

Child Protection (Offenders Registration) Regulation 2015

[2015-422]



New South Wales

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New South Wales

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Child Protection (Offenders Registration) Regulation 2015



New South Wales

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Child Protection (Offenders Registration) Regulation 2015*.

2 Commencement

This Regulation commences on 1 September 2015 and is required to be published on the NSW legislation website.

Note—

This Regulation replaces the *Child Protection (Offenders Registration) Regulation 2009*, which is repealed on 1 September 2015 by section 10 (2) of the *Subordinate Legislation Act 1989*.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*.

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

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

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

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

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

4 Definition of “supervising authority”

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

- (a) the Director of the Pre-Trial Diversion of Offenders Program, in relation to any registrable person who is participating in that Program,
- (b) the Secretary of the Department of Justice, in relation to any registrable person who is:
 - (i) an inmate, or
 - (ii) an existing licensee, or
 - (iii) a detainee, or
 - (iv) subject to a home detention order, community service order or good behaviour bond under the *Crimes (Sentencing Procedure) Act 1999*, or
 - (v) subject to an extended supervision order under the *Crimes (High Risk Offenders) Act 2006*, or
 - (vi) subject to any of the following that requires the person to submit to the supervision of the Secretary of the Department of Justice or of another employee of the Department of Justice:
 - (A) an order under section 33 of the *Children (Criminal Proceedings) Act 1987*,
 - (B) 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*,
 - (C) an order made by a foreign court,
- (c) the Secretary of the Ministry of Health, in relation to any registrable person who is a forensic patient,
- (d) the Commissioner of Corrective Services NSW, in relation to any registrable person who is a correctional patient.

Part 2 Corresponding legislation

5 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 *Crimes (Child Sex Offenders) Act 2005* of the Australian Capital Territory,

- (b) the *Child Protection (Offender Reporting and Registration) Act* of the Northern Territory,
- (c) the *Child Protection (Offender Reporting) Act 2004* of Queensland,
- (d) the *Child Sex Offenders Registration Act 2006* of South Australia,
- (e) the *Community Protection (Offender Reporting) Act 2005* of Tasmania,
- (f) the *Sexual Offences Act 2003* of the United Kingdom,
- (g) the *Sex Offenders Registration Act 2004* of Victoria,
- (h) the *Community Protection (Offender Reporting) Act 2004* of Western Australia.

6 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 *Crimes (Child Sex Offenders) Act 2005* of the Australian Capital Territory,
- (b) section 13 of the *Child Protection (Offender Reporting and Registration) Act* of the Northern Territory,
- (c) section 13 of the *Child Protection (Offender Reporting) Act 2004* of Queensland,
- (d) section 9 of the *Child Sex Offenders Registration Act 2006* of South Australia,
- (e) sections 7 and 9 of the *Community Protection (Offender Reporting) Act 2005* of Tasmania,
- (f) sections 83–86 of the *Sexual Offences Act 2003* of the United Kingdom,
- (g) section 11 of the *Sex Offenders Registration Act 2004* of Victoria,
- (h) sections 13 and 19 of the *Community Protection (Offender Reporting) Act 2004* of Western Australia.

7 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.

Part 3 Exercise of functions

8 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 Secretary of the Ministry of Health, in relation to any registrable person who is a forensic patient, and
- (c) by the Secretary of the Department of Justice, in relation to any registrable person who is an inmate, and
- (d) by the Secretary of the Department of Justice, in relation to any registrable person who is a detainee, and
- (e) by the Commissioner of Corrective Services NSW, in relation to any registrable person who is a correctional patient.

9 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, 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.

10 Exercise of other functions by Commissioner of Police

- (1) For the purposes of section 22 (3) of the Act, the functions of the Secretary of the Department of Justice 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 Secretary of the Department of Justice that a registrable person may not have been given a statutory notice by the sentencing court, or
 - (b) the Secretary of the Department of Justice 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

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) If the Commissioner of Police is of the opinion that the registrable person to whom a statutory notice relates is incapable of understanding the notice, the Commissioner must cause a record of that fact to be kept.
- (4) The Commissioner of Police is to keep a record of:
 - (a) the giving of statutory notices, and
 - (b) 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 notice for certain forensic patients

- (1) If the Secretary of the Ministry of Health:
 - (a) is required by section 5 of the Act or clause 8 (b) to give a statutory notice to a forensic patient who is a registrable person, and
 - (b) is of the opinion that the forensic patient is incapable of understanding the notice, the Secretary must cause a record of that fact to be kept.
- (2) As soon as practicable after forming the opinion that the forensic patient in respect of whom such a record has been made is now capable of understanding a statutory notice, the Secretary of the Ministry of Health must ensure that a copy of the notice is again given to the forensic patient.
- (3) This clause does not cease to apply to a registrable person just because the Secretary of the Ministry of Health takes measures in accordance with clause 15 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 Secretary must comply with the requirements of this clause in addition to taking those measures.

14 Additional written notices for certain correctional patients

(1) If the Commissioner of Corrective Services NSW:

- (a) is required by section 5 of the Act or clause 8 (e) to give a statutory notice to a correctional patient who is a registrable person, and
- (b) is of the opinion that the correctional patient is incapable of understanding the notice,

that Commissioner must cause a record of that fact to be kept.

(2) As soon as practicable after forming the opinion that the correctional patient in respect of whom such a record has been made is now capable of understanding a statutory notice, the Commissioner of Corrective Services NSW must ensure that a copy of the notice is again given to the correctional patient.

(3) This clause does not cease to apply to a registrable person just because the Commissioner of Corrective Services NSW takes measures in accordance with clause 15 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 Commissioner must comply with the requirements of this clause in addition to taking those measures.

15 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 the 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 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

16 Additional relevant personal information to be reported

- (1) For the purposes of section 9 (1) (q) of the Act, the personal information that must be provided by a registrable person includes:
- (a) whether or not the person holds a current Australian passport or overseas passport, and
 - (b) if the person does hold such a passport:
 - (i) the issuing authority, or issuing country, of the passport, and
 - (ii) the name in which the passport is issued, and
 - (iii) the passport number, and
 - (iv) the date of issue and date of expiry of the passport.
- (2) For the purposes of section 9 (1) (q) of the Act, the personal information that must be provided by a registrable person who does not generally reside at any particular premises also includes details that are sufficient to identify the places where the person sleeps on a regular basis (for example, the name and address of any refuge, shelter or other similar premises, or any other specific place such as a park or beach, where the person sleeps on a regular basis).
- (3) For the purposes of subclause (2), **regular basis** means more than once in any period of 14 days.

17 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.

18 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.

19 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

20 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 any 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.

21 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.

22 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 the Commissioner is 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.

23 Amendment of Schedule 1 to [Child Protection \(Offenders Registration\) Act 2000 No 42](#)

Schedule 1 Scheduled agencies Insert after item 10:

- 11** Centrelink (which is part of the Department of Human Services of the Commonwealth).
- 12** Technical and Further Education Commission.

24 Savings

Any act, matter or thing that, immediately before the repeal of the [Child Protection \(Offenders Registration\) Regulation 2009](#), had effect under that Regulation, continues to have effect under this Regulation.