

Terrorism (High Risk Offenders) Regulation 2018

[2018-9]



New South Wales

Status Information

Currency of version

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Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

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

Notes—

- **Does not include amendments by**
[Statute Law \(Miscellaneous Provisions\) Act 2020 No 30](#), Sch 4.110 (not commenced — to commence on 22.1.2021)

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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Terrorism (High Risk Offenders) Regulation 2018



New South Wales

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Terrorism (High Risk Offenders) Regulation 2018*.

2 Commencement

This Regulation commences on 19 January 2018 and is required to be published on the NSW legislation website.

3 Definitions

(1) In this Regulation:

the Act means the *Terrorism (High Risk Offenders) Act 2017*.

Note—

The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

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

Part 2 Information about eligible offenders

4 Application of Part

This Part prescribes the circumstances in which, and the kind of offender information that, the Attorney General may require under section 58 of the Act.

5 Definitions

In this Part:

associate of an eligible offender means a person (other than a family member) with whom the offender has, or formerly had, a personal or business relationship.

educational institution means a school, college, university or other institution at which education or training is provided.

family member of an eligible offender means each of the following persons:

- (a) the offender's spouse,
- (b) a parent, step-parent or legal guardian of the offender or the offender's spouse,
- (c) a grandparent or step-grandparent of the offender or the offender's spouse,
- (d) a sibling, nephew, niece, uncle or aunt (or a half-sibling, step-sibling, step-nephew, step-niece, step-uncle or step-aunt) of the offender or the offender's spouse,
- (e) a child or grandchild (or step-child or step-grandchild) of the offender or the offender's spouse,
- (f) the spouse of anyone mentioned in paragraph (b), (c), (d) or (e).

financial institution means:

- (a) an authorised deposit-taking institution within the meaning of the [Banking Act 1959](#) of the Commonwealth, or
- (b) any other body that is regulated by the Australian Prudential Regulation Authority pursuant to section 3 (2) (a)–(e) of the [Australian Prudential Regulation Authority Act 1998](#) of the Commonwealth.

medical practitioner means a person registered under the Health Practitioner Regulation National Law to practise as a medical practitioner (other than as a student).

medical treatment means treatment by a medical practitioner in the course of the practice of medicine or surgery (including psychological or psychiatric treatment).

public authority and **public official** have the same meanings as in the [Independent Commission Against Corruption Act 1988](#).

relevant official, in relation to an institution (whether educational, financial or religious), club, association or other organisation, means a chief executive officer, secretary or other person (however described) responsible for the day-to-day management of the institution, club, association or other organisation.

religious institution means a religious body or a religious organisation in respect of which a proclamation is in force under section 26 of the [Marriage Act 1961](#) of the Commonwealth or a religious body, or an organisation or office, within a denomination in respect of which such a proclamation is in force.

spouse includes a former spouse, a de facto partner and a former de facto partner.

6 Prescribed circumstances

- (1) The Attorney General may require offender information about an eligible offender of the kind prescribed by clause 7 from a person (the **required person**) under section 58 of the Act only if the Attorney General is satisfied that:
- (a) the information is required for use in:
 - (i) determining whether or not to make an application for a declaration under section 12, or an order under Part 2 or 3, of the Act, or
 - (ii) proceedings under the Act, and
 - (b) the required person is a compellable person, and
 - (c) if the required person is neither a public authority nor a public official—the eligible offender could pose an unacceptable risk of committing a future serious terrorism offence.
- (2) Each of the following is a **compellable person**:

Item	Prescribed person
1	the Director of Public Prosecutions
2	the Commissioner of Corrective Services
3	the Commissioner of Police
4	the Commissioner of the New South Wales Crime Commission
5	the Secretary of the State Parole Authority
6	the Secretary of the Department of Family and Community Services
7	the Secretary of the Department of Justice
8	the Chairperson of the Serious Offenders Review Council
9	the Secretary of the Ministry of Health
10	the Chief Executive of Justice Health and Forensic Mental Health Network
11	the Registrar of Victims Services
12	the Executive Director of Juvenile Justice
13	a relevant official of the Serious Young Offenders Review Panel
14	the principal registrar of the Civil and Administrative Tribunal
15	the registrar of the Mental Health Review Tribunal

- 16 the Children's Guardian
- 17 a police officer
- 18 the Chief Executive of Roads and Maritime Services
- 19 the Secretary of the Department of Transport
- 20 the Secretary of the Department of Education
- 21 a financial institution
- 22 an associate or family member of the eligible offender
- 23 a carriage service provider within the meaning of the [Telecommunications Act 1997](#) of the Commonwealth
- 24 an internet service provider within the meaning of the [Telecommunications Act 1997](#) of the Commonwealth
- 25 a medical practitioner or former medical practitioner involved in providing medical treatment of the eligible offender (whether currently or previously)
- 26 a relevant official of an educational institution
- 27 a relevant official of a religious institution
- 28 a relevant official of any club, association or other organisation of which the eligible offender is or has been a member
- 29 an employer or former employer of the eligible offender
- 30 a chief executive of a statutory health organisation within the meaning of the [Health Services Act 1997](#)
- 31 a licensee within the meaning of the [Private Health Facilities Act 2007](#)
- 32 a chief executive officer, within the meaning of the [Public Health Act 2010](#), of a public hospital

(3) However, a compellable person does not include another Australian jurisdiction or a person exercising functions for or on behalf of another Australian jurisdiction.

7 Prescribed offender information

(1) The Attorney General may require only the following kinds of offender information about an eligible offender under section 58 of the Act:

Item	Prescribed information
1	psychological or other medical reports about the eligible offender (including documents about treatment programs in which the eligible offender has participated)

- 2 custodial records about the eligible offender (including documents containing information about intervention programs in which the eligible offender has participated)
- 3 parole and community supervision records about the eligible offender
- 4 reports, records or other documents about applications for compensation made in respect of the eligible offender
- 5 reports, records or other documents about the eligible offender's criminal history (including prior convictions and findings of guilt in respect of offences committed in New South Wales or elsewhere and sentencing remarks by courts)
- 6 reports, records or other documents about data and telephone usage and call charges of the eligible offender
- 7 reports, records or other documents containing information about the eligible offender's membership, or the membership of associates of the eligible offender, in a club, association or other organisation
- 8 reports, records or other documents about the eligible offender's educational history (including the offender's behaviour at an educational institution)
- 9 reports, records or other documents containing information about the eligible offender's work and employment history (including the offender's behaviour at work)
- 10 reports, records or other documents containing information about the religious beliefs or ideologies of the eligible offender or associates of the eligible offender
- 11 reports, records or other documents containing financial information relevant to offences committed, or the funding of actual or potential terrorism activities, by the eligible offender
- 12 reports, records or other documents containing information about the behaviour or patterns of behaviour of the eligible offender while in custody
- 13 letters or correspondence of the eligible offender to an associate or family member
- 14 books, magazines, pamphlets or other publications possessed by the eligible offender containing material advocating support for engaging in any terrorist acts
- 15 information about material posted on the internet (including on social media websites) by the eligible offender advocating support for engaging in any terrorist acts

16 reports, records or other documents containing information about the participation of the eligible offender in programs or intervention plans for the assistance of individuals identified as being at risk of engaging in violent extremism

(2) The only type of information that the Attorney General can require is pre-existing documents.

Part 3 Miscellaneous

8 Prescribed terrorism intelligence authorities

Each of the following authorities or agencies are prescribed for the purposes of the definition of **prescribed terrorism intelligence authority** in section 4 (1) of the Act:

Item	Prescribed authority or agency
1	Independent Commission Against Corruption of New South Wales (including its Inspector)
2	Law Enforcement Conduct Commission of New South Wales (including its Inspector)
3	New South Wales Crime Commission
4	NSW Police Force
5	Corrective Services NSW

9 Relevant experts

(1) Each of the following kinds of bodies of knowledge are prescribed for the purposes of the definition of **relevant expert** in section 4 (1) of the Act:

- (a) knowledge about the assessment of high risk offenders (including the administration of psychometric assessment instruments and recidivism issues),
- (b) knowledge about the formation and operation of terrorist groups (including recruitment practices, ideology, financing or training),
- (c) knowledge obtained as a result of being trained in the use of the Violent Extremism Risk Assessment Version 2-Revised (VERA-2R) risk assessment tool or any other tool or process developed specifically to assess the risk of an offender committing a terrorism offence on release into the community.

(2) In this clause:

high risk offender means a person posing a risk of engaging in, or inciting other persons to engage in, activities that constitute a serious threat to the peace, order or good government of the State or any other place.

terrorism offence means a terrorism offence within the meaning of the *Crimes Act 1914* of the Commonwealth (including a serious terrorism offence).

10 Independent third party representatives

A person is qualified to provide independent and impartial representation for eligible offenders for the purposes of Division 5.3 of the Act if:

- (a) the person is a retired judicial officer, or is qualified to be appointed as a judicial officer, of any Australian jurisdiction, and
- (b) the Supreme Court is satisfied that the person understands any requirements imposed by or under a law of New South Wales or the Commonwealth with respect to accessing, storing, handling and destroying the terrorism intelligence concerned, and
- (c) the Supreme Court is satisfied that the person will maintain the confidentiality of the terrorism intelligence concerned, and
- (d) the person takes reasonable steps to avoid any conflict of interest (real or apparent) in connection with the exercise of the functions of an independent third party representative, and
- (e) the person has been given a security clearance at an appropriate level by the Commonwealth (but only if the Supreme Court so requires).