).
- (4) If a registrable person attending in person is a child, or has a disability that renders it impracticable for the person to make a report, any parent, guardian, carer or other person nominated by the person who is accompanying the registrable person may

make the report on the registrable person's behalf.

- (5) Similarly, if a registrable person who is permitted to make a report other than in person in accordance with subsection (2) is a child, or has a disability that renders it impracticable for the person to make the report himself or herself, a parent, guardian, carer or other person nominated by the registrable person may make the report on the registrable person's behalf.

### **12B Right to privacy and support when reporting**

- (1) A person making a report under this Part at a police station or other place approved by the Commissioner of Police:
- (a) is entitled to make the report out of the hearing of members of the public, and
  - (b) is entitled to be accompanied by a support person of the person's choosing.
- (2) A police officer or other person receiving the report may arrange for an interpreter to be present when a person is making a report under this Part.
- (3) A police officer or other person receiving the report must not allow an interpreter to be present when a person is making a report under this Part unless the interpreter has signed an undertaking not to disclose any information derived from the report unless required or authorised by or under any Act or law to do so.

### **12C Receipt of information to be acknowledged**

- (1) As soon as is practicable after receiving a report under this Part, the police officer or other person receiving the report must acknowledge the making of the report.
- (2) The acknowledgment must be in writing, must be given to the person who made the report and must include:
- (a) the name and signature of the police officer or other person who received the report, and
  - (b) the date and time when, and the place where, the report was received, and
  - (c) a copy of the information that was reported, and
  - (d) a copy of the record of any agreement made under subsection (4).
- (3) If a report is not made in person, the police officer or other person who received the report must, as soon as practicable:
- (a) give the person making the report a unique reference number, and
  - (b) record that number on the relevant registrable person's file and on the acknowledgment.

- (4) The Commissioner of Police may make an agreement with the registrable person as to the manner in which any reference number or acknowledgment required to be given by this section may be given.
- (5) The Commissioner of Police must ensure:
  - (a) that there is a method of recording an agreement made under subsection (4), and
  - (b) that, except with the written consent of the registrable person, any reference number or acknowledgment required to be given by this section is given in accordance with the agreement while the agreement remains in force.
- (6) The Commissioner of Police must ensure that a copy of every acknowledgment is retained.

**12D Additional matters to be provided**

- (1) If a report is required to be made in person, the person making the report must also:
  - (a) present for inspection:
    - (i) the registrable person's driver licence (if any) and one of the documents relating to the person set out in subsection (2), or
    - (ii) if the person does not hold a driver licence, any 2 of the documents relating to the person set out in subsection (2), and
  - (b) if not the registrable person:
    - (i) the person's driver licence (if any) and one of the documents relating to the person set out in subsection (2), or
    - (ii) if the person does not hold a driver licence, any 2 of the documents relating to the person set out in subsection (2), and
  - (c) in any case, any other form of identification specified by the regulations for the purposes of this subsection.
- (2) The documents specified in this subsection 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 receiving the report may waive the requirements of subsection (1) (a) and (c) if:
- (a) the registrable person permits his or her fingerprints to be taken immediately before or after the report is made, or
  - (b) the police officer is otherwise satisfied as to the registrable person's identity.
- (4) The police officer receiving the report may waive the requirements of subsection (1) (b) and (c) if the police officer is otherwise satisfied as to the person's identity.
- (5) The police officer receiving a report may copy any document presented to the officer for inspection under subsection (1) (a) or (b).
- (6) If a report is made otherwise than in person, the regulations may specify:
- (a) the circumstances in which:
    - (i) information concerning the identity of the registrable person and the identity of the person making the report, and
    - (ii) a document verifying or supporting details in the report,are required, and
  - (b) the manner in which that information is to be provided,
- but may not require an original document to be provided.
- (7) In this section:

**driver licence** means a New South Wales driver licence, or any other licence issued under a law in force in a foreign jurisdiction authorising the holder to drive a motor

vehicle, containing photo identification of the holder of the licence.

### **12E Power to take fingerprints**

A police officer receiving a report made in person under this Part may take, or may cause to be taken by a person authorised by the police officer, the fingerprints of the registrable person if:

- (a) not reasonably satisfied as to the identity of the registrable person after the officer has examined all of the material relating to identity provided or presented to the officer by, or on behalf of, the registrable person, or
- (b) there are no fingerprints of the person held by NSW Police, or
- (c) if a person permits the person's fingerprints to be taken under section 12D.

### **12F Power to take photographs**

- (1) A police officer receiving a report made in person under this Part may require the registrable person:
  - (a) to be photographed, or
  - (b) to expose any part of the person's body to enable that part of the body to be photographed by the officer or another person authorised by the officer.
- (2) A police officer cannot, under this section, require a registrable person to expose his or her genitals, the anal area of his or her buttocks or, in the case of females or transgender people who identify as females, their breasts.

### **12G Information to be given before obtaining fingerprints or photographs**

Before attempting to exercise a power under section 12E or 12F, the police officer must inform the registrable person in language likely to be understood by the person:

- (a) of the purpose for which the power is to be exercised and, in the case of section 12E
  - (a), why the officer is not satisfied as to the registrable person's identity, and
- (b) that if the person refuses to give the person's fingerprints, or to expose part of the person's body (as the case may be) voluntarily, reasonable force may be used, and
- (c) that the fingerprints or photographs will be retained by the Commissioner of Police.

### **12H Retention of documents, fingerprints and photographs**

- (1) The Commissioner of Police may retain and use for identification, law enforcement or child protection purposes any of the following taken under this Division from a person:
  - (a) copies of any documents,

(b) any fingerprints,

(c) any photographs.

- (2) A person having possession of documents, fingerprints or photographs provided under this Division must not use them otherwise than for a purpose permitted by this Division.

Maximum penalty: 20 penalty units.

- (3) Despite any other law, a person having possession of the fingerprints of a registrable person provided under, or used for the purposes of, this Division is not required to destroy those fingerprints before the registrable person ceases to have reporting obligations.

### **121 Reporting by remote offenders**

- (1) This section applies if a registrable person resides more than 100 kilometres from the nearest police station that is not a restricted police station.
- (2) A registrable person need not comply with a time limit concerning the making of a report in person under this Part if:
- (a) the person, or another person entitled to make the report on the person's behalf, contacts the Commissioner of Police before the time limit expires, and
  - (b) the Commissioner of Police agrees to allow the report to be made at a specific time that is after the time limit and at a specific place, and
  - (c) before the time limit expires the person provides the Commissioner of Police by telephone or other means with the information required to be reported under this Part.
- (3) The Commissioner of Police must ensure that there is a method of recording all agreements made under this section.
- (4) Without limiting subsection (3), the recording method adopted must result in the creation of a written record:
- (a) that is identified by a unique reference number, and
  - (b) that identifies when and where each agreement was made, and
  - (c) that identifies the person who enters into any agreement, and
  - (d) that contains the terms of any agreement.
- (5) If an agreement is made under this section, the Commissioner of Police must ensure that the registrable person is provided with the reference number required by



subsection (4) (a).

- (6) The Commissioner of Police must ensure that there is a method of recording all information provided under subsection (2).

## **Division 5 Modified reporting procedures for protected witnesses**

### **13 Modified reporting procedures for protected witnesses**

- (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.
- (1A) This section (except subsections (3)–(10)) also applies to a registrable person who is receiving protection under a foreign witness protection law specified by the regulations for the purposes of this subsection, or who has the same status as such a person under an order made under a corresponding Act specified by the regulations for the purposes of this subsection.
- (2) It is sufficient compliance with the requirements of this Part:
- (a) if a person to whom this section applies provides information required by the Commissioner of Police, at the times and in the manner 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 in a manner approved by the Commissioner of Police, and
  - (c) if copies of relevant documents, rather than original documents, are provided.
- (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 14 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.
- (9A) An order declaring that this section applies to a registrable person takes effect immediately.
- (10) An order declaring that this section does not apply to a registrable person takes effect:
  - (a) at the end of 14 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) (Repealed)

### **13A Modification of ongoing reporting obligations**

Sections 9 (1), 11A-11D and 18A apply with respect to a person to whom section 13 applies as if any reference in them to New South Wales were a reference to the jurisdiction in which the person generally resides.

## **Division 6 Reporting period**

### **14 When reporting obligations begin**

For the purposes of this Act, a registrable person's reporting obligations in respect of a registrable offence begin:

- (a) when the person is sentenced for the offence, or
  - (b) when the person ceases to be in government custody in relation to the offence,
- whichever is the later.

### **14A Length of reporting period**

- (1) A registrable person must continue to comply with the reporting obligations imposed by this Part for:
  - (a) 8 years, if the person has only ever been found guilty of a single Class 2 offence, or
  - (b) 15 years, if the person:
    - (i) has only ever been found guilty of a single Class 1 offence, or
    - (ii) has ever been found guilty of more than a single registrable offence but is not covered by paragraph (c), or
  - (c) the remainder of the person's life, if the person is a registrable person in respect of:
    - (i) a Class 1 offence and the person subsequently commits and is found guilty of another registrable offence, or
    - (ii) a Class 2 offence and the person subsequently commits and is found guilty of a Class 1 offence, or
    - (iii) a Class 2 offence and the person subsequently commits and is found guilty of another Class 2 offence and has ever been found guilty of 3 or more Class 2 offences.

#### **Note—**

A life-long reporting obligation may be suspended under Division 7.

- (2) Subsection (1) (c) does not apply if the registrable person was not given notice of the person's reporting obligations under this Act or a corresponding Act before the person committed the subsequent offence.
- (3) A reference in subsection (1) to an offence extends to an offence committed before

the commencement of that subsection.

(4) For the purposes of this section:

- (a) 2 or more offences arising from the same incident are to be treated as a single offence, and
- (b) 2 or more offences arising from the same incident are to be treated as a single Class 1 offence if at least one of those offences is a Class 1 offence.

**14B Reduced period applies for young registrable persons**

- (1) The reporting periods specified in section 14A do not apply to a person who was a child at the time at which the person committed each registrable offence.
- (2) Instead, a reporting period that is half the reporting period that would otherwise apply to the person under section 14A (or seven and a half years in the case of a reporting period for life) applies to the person.

**14C Extended reporting period if registrable person still on parole**

- (1) This section applies if:
  - (a) a registrable person is on parole, or is an existing licensee, in respect of a registrable offence, and
  - (b) the reporting period in respect of the offence will end before the expiry of the sentence of imprisonment to which the parole or licence relates.
- (2) Despite anything to the contrary in this Division, the reporting period is extended until the expiry of the term of imprisonment to which the parole or existing licence relates.

**14D Reporting period for corresponding registrable persons**

- (1) Despite anything in this Part, a corresponding registrable person must continue to comply with the reporting obligations imposed by this Part for the corresponding foreign reporting period referred to in section 3C (b).
- (2) For the purposes of this section, if a corresponding registrable person is a corresponding registrable person under the laws of more than one jurisdiction, the corresponding foreign reporting period is the longest period for which the person would be required to report to the corresponding registrar of a foreign jurisdiction.

**Division 7 Suspension and extension of reporting obligations**

**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 government custody, or
  - (b) the person is outside New South Wales unless the person is a person to whom Division 5 applies or the obligation is under section 11B, or
  - (c) the person is the subject of an order in force under section 16 (or an equivalent order in a foreign jurisdiction).
- (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 who is required to continue to comply with the reporting obligations imposed by this Part for the remainder of his or her life.
- (2) If:
- (a) a period of 15 years has passed (ignoring any period during which the registrable person was in government custody) since the person was last sentenced or released from government custody in respect of a registrable offence or a corresponding registrable offence, whichever is the later, and
  - (b) the person did not become the subject of a life-long reporting period under a corresponding Act while in a foreign jurisdiction before becoming the subject of such a period in New South Wales, and
  - (c) the person is not subject to parole or licence in respect of a registrable offence (whether in New South Wales or a foreign jurisdiction),
- the person may apply to the Administrative Decisions Tribunal for an order suspending the person's reporting obligations.
- (3) On the application of an eligible registrable person, the Administrative Decisions Tribunal may make an order suspending the registrable person's reporting obligations.
- (4) 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.
- (5) 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 registrable person's registrable offences and corresponding registrable offences,
  - (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.
- (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) As soon as practicable after receiving an application under this section, the Administrative Decisions Tribunal must notify the Commissioner for the Commission for Children and Young People of the application.
- (8) The Administrative Decisions Tribunal must notify the Commissioner of Police of the terms of any order made under this section.
- (9) The Administrative Decisions Tribunal may not award costs in respect of proceedings under this section.
- (10) 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.
- (11) 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.

#### **16A Cessation of order**

- (1) An order made under section 16 ceases to have effect if, at any time after the making of the order, the registrable person:
- (a) is made subject to a child protection registration order or any other order prescribed by the regulations for the purposes of this section, or
  - (b) is found guilty of a registrable offence, or
  - (c) becomes a corresponding registrable person who must under section 14D continue to comply with the reporting obligations imposed by this Part for any period.
- (2) An order that ceases to have effect in accordance with subsection (1) is revived if:

- (a) the finding of guilt that caused the order to cease to have effect is quashed or set aside by a court, or
  - (b) the order ceased to have effect in accordance with subsection (1) (a) and the child protection registration order or other order prescribed by the regulations is quashed on appeal or the registrable person's finding of guilt in respect of the offence that resulted in the making of that order is quashed or set aside by a court.
- (3) For the purposes of this section, it is irrelevant whether or not a person may lodge, or has lodged, an appeal in respect of a finding of guilt or child protection registration order or other prescribed order referred to in this section.

### **16B Application for new order**

- (1) If an order ceases to have effect in accordance with section 16A, the registrable person may apply under section 16 for a new order.
- (2) Section 16 (11) does not apply with respect to an application referred to in subsection (1).
- (3) If an order ceases to have effect in accordance with section 16A (1) (b) or (c), on an application for a new order, section 16 (2) (a) applies as if the period referred to were a period of 15 years (ignoring any period during which the person was in government custody) since the person last committed a registrable offence or a corresponding registrable offence.

## **Division 8 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,
  - (b1) whether the form of the notification given to the person as to the person's obligations was adequate to inform the person of those obligations, having regard to the person's circumstances,

- (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.

### **18A Bar to prosecution for failing to report leaving New South Wales**

- (1) This section applies if a registrable person leaves New South Wales and is found guilty of failing to report his or her presence in a foreign jurisdiction as required by a corresponding Act.
- (2) The registrable person is not to be prosecuted for a failure to comply with section 17 in respect of the travel out of New South Wales.

## **Division 9 Child Protection Register**

### **19 Child Protection Register**

- (1) The Commissioner of Police is to establish and maintain a Child Protection Register or arrange with another person or body for the establishment and maintenance of a Child Protection Register on the Commissioner's behalf.
- (2) The Register is to contain the following information in respect of each registrable person (to the extent that it is known by the Commissioner of Police):
  - (a) the person's name and other identifying particulars,
  - (b) details of each Class 1 or Class 2 offence of which the person has been found guilty or with which the person has been charged,
  - (c) details of each offence of which the person has been found guilty that resulted in the making of a child protection registration order,
  - (d) the date on which the person was sentenced for any registrable offence,
  - (e) the date on which the person ceased to be in government custody in respect of a registrable offence, or entered or ceased to be in government custody in respect of any offence during the person's reporting period,



- (f) whether the person is a child or has any special need or disability,
- (g) any information provided to the Commissioner in respect of the person under this Part,
- (h) any information the Commissioner considers appropriate for inclusion in the Register,
- (i) any other information prescribed by the regulations.

#### **19A Restriction on who may access personal information on protected witnesses**

The Commissioner of Police must ensure that any information in the Register about a person to whom Division 5 applies, whose identity is apparent or can reasonably be ascertained from that information, cannot be accessed other than by a person authorised by the officer responsible for the day to day operation of the witness protection program.

**Note—**

Division 5 applies to certain people who are, or were, in witness protection programs.

#### **19B Registrable person's rights in relation to Child Protection Register**

- (1) If asked to do so by a registrable person, the Commissioner of Police must provide the person with a copy of all the reportable information that is held in the Register in relation to the person.
- (2) The Commissioner of Police must comply with subsection (1) as soon as practicable after being asked to do so.
- (3) A registrable person may ask the Commissioner of Police to amend any reportable information held on the Register in relation to the person that is incorrect.
- (4) The Commissioner of Police must comply with such a request on being satisfied that the information is incorrect.
- (5) In this section:

**reportable information** means any information supplied to the Commissioner of Police by, or on behalf of, the registrable person that the person is required to report to the Commissioner and that is still held in the Register.

### **Part 4 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.

#### **20A Application of reporting obligations to persons subject to child protection prohibition**

## **orders**

- (1) If a child protection prohibition order is made against a registrable person, the reporting obligations of the registrable person recommence or continue to apply to the registrable person for the term of the order, despite any other provision of this Act.
- (2) Subsection (1) does not affect any period of the application of reporting obligations to a registrable person under this Act that exceeds the period for which a prohibition order is in force.
- (3) A person whose reporting obligations are recommenced by this section must notify the Commissioner of Police of the person's relevant personal information not later than 28 days after the order is made or within such other period as the regulations may prescribe.
- (4) The regulations may prescribe the manner in which information is to be notified under this section.
- (5) In this section, **child protection prohibition order** means a prohibition order within the meaning of the [Child Protection \(Offenders Prohibition Orders\) Act 2004](#).

## **21 Proceedings for offences**

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

### **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:
  - (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).
- (3) For the purposes of this Act, a certificate that would be evidence under a corresponding Act that at a specified time, or during a specified period, a person was required to report to a corresponding registrar under that Act is evidence, and in the absence of evidence to the contrary is proof, of the facts stated in the certificate.

### **21B Time limit for prosecutions waived**

Despite anything to the contrary in the *Criminal Procedure Act 1986*, a proceeding for an offence under this Act may be commenced at any time.

### **21C Effect of spent convictions**

- (1) The fact that an offence in respect of which a registrable person has been found guilty becomes spent does not affect:
  - (a) the status of the offence as a registrable offence for the purposes of this Act in respect of the person, or
  - (b) any reporting obligations of the person.
- (2) For the purposes of this section, an offence becomes spent if, under a law in any jurisdiction, the registrable person is permitted not to disclose the fact that the person was convicted or found guilty of the offence.

### **21D Disclosure of information concerning registrable persons**

- (1) A government agency may disclose information concerning a registrable person to the Commissioner of Police or a supervising authority.
- (2) This section has effect despite any other law.

## **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.
- (1A) In particular, regulations may be made for or with respect to the following:
  - (a) matters incidental to the making of reports under Part 3, including:
    - (i) the manner and form in which a report must be made, and
    - (ii) the nature of any verifying documentation or evidence to be produced in support of any such report,
  - (b) the form of, or the information to be included in, any notice or other document that is required by this Act to be given to registrable persons,
  - (c) the manner in which a notice or other document may be given under this Act,
  - (d) the manner and form in which the Register is to be established and maintained, including the manner and form in which information is to be entered in the Register,

- (e) requiring or permitting the Commissioner of Police to remove specified information, or information of a specified class, from the Register,
  - (f) the notification of reporting obligations to registrable persons, including:
    - (i) permitting the person notifying a registrable person to ask the person to acknowledge being given the notice, and
    - (ii) making special provision for the notification of registrable persons who are children or who have disabilities or other special needs, and
    - (iii) permitting or requiring a person or body to be notified of a registrable person's status as a child or person who has a special need or disability to facilitate notification and reporting, and
    - (iv) providing for the notification to be given to a carer of, or a person nominated by, a registrable person who may be unable to understand his or her reporting obligations or the consequences of failing to comply with those obligations, and
    - (v) requiring that a registrable person be given additional information to that required by this Act, and
    - (vi) requiring a person or body to provide specified information to registrable persons concerning their reporting obligations, and
    - (vii) requiring a person or body to inform the Commissioner of Police:
      - (A) that a registrable person has left the custody or control of the person or body, and
      - (B) that the person or body has given specified information to a registrable person, and
      - (C) that, in the opinion of the person or body, a registrable person does or does not have the legal capacity to understand specified information, and
    - (viii) requiring a person or body to give to the Commissioner of Police any acknowledgment by a registrable person of the receipt of a notice or any other specified information that is held by the person or body,
  - (g) requiring a person or body to create records for the purposes of this Act and to retain those records for a specified period or an unlimited period.
- (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 (Repealed)**

### **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 (Repealed)

## Schedule 2 Savings, transitional and other provisions

(Section 24)

### Part 1 Preliminary

#### 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*

*Child Protection (Offenders Registration) Amendment Act 2004*

- (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.

### Part 2 Provisions consequent on enactment of **Child Protection Legislation Amendment Act 2002**

#### 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.

### **Part 3 Provisions consequent on enactment of [Child Protection \(Offenders Registration\) Amendment Act 2004](#)**

#### **3 Definitions**

In this Part:

**additional relevant personal information** means any information required to be provided by registrable persons under section 9 (as inserted by the amending Act) that was not required to be provided by registrable persons under section 9 (as in force before its repeal by the amending Act).

**amending Act** means the [Child Protection \(Offenders Registration\) Amendment Act 2004](#).

**appropriate period** means:

- (a) in relation to a person who is in New South Wales on the commencement of this clause—28 days after that commencement or before the person leaves New South Wales, whichever period ends first, or

- (b) in relation to a person who is not in New South Wales on that commencement—within 14 days after entering and remaining in New South Wales for 14 or more consecutive days.

**existing registrable person** means a person who was, immediately before the commencement of section 3A, as inserted by the amending Act, a registrable person under this Act, other than:

- (a) a person who was in government custody immediately before that commencement, or
- (b) a person who was a registrable person because of a registrable offence committed in a foreign jurisdiction and who had not carried out any reporting obligations before that commencement.

**new registrable person** means a person who is a registrable person merely because of having committed an offence that first became a registrable offence on the commencement of section 3A, other than a person who was in government custody on that commencement.

#### **4 Application of reporting periods and associated provisions**

- (1) Regulations may be made for or with respect to the application of Division 6 of Part 3, as inserted by the amending Act, and any other amendments made by that Act on and from a day before the commencement of this clause, being a day subsequent to the introduction of the Bill for that Act into Parliament.
- (2) Any such regulation may be made only for the purpose of facilitating the complementary operation of this Act, as amended by the amending Act, and an Act of another State or Territory that contains provisions that are complementary with this Act as amended by the amending Act.
- (3) A regulation under this clause has effect despite any other provision of this Part.

#### **5 Application of Act to existing registrable persons**

- (1) This Act, as amended by the amending Act, applies to an existing registrable person, except as provided by this Schedule or regulations made under this Schedule.
- (2) An existing registrable person must, within the appropriate period, provide the person's additional relevant personal information to the Commissioner of Police. The additional relevant personal information must be provided in the same manner in which an initial report must be made under this Act or in any other manner permitted by the Commissioner of Police either generally or in a particular case.
- (3) The first annual report of an existing registrable person, under section 10 (as inserted by the amending Act), must be made before the end of the calendar month in which the first anniversary of the date that the person first reported information to the Commissioner of Police occurs after one month after the commencement of this



clause.

- (4) The period of reporting obligations applicable to an existing registrable person immediately before the commencement of this clause continues to apply to the existing registrable person, except as provided by the regulations.
- (5) Nothing in subclause (4) applies to or in respect of any new reporting obligations of an existing registrable person or to a person who becomes a corresponding registrable person after that date.
- (6) Division 1 of Part 3 (except sections 6 (1) (c)-(f), 7-7C and 8) does not apply to or in respect of an existing registrable person.
- (7) Section 11B, as inserted by the amending Act, does not apply to an existing registrable person who was out of New South Wales on the commencement of this clause.
- (8) Section 11C, as inserted by the amending Act, applies to an existing registrable person who, before the commencement of this clause, was required to notify the Commissioner of Police of an intention to leave New South Wales and was outside New South Wales on that commencement.
- (9) In this clause:

***new reporting obligations*** means obligations in respect of an offence for which a person was sentenced after the commencement of this clause.

## **6 New registrable persons**

- (1) This Act, as amended by the amending Act, applies to a new registrable person in the same way that it applies to a registrable person who is not in government custody and is not an existing registrable person, except as provided by this Schedule or regulations made under this Schedule.
- (2) A new registrable person must, within the appropriate period, provide the person's relevant personal information to the Commissioner of Police.
- (3) The report must be made in the manner in which an initial report must be made under this Act.
- (4) For the purposes of calculating the period for which a new registrable person must continue to comply with the person's reporting obligations, the reporting period for a new registrable person is taken to have commenced on the later of:
  - (a) the day when the person was sentenced for the registrable offence, or
  - (b) the day when the person ceased to be in government custody in relation to the registrable offence.

(5) Division 1 of Part 3 (except sections 6 (1) (c)-(f), 7-7C and 8) does not apply to or in respect of a new registrable person.

(6) Section 11B, as inserted by the amending Act, does not apply to a new registrable person who is out of New South Wales on the commencement of this clause.

## **7 References to reporting obligations**

A reference in this Act to the reporting obligations of a registrable person includes a reference to reporting obligations imposed under this Part.

## **8 Register**

The Register of Offenders (the ***existing Register***), as kept immediately before the repeal of section 19 by the amending Act, is taken to be the Child Protection Register for the purposes of this Act.

## **9 Time limits for prosecutions**

Section 21B, as inserted by the amending Act, does not apply to an offence committed before the commencement of that section if the limitation period for commencing proceedings expired before that commencement.