

Child Protection (Offenders Registration) Regulation 2009

[2009-447]



New South Wales

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

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New South Wales

Contents

Part 1 Preliminary	4
1 Name of Regulation	4
2 Commencement	4
3 Definitions	4
Part 2 Corresponding legislation	5
4 Corresponding Acts.....	5
5 Corresponding child protection registration orders.....	6
6 Corresponding registrable persons	6
Part 3 Exercise of functions	7
7 Exercise of sentencing court’s functions by supervising authorities.....	7
8 Exercise of sentencing court’s functions by Commissioner of Police	7
9 Exercise of other functions by Commissioner of Police	8
Part 4 Statutory notices	8
10 Definition	8
11 Giving of statutory notices	8
12 Contents of statutory notices	9
13 Additional written notices for certain correctional or forensic patients	9
14 Registrable persons who are children or have special needs	10
Part 5 Reporting requirements	11

15 Change of travel plans while out of New South Wales.....	11
16 Manner in which registrable person may report	12
17 Time for notification when reporting obligations are recommenced.....	12
Part 6 Miscellaneous	12
18 Class 2 offences.....	12
19 Supervising authorities.....	13
20 Foreign witness protection laws.....	14
21 Child Protection Register	14
22 Identification of parents, guardians, carers and nominees	14
23 Communication of information to support persons	15
24 Savings	15

Child Protection (Offenders Registration) Regulation 2009



New South Wales

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

ANTHONY KELLY, MLC Minister for Police

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Child Protection (Offenders Registration) Regulation 2009*.

2 Commencement

This Regulation commences on 1 September 2009 and is required to be published on the NSW legislation website.

Note—

This Regulation replaces the *Child Protection (Offenders Registration) Regulation 2001* which is repealed on 1 September 2009 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation:

correctional patient has the same meaning as in the *Mental Health (Forensic Provisions) Act 1990*.

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

forensic patient has the same meaning as in the *Mental Health (Forensic Provisions) Act 1990*.

Pre-Trial Diversion of Offenders Program has the same meaning as in the *Pre-Trial Diversion of Offenders Act 1985*.

statutory notice—see clause 10.

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

the Australian Capital Territory Act means the *Crimes (Child Sex Offenders) Act 2005* of the Australian Capital Territory.

the Northern Territory Act means the *Child Protection (Offender Reporting and Registration) Act* of the Northern Territory.

the Queensland Act means the *Child Protection (Offender Reporting) Act 2004* of Queensland.

the South Australian Act means the *Child Sex Offenders Registration Act 2006* of South Australia.

the Tasmanian Act means the *Community Protection (Offender Reporting) Act 2005* of Tasmania.

the United Kingdom Act means the *Sexual Offences Act 2003* of the United Kingdom.

the Victorian Act means the *Sex Offenders Registration Act 2004* of Victoria.

the Western Australian Act means the *Community Protection (Offender Reporting) Act 2004* of Western Australia.

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

Part 2 Corresponding legislation

4 Corresponding Acts

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

- (a) the Australian Capital Territory Act,
- (b) the Northern Territory Act,
- (c) the Queensland Act,
- (d) the South Australian Act,
- (e) the Tasmanian Act,
- (f) the United Kingdom Act,
- (g) the Victorian Act,
- (h) the Western Australian Act.

5 Corresponding child protection registration orders

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

- (a) Part 2.2 of the Australian Capital Territory Act,
- (b) section 13 of the Northern Territory Act,
- (c) section 13 of the Queensland Act,
- (d) section 9 of the South Australian Act,
- (e) sections 7 and 9 of the Tasmanian Act,
- (f) section 11 of the Victorian Act,
- (g) sections 13 and 19 of the Western Australian Act.

6 Corresponding registrable persons

For the purposes of section 3C (4) of the Act, the following classes of persons are excluded from being corresponding registrable persons for the purposes of the Act:

- (a) any person who is a reportable offender within the meaning of the Tasmanian Act if the reportable offences for which the reportable offender has been sentenced are as follows and but for those offences the person would not be a reportable offender under that Act:
 - (i) offences under the *Sex Industry Offences Act 2005* of Tasmania (other than section 9),
 - (ii) offences under section 185 of the *Criminal Code Act 1924* of Tasmania,
 - (iii) offences of attempting, or of conspiracy or incitement, to commit an offence referred to in paragraph (i) or (ii),
- (b) any person who is a registrable offender within the meaning of the Victorian Act if the registrable offences for which the registrable offender has been sentenced are as follows and but for those offences the person would not be a registrable offender under that Act:
 - (i) class 3 or class 4 offences within the meaning of that Act,
 - (ii) offences under section 59 of the *Crimes Act 1958* of Victoria,
 - (iii) offences of attempting, or of conspiracy or incitement, to commit an offence referred to in paragraph (i) or (ii),

- (c) any person who is a reportable offender within the meaning of the Western Australian Act if the reportable offences for which the reportable offender has been sentenced are as follows and but for those offences the person would not be a reportable offender under that Act:
 - (i) class 3 offences within the meaning of that Act,
 - (ii) offences under section 329 (7) or (8) or 330 of the *Criminal Code Act Compilation Act 1913* of Western Australia,
 - (iii) offences of attempting, or of conspiracy or incitement, to commit an offence referred to in paragraph (i) or (ii).

Part 3 Exercise of functions

7 Exercise of sentencing court's functions by supervising authorities

For the purposes of section 22 (3) of the Act, the function of a sentencing court under section 4 (1) of the Act is to be exercised:

- (a) by the Director of the Pre-Trial Diversion of Offenders Program, in relation to any registrable person who is participating in that Program, and
- (b) by the Director-General of the Department of Health, in relation to any registrable person who is a correctional patient or a forensic patient, and
- (c) by the Director-General of the Department of Justice and Attorney General, in relation to any registrable person who is an inmate, and
- (d) by the Director-General of the Department of Human Services, in relation to any registrable person who is a detainee.

8 Exercise of sentencing court's functions by Commissioner of Police

(1) For the purposes of section 22 (3) of the Act, the function of a sentencing court under section 4 (1) of the Act with respect to the notification of a registrable person who is the subject of:

- (a) a supervised sentence referred to in section 5 (3) (a), (b) or (c) of the Act, or
- (b) an order under section 9 or 12 of the *Crimes (Sentencing Procedure) Act 1999*, or
- (c) an order under section 33 (1) (e) of the *Children (Criminal Proceedings) Act 1987*,

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

(2) Subject to section 4 (1) of the Act, the notification of a registrable person by the Commissioner of Police as to the matters referred to in subclause (1) may be done

when the person first attends a police station for the purpose of complying with his or her reporting obligations.

9 Exercise of other functions by Commissioner of Police

- (1) For the purposes of section 22 (3) of the Act, the functions of the Director-General of the Department of Justice and Attorney General under section 5 of the Act are to be exercised by the Commissioner of Police.
- (2) Subject to section 5 (1) of the Act, the notification of a registrable person by the Commissioner of Police may be done when the person first attends a police station for the purpose of complying with his or her reporting obligations.
- (3) This clause does not apply if:
 - (a) the Commissioner of Police notifies the Director-General of the Department of Justice and Attorney General that a registrable person may not have been given a statutory notice by the sentencing court, or
 - (b) the Director-General of the Department of Justice and Attorney General is of the opinion that a registrable person:
 - (i) is a child, or has a special need, and
 - (ii) is incapable of understanding a statutory notice given by a sentencing court.

Part 4 Statutory notices

10 Definition

In this Part:

statutory notice means a written notice that, under section 4, 4A, 5, 6, 7 or 7B of the Act, or under clause 13 of this Regulation, is required to be given to a registrable person in relation to:

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

11 Giving of statutory notices

- (1) A statutory notice is to be given personally, and not by post or other means.
- (2) As soon as practicable after a sentencing court or supervising authority gives a statutory notice, it must ensure that information as to when the notice was given is sent to the Commissioner of Police.
- (3) The Commissioner of Police is to keep a record of the giving of statutory notices and the receipt of information under subclause (2).

12 Contents of statutory notices

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

13 Additional written notices for certain correctional or forensic patients

- (1) This clause applies to and in respect of a correctional patient or a forensic patient to whom (in accordance with clause 7 (b)) the Director-General of the Department of Health is required to give a statutory notice under section 5 of the Act.
- (2) If the Director-General is of the opinion that the registrable person to whom such a notice relates is incapable of understanding the notice, the Director-General must cause a record of that fact to be kept.
- (3) As soon as practicable after forming the opinion that a registrable person in respect of whom such a record has been made is now capable of understanding a statutory

notice, the Director-General must ensure that a copy of the notice is again given to the registrable person.

(4) This clause does not cease to apply to a registrable person just because the Director-General takes measures in accordance with clause 14 to assist the person to understand:

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

and the Director-General must comply with the requirements of this clause in addition to taking those measures.

14 Registrable persons who are children or have special needs

(1) This clause applies to and in respect of any registrable person:

- (a) to whom a sentencing court, a supervising authority or the Commissioner of Police is required or empowered to give a statutory notice, and
- (b) who, in the opinion of the court, authority or Commissioner:
 - (i) is a child, or has a special need, and
 - (ii) is incapable of understanding a statutory notice.

(2) The supervising authority or Commissioner of Police must take such measures as are reasonably practicable to assist such a registrable person to understand:

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

(3) Such measures may include, but are not limited to, the following:

- (a) providing an oral explanation to the registrable person of those obligations and consequences,
- (b) providing an audio or video recorded explanation to the registrable person of those obligations and consequences,
- (c) providing the registrable person with a translation of the relevant statutory notice in a language with which the registrable person is familiar,
- (d) making available an interpreter to provide the registrable person with an oral explanation of the relevant statutory notice in a language with which the registrable person is familiar,

- (e) making available a person (being a person with experience in communicating with persons who have similar special needs) to communicate those obligations and consequences to the registrable person in a manner with which the registrable person is familiar,
 - (f) providing additional written notice to the registrable person in a form that can be more readily understood by persons who have similar special needs,
 - (g) arranging for a support person to be present when the relevant statutory notice is being given to the registrable person or when any other measure is being taken to communicate those obligations and consequences to the registrable person.
- (4) The obligations imposed by subclause (2) do not apply to a sentencing court.
- (5) In relation to each registrable person in respect of whom a sentencing court forms an opinion of the kind referred to in subclause (1) (b), the court must inform the Commissioner of Police and each relevant supervising authority of its opinion and of the reasons for its opinion.
- (6) In relation to each registrable person in respect of whom a supervising authority forms an opinion of the kind referred to in subclause (1) (b), the authority:
- (a) must inform the Commissioner of Police of its opinion and of the reasons for its opinion, and
 - (b) must keep a record of any measures taken by the authority under this clause in relation to the registrable person, and
 - (c) must inform the Commissioner of Police as to each occasion on which any such measures are taken and the nature of the measures taken.
- (7) In relation to each registrable person in respect of whom the Commissioner of Police forms an opinion of the kind referred to in subclause (1) (b), the Commissioner:
- (a) must inform each relevant supervising authority of the Commissioner's opinion and of the reasons for the Commissioner's opinion, and
 - (b) must keep a record of any measures taken by the Commissioner or by any relevant supervising authority under this clause in relation to the registrable person.

Part 5 Reporting requirements

15 Change of travel plans while out of New South Wales

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

be sent.

16 Manner in which registrable person may report

- (1) For the purposes of section 12A (2) of the Act, a report referred to in that subsection that is required to be made by a registrable person may be made by telephone to the Crime Manager for the Local Area Command within which the registrable person resides.
- (2) The report:
 - (a) may be made by the registrable person, or
 - (b) may be made, on the registrable person's behalf, by the registrable person's supervisor.
- (3) A supervisor may not make a report on a registrable person's behalf unless the registrable person has presented for the supervisor's inspection the documents that he or she would have had to present under section 12D of the Act had he or she made the report to a police officer in person.
- (4) In this clause:

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

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

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

17 Time for notification when reporting obligations are recommenced

For the purposes of section 20A (3) of the Act, the period of 7 days after the child protection prohibition order is made is prescribed.

Part 6 Miscellaneous

18 Class 2 offences

For the purposes of paragraph (k) of the definition of **Class 2 offence** in section 3 (1) of the Act, an offence against any of the following sections of the Criminal Code set out in the Schedule to the [Criminal Code Act 1995](#) of the Commonwealth is stated to be a Class 2 offence:

- (a) section 271.4,

- (b) section 271.7,
- (c) section 474.19,
- (d) section 474.20,
- (e) section 474.22,
- (f) section 474.23,
- (g) section 474.26,
- (h) section 474.27.

19 Supervising authorities

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

- (a) the Director of the Pre-Trial Diversion of Offenders Program, in relation to any registrable person who is participating in that Program,
- (b) the Director-General of the Department of Human Services, in relation to any registrable person who is a detainee or who is subject to any of the following that requires the person to submit to the supervision of the Director-General or an officer of the Department:
 - (i) an order under section 33 of the *Children (Criminal Proceedings) Act 1987*,
 - (ii) a condition of parole under the *Crimes (Sentencing Procedure) Act 1999*, the *Crimes (Administration of Sentences) Act 1999* or the *Parole Orders (Transfer) Act 1983*,
 - (iii) an order made by a foreign court,
- (c) the Director-General of the Department of Justice and Attorney General, in relation to any registrable person who is:
 - (i) an inmate, or
 - (ii) an existing licensee, or
 - (iii) subject to a periodic detention order, home detention order, community service order or good behaviour bond under the *Crimes (Sentencing Procedure) Act 1999*, or
 - (iv) subject to a condition or order referred to in paragraph (b) (ii) or (iii), that requires the person to submit to the supervision of the Director-General or of an officer of the Department of Justice and Attorney General, or

(v) subject to an extended supervision order under the *Crimes (Serious Sex Offenders) Act 2006*,

(d) the Director-General of the Department of Health, in relation to any registrable person who is a correctional patient or a forensic patient.

20 Foreign witness protection laws

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

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

(b) the *Witness Protection Act 1996* of the Australian Capital Territory,

(c) the *Witness Protection (Northern Territory) Act* of the Northern Territory,

(d) the *Witness Protection Act 2000* of Queensland,

(e) the *Witness Protection Act 1996* of South Australia,

(f) the *Witness Protection Act 2000* of Tasmania,

(g) the *Witness Protection Act 1991* of Victoria,

(h) the *Witness Protection (Western Australia) Act 1996* of Western Australia.

21 Child Protection Register

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

(a) the date of each occasion on which the registrable person has asked for the accuracy of his or her reporting period, as specified in the Register, to be checked,

(b) the date of each occasion on which the registrable person has been notified of the results of any such check.

22 Identification of parents, guardians, carers and nominees

(1) When a parent, guardian, carer or nominee of a registrable person attends a police station for the purpose of giving information pursuant to section 12A (4) or (5) of the Act, the person must advise the police officer concerned as to the capacity in which the person is attending and must produce the following documentation to verify his or her identity:

(a) a current driver photo licence issued in Australia and any other one of the identification documents specified in section 12D (2) of the Act, or

(b) if the person does not have such a licence, two of the documents specified in

section 12D (2) of the Act, at least one of which must be a document specified in section 12D (2) (a), (b), (c) or (d).

- (2) The police officer dealing with the registrable person under section 12 of the Act may waive the requirements of subclause (1) if the police officer is otherwise satisfied as to the identity of the person concerned.

23 Communication of information to support persons

- (1) This clause applies to and in respect of any registrable person who, in the opinion of the Commissioner of Police:
- (a) is a child, or has a disability, and
 - (b) is incapable of understanding:
 - (i) the registrable person's reporting obligations, or
 - (ii) the consequences that may arise if the registrable person fails to comply with those obligations.
- (2) The Commissioner of Police may inform a support person of those obligations and consequences, for the purpose only of enabling the support person to assist the registrable person to comply with them, but may not do so if of the opinion that the support person is unlikely to provide such assistance.
- (3) Any such information must be given to the support person personally or by means of "person-to-person" registered post.
- (4) Subclause (3) does not apply if the support person is a public authority that provides support, or supervises the provision of support, to the registrable person.
- (5) In this clause, **support person**, in relation to a registrable person, means:
- (a) a person nominated by the registrable person for the purposes of this clause, or
 - (b) if no such person is nominated:
 - (i) a parent, guardian or carer of the registrable person, or
 - (ii) a public authority that provides support, or supervises the provision of support, to the registrable person.

24 Savings

Any act, matter or thing, that immediately before the repeal of the [Child Protection \(Offenders Registration\) Regulation 2001](#), had effect under that Regulation, continues to have effect under this Regulation.