



Community Protection (Offender Reporting) Act 2004

## Community Protection (Offender Reporting) Amendment Regulations 2013

Made by the Governor in Executive Council.

### 1. Citation

These regulations are the *Community Protection (Offender Reporting) Amendment Regulations 2013*.

### 2. Commencement

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — when the *Community Protection (Offender Reporting) Amendment Act (No. 2) 2012* section 33 comes into operation.

### 3. Regulations amended

These regulations amend the *Community Protection (Offender Reporting) Regulations 2004*.

### 4. Regulation 3 amended

- (1) In regulation 3 insert in alphabetical order:

*analyst* means a person authorised under regulation 26H(2);

*authorised breath tester* has the meaning given in regulation 26D(1);

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**authorised sample collector** means a medical practitioner, a registered nurse or a phlebotomist;

**blood alcohol content** means the concentration of alcohol in a person's blood, expressed in grams of alcohol per 100 ml of blood;

**blood sampling equipment** has the meaning given in regulation 26F(1);

**Breath Analysis Regulations** means the *Road Traffic (Breath Analysis) Regulations 1975*;

**breath test** means a test of a sample of a reportable offender's breath under section 94B(2)(a) of the Act by means of breath testing equipment;

**breath testing equipment** means a type of apparatus that is approved under the *Road Traffic Act 1974* section 72(2)(a) or (b);

**medical practitioner** means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the medical profession;

**phlebotomist** means the holder of a current certificate of competency in phlebotomy issued by an Australian public hospital or teaching facility;

**registered nurse** means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the nursing and midwifery profession whose name is entered on the Register of Nurses Division 1 kept under that Law as a registered nurse;

**self-testing breath analysing equipment** means breath testing equipment of a type that is designated as self-testing apparatus under the *Road Traffic Act 1974* section 72(2a);

**urine sampling equipment** has the meaning given in regulation 26F(1).

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- (2) In regulation 3 in the definition of *recognised order* delete “prohibition” and insert:

protection

- (3) In regulation 3 in the definition of *relevant court*:

- (a) delete “prohibition” and insert:

protection

- (b) in paragraph (b) delete “Court.” and insert:

Court;

**5. Regulation 15 deleted**

Delete regulation 15.

**6. Regulation 17 amended**

After regulation 17(bc) insert:

- (bd) an offence under *The Criminal Code* section 320(4);
- (be) an offence under *The Criminal Code* section 320(5);
- (bf) an offence under *The Criminal Code* section 320(6);

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**7. Regulation 18 amended**

In regulation 18:

- (a) in paragraph (g) delete “Division 6.” and insert:

Division 6;

- (b) after paragraph (g) insert:

- (h) an intensive youth supervision order under the *Young Offenders Act 1994* Part 7 Division 7 that is made without imposing on the offender a sentence of detention.

**8. Regulation 21 amended**

In regulation 21 delete “prohibition” (first occurrence) and insert:

protection

Note: The heading to amended regulation 21 is to read:

**Corresponding protection orders (s. 85)**

**9. Regulation 22 amended**

In regulation 22(1) and (2) delete “prohibition” and insert:

protection

Note: The heading to amended regulation 22 is to read:

**Application for recognition of corresponding protection orders (s. 108(2)(a))**

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**r. 10****10. Regulation 23 amended**

In regulation 23(1) and (2) delete “prohibition” and insert:

protection

Note: The heading to amended regulation 23 is to read:

**Recognition of corresponding protection orders (s. 108(2)(b))**

**11. Regulation 24 amended**

In regulation 24(1) and (2) delete “prohibition” (each occurrence).

Note: The heading to amended regulation 24 is to read:

**Effect of recognition of corresponding protection orders  
(s. 108(2)(d))**

**12. Regulations 26A to 26K inserted**

After regulation 25 insert:

**26A. Authorisation of absences from assessment or treatment (s. 94A(5)(a))**

- (1) A reportable offender who is required by an order of the Commissioner to undergo assessment or treatment under section 94A(1) of the Act may request the Commissioner to authorise his or her absence from assessment or treatment if —
  - (a) the reportable offender has an illness or an injury which prevents him or her from undergoing the assessment or treatment; or
  - (b) the reportable offender is otherwise unable to attend the assessment or treatment.

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- (2) The Commissioner may authorise an absence in accordance with a request under subregulation (1)(a) if —
- (a) the reportable offender provides the Commissioner with a medical certificate from a medical practitioner —
    - (i) describing the reportable offender's illness or injury; and
    - (ii) stating the period of time in which the reportable offender is expected to be ill or injured;
  - and
  - (b) the Commissioner is satisfied that the reportable offender is ill or injured; and
  - (c) the Commissioner is satisfied that the illness or injury prevents the reportable offender from undergoing the assessment or treatment.
- (3) The Commissioner may authorise an absence in accordance with a request under subregulation (1)(b) if the Commissioner is satisfied that there are reasonable grounds for the absence.
- (4) A request made under subregulation (1) and an authorisation given under subregulation (2) or (3) must be in writing.
- (5) The Commissioner may authorise an absence under this regulation for the whole period of the assessment or treatment or for part of the period of assessment or treatment.
- (6) If required by the Commissioner to do so, a reportable offender making a request under this regulation must provide the Commissioner with further information in relation to the request.

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- (7) The Commissioner may, by written notice given to the reportable offender, withdraw an authorisation given under subregulation (2) or (3).

**26B. Reports by persons providing assessment or administering treatment (s. 94A(5)(c))**

- (1) A person providing assessment for the purposes of a protection order under section 94A of the Act must report to the Commissioner —
- (a) if treatment is recommended for the reportable offender, the type of treatment recommended; and
  - (b) the reason why the recommended treatment is, or may be, appropriate.
- (2) A person providing a report to the Commissioner under subregulation (1) must provide the report as soon as reasonably practicable after making the assessment.
- (3) A person administering treatment for the purposes of a protection order under section 94A of the Act must report to the Commissioner —
- (a) the type of treatment being administered; and
  - (b) whether the intended outcome of the treatment is being, or has been, achieved.
- (4) A person providing a report to the Commissioner under subregulation (3) must provide the report as soon as reasonably practicable —
- (a) after receiving a request for the report from the Commissioner; or
  - (b) after the completion of the course of treatment.
- (5) A report provided under this regulation must be in writing.

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**26C. Manner of making requirement to give a sample (s. 94B(8)(a))**

- (1) In this regulation —  
*approved form* means a form approved by the Commissioner.
- (2) A requirement under section 94B(2)(a) of the Act in relation to a breath test may be made by an authorised police officer verbally directing the reportable offender to give a sample of his or her breath for the purposes of the breath test.
- (3) Without limiting section 94B(3) of the Act, a requirement under section 94B(2)(b) of the Act in relation to blood or urine analysis may be made —
  - (a) by an authorised police officer verbally directing the reportable offender to give a sample of his or her blood or urine for the purposes of the analysis; or
  - (b) by an authorised police officer giving a notice in the approved form to the reportable offender.

**26D. Manner of conducting breath test (s. 94B(8)(b))**

- (1) In this regulation —  
*authorised breath tester* means a person certified under a written law by the chief executive officer of the Chemistry Centre (WA) as being competent to operate all types of breath testing equipment.
- (2) A breath test may be conducted only by an authorised breath tester in the presence of an authorised police officer.



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- (3) A sample of a reportable offender's breath may only be tested for the purposes of a breath test —
  - (a) by breath testing equipment, other than self-testing breath analysing equipment, that is operated in accordance with the instructions set out in the Breath Analysis Regulations Second Schedule Part 1; or
  - (b) by self-testing breath analysing equipment that is operated in accordance with the instructions set out in the Breath Analysis Regulations Second Schedule Part 3.
- (4) A reportable offender who is directed under regulation 26C(2) to give a sample of breath for a breath test must comply with the directions of an authorised breath tester in relation to the giving of the sample.
- (5) A person who fails to comply with subregulation (4) commits an offence.  
Penalty: a fine of \$2 000.
- (6) As soon as is practicable after conducting a breath test, an authorised breath tester must give a written certificate of the result of the breath test to the reportable offender to whom the result relates.
- (7) Subregulation (6) does not apply to a breath test conducted by self-testing breath analysing equipment.
- (8) A certificate given under subregulation (6) must be in the form of Schedule 1 Form 4.

**26E. Authorised sample collectors to take or collect samples (s. 94B(8)(b))**

- (1) If a reportable offender is required under section 94B(2)(b) of the Act to give a sample of his or

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her blood or urine for analysis, the sample may be taken or collected only by an authorised sample collector.

- (2) The taking or collecting of a sample under section 94B(2)(b) of the Act must be done by the least painful method that is known or available to the person taking or collecting the sample.

**26F. Manner of taking sample of blood or collecting sample of urine (s. 94B(8)(b))**

- (1) In this regulation —

***blood sampling equipment*** means —

- (a) a sterile syringe with a capacity of approximately 30 ml; and
- (b) a sterile needle to be attached to the syringe; and
- (c) 2 sterile bottles, each of which —
  - (i) is numbered with the serial number of the package referred to in regulation 26G(2)(c); and
  - (ii) contains approximately 25 mg of potassium oxalate and 10 mg of sodium fluoride; and
  - (iii) is closed with a cap fitted with a rubber disk;

and

- (d) a container containing a solution of one part mercury bichloride to 1 000 parts distilled water; and
- (e) 2 swabs of cotton wool; and
- (f) a pair of disposable gloves;

***sample*** means a sample of blood or urine;

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***urine sampling equipment*** means —

- (a) one container for collecting urine; and
  - (b) 2 specimen containers; and
  - (c) one pair of disposable gloves.
- (2) An authorised sample collector may take or collect a sample under section 94B(2)(b) of the Act only if the authorised police officer who requires the reportable offender to give the sample has given the authorised sample collector a request in the form of Schedule 1 Form 5.
- (3) A reportable offender who is required to give a sample must comply with the directions of an authorised sample collector in relation to the taking or collecting of the sample.
- (4) A person who fails to comply with subregulation (3) commits an offence.  
Penalty: a fine of \$2 000.
- (5) The authorised sample collector must take or collect a sufficient quantity of a sample from the reportable offender to enable —
- (a) approximately one half of the sample to be given to the reportable offender; and
  - (b) approximately one half of the sample to be given to an authorised police officer; and
  - (c) an analysis of the samples referred to in paragraphs (a) and (b) to be made.
- (6) A sample of blood may be taken only by means of blood sampling equipment.

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- (7) A sample of urine may be collected only by means of urine sampling equipment.

**26G. Collection of samples (s. 94B(8)(e))**

- (1) This regulation applies to a sample of blood or urine taken or collected in accordance with regulation 26F.
- (2) If the sample taken is blood, the authorised sample collector must —
- (a) discharge approximately one half of the blood into one of the 2 sterile bottles in the blood sampling equipment and the balance of the blood into the second of those bottles; and
  - (b) seal each of the sterile bottles; and
  - (c) place each sterile bottle into its own serially numbered package.
- (3) If the sample collected is urine, the authorised sample collector must —
- (a) pour approximately one half of the urine into one of the specimen containers and the balance of the urine into the other specimen container; and
  - (b) seal each of the specimen containers; and
  - (c) place each specimen container into its own serially numbered package.
- (4) The authorised sample collector must —
- (a) seal each of the serially numbered packages by fixing a certificate, completed and signed by the authorised sample collector, over the opening of each package; and

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- (b) give one of the sealed serially numbered packages referred to in paragraph (a) to the reportable offender from whom the sample was taken; and
  - (c) give the other sealed serially numbered package to an authorised police officer.
- (5) The certificate of the authorised sample collector referred to in subregulation (4)(a) must be in the form of Schedule 1 Form 6.

**26H. Authorisation of persons as analysts (s. 94B(8)(c))**

- (1) This regulation applies to —
- (a) in relation to the determination of the blood alcohol content in a sample of blood taken in accordance with regulation 26F, a person who has been certified by the chief executive officer of the Chemistry Centre (WA) as an analyst under the *Road Traffic Act 1974* section 65; or
  - (b) in relation to the determination of whether drugs are present in a sample of blood or urine taken or collected in accordance with regulation 26F, a person who has been certified by the chief executive officer of the Chemistry Centre (WA) as a drugs analyst under the *Road Traffic Act 1974* section 65.
- (2) A person to whom this regulation applies is authorised as an analyst for the purposes of section 94B of the Act.

**26I. Reporting results of analysis (s. 94B(8)(d))**

- (1) This regulation applies to a sample of blood or urine taken or collected in accordance with regulation 26F.

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- (2) When a sample of blood or urine has been analysed by an analyst to determine the blood alcohol content or the presence of drugs, the analyst must give a written certificate of the result of the analysis to —
  - (a) the reportable offender to whom the result relates; and
  - (b) the Commissioner.
- (3) A certificate given under subregulation (2) must be in the form of Schedule 1 Form 7.

**26J. Testing of equipment used in conducting breath tests (s. 94B(8)(g))**

Breath testing equipment, other than self-testing breath analysing equipment, is to be taken to be in proper working order if the breath testing equipment is in proper working order in accordance with the Breath Analysis Regulations regulation 6.

**26K. Certificate evidence (s. 94B(8)(i))**

In a proceeding for an offence against section 101 of the Act, and in the absence of proof to the contrary, any of the following certificates is evidence of the matters certified in it —

- (a) a certificate purporting to be signed by the chief executive officer of the Chemistry Centre (WA) certifying that a named person is, or was at a particular time, an authorised breath tester;
- (b) a certificate purporting to be signed by the chief executive officer of the Chemistry Centre (WA) certifying that a named person is, or was at a particular time, an analyst;

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- (c) a certificate purporting to be signed by an authorised breath tester certifying —
  - (i) that a sample of breath was given by a named person; and
  - (ii) that the sample was given at a specified date and time; and
  - (iii) that the sample was tested in accordance with regulation 26D; and
  - (iv) the result obtained from the test;
- (d) a certificate purporting to be signed by an authorised sample collector certifying that a sample of blood or urine —
  - (i) was taken or collected from a named person; and
  - (ii) was taken or collected at a specified date and time; and
  - (iii) was taken or collected in accordance with regulation 26F; and
  - (iv) was sealed in a package with a specified serial number in accordance with regulation 26G;
- (e) a certificate purporting to be signed by an analyst certifying —
  - (i) the name of the analyst who analysed the sample of blood or urine; and
  - (ii) the kind of sample that was analysed; and
  - (iii) the result obtained from the analysis of the sample.

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**13. Schedule 1 Form 1 amended**

In Schedule 1 Form 1 under the heading “**Order sought**” delete “**prohibition**”.

**14. Schedule 1 Form 2 amended**

In Schedule 1 Form 2 under the heading “**Order sought**”:

- (a) delete “prohibition”;
- (b) delete “**prohibition**”.

**15. Schedule 1 Form 3 amended**

- (1) In Schedule 1 in the heading to Form 3 delete “**prohibition**”.
- (2) In Schedule 1 Form 3 delete “**prohibition**”.

**16. Schedule 1 Forms 4 to 7 inserted**

In Schedule 1 after Form 3 insert:

**4. Certificate of authorised breath tester (r. 26D(8))**

*Community Protection (Offender Reporting) Act 2004*

**Certificate of authorised breath tester**

I, ....., an authorised breath tester, as defined in the *Community Protection (Offender Reporting) Regulations 2004* regulation 26D(1) certify that —

- 1. .... provided a  
[Name of person from whom sample was taken]  
sample of breath on ..... at .....  
[date] [time]
- 2. I was at the material time an authorised breath tester.



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3. The sample of breath given was tested by apparatus that I operated and that apparatus was breath testing equipment as defined in the *Community Protection (Offender Reporting) Regulations 2004* regulation 3.
4. I operated the breath testing equipment in the manner prescribed in regulation 26D and the regulations relating to the use of breath testing equipment of the relevant type were complied with.
5. The breath testing equipment indicated a result at the conclusion of the test.
6. I completed, signed and handed to the person named above a copy of this certificate.
7. The test result obtained from the test referred to in this certificate was .....

.....  
 [Signature of authorised breath tester]

.....  
 [Date]

**5. Request to take sample of blood or urine (r. 26F(2))**

<i>Community Protection (Offender Reporting) Act 2004</i>	
<b>Request to take sample of blood or urine</b>	
<b>To</b>	[Name of medical practitioner, registered nurse or phlebotomist]
<b>Place where sample is to be taken</b>	[Name of hospital/medical centre/place]

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<b>Date and time sample is to be taken</b>	
<b>Request for sample to be taken</b>	<p>Under the <i>Community Protection (Offender Reporting) Regulations 2004</i> regulation 26F(2), I request you, a</p> <p>.....</p> <p><i>[Insert description, e.g. medical practitioner, nurse practitioner, phlebotomist]</i></p> <p>to take —</p> <p>(a) a blood sample*;</p> <p>(b) a urine sample*;</p> <p style="padding-left: 2em;">[* delete inapplicable]</p> <p>from —</p> <p>.....</p> <p><i>[Name of person from whom sample is to be taken or collected]</i></p> <p>in accordance with the <i>Community Protection (Offender Reporting) Regulations 2004</i>.</p>
<b>Date form was issued</b>	.....
<b>Authorised police officer</b>	<p>.....</p> <p><i>[Signature]</i></p> <p>.....</p> <p><i>[Date]</i></p> <p>Name .....</p> <p>Rank and Number .....</p> <p>Telephone no. ....</p> <p>Ref no. ....</p>

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**6. Certificate of authorised sample collector (r. 26G(5))***Community Protection (Offender Reporting) Act 2004***Certificate of authorised sample collector**

Under the *Community Protection (Offender Reporting) Act 2004*  
 section 94B(2)(b), I, a qualified

.....  
 [Insert description, e.g. medical practitioner, registered nurse or  
 phlebotomist]

took —

- (a) a blood sample\*;
- (b) a urine sample\*;  
 [\*delete inapplicable]

from .....  
 [Name of person from whom sample was taken or collected]

at .....

.....  
 [Place where sample was taken or collected]

in accordance with the *Community Protection (Offender Reporting)  
 Regulations 2004*.

The sample was taken or collected at .....  
 [Insert time, day, month and year]

The sample, or a portion of that sample, is contained and sealed in the  
 sample container(s) numbered .....  
 [Number on sample container(s)]

The equipment used for the purpose of taking or collecting the sample  
 of blood\*/urine\* [\* delete inapplicable] was contained in an equipment  
 kit serially numbered ..... and that equipment kit  
 was sealed and intact ..... [Number on equipment kit] before I  
 opened it.

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The sample was taken or collected in the manner prescribed in the *Community Protection (Offender Reporting) Regulations 2004* regulation 26G.

.....  
[Signature and qualification]

.....  
[Date]

Witnessed by .....  
[Authorised police officer's signature]  
[Rank and number]

.....  
[Date]

**7. Certificate of analyst (r. 26I(3))**

*Community Protection (Offender Reporting) Act 2004*

**Certificate of analyst**

Laboratory reference no. ....

Police reference no. ....

I, ....., being an authorised analyst referred to in the *Community Protection (Offender Reporting) Regulations 2004* regulation 26H(2), certify that —

- (a) the Chemistry Centre (WA), Perth received for analysis the following sample —
    - (i) a blood sample\*;
    - (ii) a urine sample\*;
- [\* delete inapplicable]

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from\*/by\* .....

on .....

and

(b) the thing referred to in paragraph (a) of this certificate was analysed by [*insert details of method of analysis*]

.....  
.....  
.....;

and

(c) the following is the result of the analysis —

.....  
.....  
.....

Certified on ..... at .....  
[*date*] [ *time*]

.....  
[*Signature of analyst*]

.....  
[*Address of analyst*]

By Command of the Governor,

N. HAGLEY, Clerk of the Executive Council.