



Western Australia

# **Community Protection (Offender Reporting) Act 2004**

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Western Australia

# Community Protection (Offender Reporting) Act 2004

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**Defined Terms**



Western Australia

## **Community Protection (Offender Reporting) Act 2004**

**An Act to require certain offenders who commit sexual or certain other serious offences to keep police informed of their whereabouts and other personal details for a period of time to reduce the likelihood that they will re-offend and to facilitate the investigation and prosecution of any future offences that they may commit, to enable courts to make orders prohibiting certain offenders from engaging in specified conduct, and for related purposes.**

## **Part 1 — Preliminary matters**

### **1. Short title**

This Act may be cited as the *Community Protection (Offender Reporting) Act 2004*<sup>1</sup>.

### **2. Commencement**

- (1) This Act comes into operation on a day fixed by proclamation<sup>1</sup>.
- (2) Different days may be fixed under subsection (1) for different provisions.

### **3. Terms used**

In this Act, unless the context otherwise requires —

***approved place*** means a place approved by the Commissioner under section 34(1)(b);

***authorised person*** means a police officer or a person, or a person who falls within a class of persons, prescribed by the regulations;

***child*** means a person who is under 18 years of age;

***Class 1 offence*** has the meaning given to that term in section 10;

***Class 2 offence*** has the meaning given to that term in section 11;

***Class 3 offence*** has the meaning given to that term in section 12;

***commencement day*** means the day on which section 24 comes into operation;

***Commissioner*** means the person holding or acting in the office of Commissioner of Police under the *Police Act 1892*;

***community order*** means —

- (a) a community based order or intensive supervision order made under the *Sentencing Act 1995*; or

- (b) a youth community based order or intensive youth supervision order made under the *Young Offenders Act 1994*;

**corresponding Act** means a law of a foreign jurisdiction that —

- (a) 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) is prescribed by the regulations to be a corresponding Act for the purposes of this Act;

**corresponding offender reporting order** means an order made under a corresponding Act that falls within a class of orders that are prescribed by the regulations to be corresponding offender reporting orders for the purposes of this Act;

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

**corresponding reportable offence** means an offence that is a reportable offence for the purposes of a corresponding Act but is not a reportable offence as defined in section 9;

**corresponding reportable offender** has the meaning given to that term in section 7;

**court** includes a court (however described) of a foreign jurisdiction;

**detainee** means a person who is detained in a detention centre, as defined in the *Young Offenders Act 1994* section 3;

**disability**, in relation to a person, means —

- (a) any defect or disturbance in the normal structure or functioning of the person's body;
- (b) any defect or disturbance in the normal structure or functioning of the person's brain; or

- (c) any illness or condition that impairs the person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour,

whether arising from a condition subsisting at birth or from an illness or injury;

**existing controlled reportable offender** means a person who, as a result of having been sentenced for a reportable offence, was under the supervision of a supervising authority or any other person immediately before the commencement day and includes a person who was in government custody in respect of a reportable offence at that time;

**existing licensee** means a person who is released under —

- (a) a re-entry release order made under the *Sentence Administration Act 2003*; or
- (b) a supervised release order made under the *Young Offenders Act 1994*,

and includes a person who has a similar status under the laws of a foreign jurisdiction;

**finding of guilt** has the meaning given to that term in section 4;

**foreign jurisdiction** means a jurisdiction other than Western Australia (including jurisdictions outside Australia);

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

**government custody** means —

- (a) custody as a prisoner or detainee or as a mentally impaired accused where the custody order made under the *Criminal Law (Mentally Impaired Accused) Act 1996*<sup>2</sup> Part 4, as originally made, requires the person 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);

**mentally impaired accused** means a person who is subject to a custody order made under the *Criminal Law (Mentally Impaired Accused) Act 1996*<sup>2</sup> Part 4;

**New South Wales Act** means the *Child Protection (Offenders Registration) Act 2000* of New South Wales;

**New South Wales reportable offender** has the meaning given to that term in section 8;

**offender reporting order** means an order made under section 13 and includes a corresponding offender reporting order;

**parole** means parole under an order made under the *Sentence Administration Act 2003* and includes parole under an equivalent order made under the laws of a foreign jurisdiction;

**past offender reporting order** means an order made under section 19;

**personal details** means the information listed in section 26(1);

**personal information** means information about an individual whose identity is apparent or can reasonably be ascertained from the information;

**prisoner** has the meaning given to that term in the *Prisons Act 1981* section 3;

**prohibition order** has the meaning given to that term in section 85;

**public authority** means —

- (a) a department of the Public Service;
- (b) a local government or regional local government; or
- (c) any other body, whether incorporated or not, that is established or continued for a public purpose under a written law and that, under the authority of a written law, performs a statutory function on behalf of the State;

**Register** means the Community Protection Offender Register established under section 80;

**reportable offence** has the meaning given to that term in section 9;

**reportable offender** has the meaning given to that term in section 6;

**reporting obligations**, in relation to a reportable offender, means the obligations imposed on him or her by Part 3;

**reporting period** means the period, as determined under Part 3 Division 5, during which a reportable offender must comply with his or her reporting obligations;

**sentence** includes —

- (a) an exercise of power under the *Sentencing Act 1995* Part 6;
- (b) an order under the *Sentencing Act 1995* Part 7;
- (c) an exercise of power under the *Young Offenders Act 1994* section 66, 67, 69 or 70;
- (d) a custody order made under the *Criminal Law (Mentally Impaired Accused) Act 1996* Part 4;
- (e) a special order made under the *Young Offenders Act 1994* section 126; and
- (f) anything prescribed by the regulations to be a sentence for the purposes of this definition,

and any sentence or equivalent exercise of power or order under the laws of a foreign jurisdiction;

**strict government custody**, in relation to a reportable offender, means custody as a prisoner, detainee or mentally impaired accused, but does not include such custody if the reportable offender —

- (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 during any such period under the immediate supervision of an officer of a supervising authority or other person having custody of the reportable offender;

**supervising authority**, in relation to a class of reportable offenders, means the authority prescribed by the regulations as the supervising authority of that class of reportable offenders;

**young reportable offender** means a reportable offender who is a child.

[Section 3 amended by No. 47 of 2011 s. 15.]

#### 4. **Meaning of finding of guilt**

- (1) For the purposes of this Act, a reference to a finding of guilt (however expressed) in relation to an offence 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, if 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 finding under *The Criminal Code* section 27 that the person is not guilty of the offence on account of unsoundness of mind or a finding under equivalent provisions of the laws of a foreign jurisdiction.
- (2) 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.

#### 5. **Other reference provisions**

- (1) 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 against the same person.
- (2) A reference in this Act to doing a thing **in person** is a reference to doing the thing by personal attendance at a place, and it is not sufficient to attend the place by telephone or by any other electronic means.

## **Part 2 — Offenders to whom Act applies**

### **Division 1 — General**

#### **6. Reportable offenders**

- (1) Subject to subsections (4) and (5), a reportable offender is a person whom a court, on or after the commencement day, sentences for a reportable offence.
- (2) A person is also a reportable offender if —
  - (a) the person was sentenced for a reportable offence before the commencement day and is an existing controlled reportable offender in respect of that offence; or
  - (b) if paragraph (a) does not apply, the person —
    - (i) was sentenced before the commencement day for 2 or more reportable offences; and
    - (ii) at least one of those offences was committed within 8 years before that day.
- (3) A person who is —
  - (a) a corresponding reportable offender; or
  - (b) a New South Wales reportable offender,is also a reportable offender.
- (4) Unless he or she is a reportable offender because of subsection (3), a person is not a reportable offender merely because he or she as a child committed a single offence (including an offence under the laws of a foreign jurisdiction) that falls within a class of offences that are prescribed by the regulations to be offences for the purposes of this subsection.
- (5) A person is also not a reportable offender if he or she 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.

- (6) A person ceases to be a reportable offender if —
- (a) the finding of guilt in respect of the only offence that makes the person a reportable offender for the purposes of this Act is quashed or set aside by a court; or
  - (b) the person is a reportable offender only because he or she is subject to an offender reporting order or past offender reporting order and that order is quashed on appeal.
- (7) 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 offender reporting order or past offender reporting order.
- (8) A reference to a single offence in subsection (4) includes a reference to more than one offence of the same kind arising from the same incident.

#### **7. Corresponding reportable offenders**

A corresponding reportable offender is a person —

- (a) who had at any time (whether before, on or after the commencement day) been in a foreign jurisdiction and at that time had been required to report to the corresponding registrar in that jurisdiction; and
- (b) who —
  - (i) would, if he or she were currently in that foreign jurisdiction, be required to report to the corresponding registrar in that jurisdiction for a longer period than he or she would be required to report under this Act; or
  - (ii) falls within a class of persons who are prescribed by the regulations to be corresponding reportable offenders for the purposes of this Act.

**8. New South Wales reportable offenders**

A New South Wales reportable offender is a person who had been in New South Wales at a time before the date specified by the regulations for the purposes of this section and whose reporting obligations under the New South Wales Act had begun at that time, other than a person prescribed by the regulations not to be a New South Wales reportable offender for the purposes of this Act.

**9. Reportable offences**

A reportable offence is —

- (a) a Class 1 offence;
- (b) a Class 2 offence;
- (c) a Class 3 offence, if the person concerned has previously been found guilty of another Class 3 offence; or
- (d) an offence that results in the making of an offender reporting order or past offender reporting order.

**10. Class 1 offences**

A Class 1 offence is —

- (a) an offence against a provision listed in Schedule 1;
- (b) an offence under a law of a foreign jurisdiction the elements of which, if they had occurred in Western Australia, would have constituted an offence of a kind referred to in this section;
- (c) an offence under a law of a foreign jurisdiction that is prescribed by the regulations to be a Class 1 offence;
- (d) an offence an element of which is an intention to commit an offence of a kind referred to in this section;
- (e) an offence of attempting, or of conspiracy or incitement, to commit an offence of a kind referred to in this section; or

- (f) 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 committed before the commencement day — was an offence of a kind referred to in this section.

**11. Class 2 offences**

A Class 2 offence is —

- (a) an offence against a provision listed in Schedule 2;
- (b) an offence under a law of a foreign jurisdiction the elements of which, if they had occurred in Western Australia, would have constituted an offence of a kind referred to in this section;
- (c) an offence under a law of a foreign jurisdiction that is prescribed by the regulations to be a Class 2 offence;
- (d) an offence an element of which is an intention to commit an offence of a kind referred to in this section;
- (e) an offence of attempting, or of conspiracy or incitement, to commit an offence of a kind referred to in this section; or
- (f) 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 committed before the commencement day — was an offence of a kind referred to in this section.

[12. *Has not come into operation*<sup>3</sup>.]

**13. Offender reporting orders**

- (1) If—
- (a) a court finds a person guilty of an offence that is not a Class 1 offence or a Class 2 offence; and
  - (b) apart from this section, that offence would not result in the person becoming a reportable offender,
- the court may order that the offender comply with the reporting obligations of this Act.
- (2) The court may make the order only if it is satisfied that the offender poses a risk to the lives or the sexual safety of one or more persons, or persons generally.
- (3) For the purposes of subsection (2), it is not necessary that the court be able to identify a risk to a particular person or particular persons or a particular class of persons.
- (4) In deciding whether to make the order in relation to an offence, the court may take into account the following —
- (a) any evidence given during proceedings for the offence;
  - (b) any document or record (including an electronic document or record) served on the offender by the prosecution;
  - (c) any statement tendered, or deposition made, or exhibit tendered, at any proceedings in relation to the offence;
  - (d) any evidence given by a victim or the offender in relation to the making of the order;
  - (e) any pre-sentence report given to the court;
  - (f) any victim impact statement given to the court;
  - (g) any mediation report given to the court;
  - (h) any other matter the court considers relevant.
- (5) The court must make the order at the time the person is sentenced for the offence.

- (6) An application for the imposition of the order may be made by the prosecution, but an application is not necessary for the court to make the order.
- (7) For the purposes of Part 3 Division 5, a person subject to an order made under this section is taken to have been found guilty of a Class 2 offence.

### **Division 2 — Past offender reporting orders**

#### **14. Terms used**

In this Division —

*court* means —

- (a) if the respondent is a child — the Children’s Court; or
- (b) otherwise, the District Court;

*registrar* means the clerk or registrar of the court to which an application for a reporting order is made;

*reporting order* means a past offender reporting order;

*respondent* means the person who is subject to a reporting order or in respect of whom a reporting order is sought.

#### **15. Commissioner may apply for reporting orders**

If —

- (a) a person has been sentenced before the commencement day for an offence; and
- (b) the person is not and has not been a reportable offender in respect of that offence,

the Commissioner may apply to a court for an order that the person comply with the reporting obligations of this Act.

**16. Fixing a hearing**

When an application for a reporting order is made the registrar must —

- (a) fix a day, time and place for the hearing;
- (b) prepare a summons in the prescribed form;
- (c) cause the summons to be served on the respondent; and
- (d) notify the applicant of the hearing.

**17. Evidence**

Evidence may be given at a hearing orally or by affidavit.

**18. How application to be disposed of**

The court may dispose of the application —

- (a) by making a reporting order;
- (b) by dismissing the application; or
- (c) at the request of the applicant — by discontinuing the application.

**19. Court may make reporting orders**

- (1) The court may make an order that a person comply with the reporting obligations of this Act if the court is satisfied that the person poses a risk to the lives or sexual safety of one or more persons, or persons generally.
- (2) For the purposes of subsection (1), it is not necessary that the court be able to identify a risk to a particular person or particular persons or a particular class of persons.
- (3) For the purposes of Part 3 Division 5, a person subject to an order made under this section in respect of an offence that is a reportable offence is taken to have been found guilty of, and to have been sentenced for, the offence when the order was made.

- (4) For the purposes of Part 3 Division 5, a person subject to an order made under this section in respect of an offence that is not a reportable offence is taken to have been found guilty of, and to have been sentenced for, a Class 2 offence when the order was made.

**20. Attendance at hearings**

- (1) If the applicant does not attend a hearing fixed under section 16, the court —
- (a) if it is satisfied the applicant was notified of the hearing — must dismiss the application; or
  - (b) otherwise, must adjourn the hearing.
- (2) If the respondent does not attend a hearing fixed under section 16 and the applicant does attend, the court —
- (a) if it is satisfied that the respondent was served with a summons requiring the respondent to attend the hearing — must hear the matter in the absence of the respondent; or
  - (b) otherwise, must adjourn the hearing.
- (3) The registrar of a court that adjourns a hearing must notify any party permitted to attend the hearing who was not present when the hearing was adjourned.

**21. Notification of orders made in absence of respondent**

The registrar of a court that makes a reporting order in the absence of the respondent must cause a copy of the order to be served on the respondent.

**22. Appeals**

- (1) A person aggrieved by the decision of a court —
- (a) under section 18(b) to dismiss an application; or

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(b) to make a reporting order,

may appeal against that decision in accordance with this section.

- (2) If the decision was made by the District Court, the appeal is to be made to the Court of Appeal in accordance with the *District Court of Western Australia Act 1969* section 79(1)(a).
- (3) If the decision was made by the Children's Court when constituted so as not to consist of or include a judge, the appeal is to be made as if the decision were a decision to which the *Children's Court of Western Australia Act 1988* section 41 applied.
- (4) If the decision was made by the Children's Court when constituted so as to consist of or include a judge, the appeal is to be made as if the decision were a decision to which the *Children's Court of Western Australia Act 1988* section 43 applied.

*[Section 22 amended by No. 5 of 2008 s. 127(2).]*

**23. Appeal does not stay order**

An appeal against an order made under this Part does not operate to stay the operation of the order unless the court to which the appeal is made so orders.



## Part 3 — Reporting obligations

### Division 1 — Initial report

**24. When the report must be made**

- (1) A reportable offender of a kind referred to in column 1 of the Table to this subsection must report his or her personal details to the Commissioner within the period specified in column 2 of the Table.

**Table**

<b>Column 1 Reportable offender</b>	<b>Column 2 Period for initial report</b>
A reportable offender (other than a corresponding reportable offender) who enters government custody in Western Australia on or after the commencement day as a consequence of having been sentenced for a reportable offence and who ceases to be in government custody while in Western Australia	Within 7 days after he or she ceases to be in government custody
A reportable offender (other than a corresponding reportable offender) in government custody in Western Australia immediately before the commencement day and who ceases to be in government custody while in Western Australia	Within 60 days after the commencement day or 7 days after he or she ceases to be in government custody, whichever is the later

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<b>Column 1</b> <b>Reportable offender</b>	<b>Column 2</b> <b>Period for initial report</b>
A reportable offender (other than a corresponding reportable offender) who is in Western Australia on the commencement day, but who is not in government custody at that time	Within 60 days after the commencement day or, if he or she is given written notice of his or her reporting obligations within 53 days after that day, within 7 days after he or she is given that notice
Any other reportable offender who is sentenced in Western Australia for a reportable offence	Within 7 days after he or she is sentenced
A reportable offender who enters Western Australia from a foreign jurisdiction and who has not previously been required under this section to report his or her personal details to the Commissioner	Within 14 days after entering Western Australia, if remaining in Western Australia for 14 or more consecutive days, not counting any days spent in government custody
A corresponding reportable offender who has not previously reported his or her personal details to the Commissioner and who is in Western Australia on the date on which he or she becomes a corresponding reportable offender	Within 7 days after he or she becomes a corresponding reportable offender or 7 days after he or she ceases to be in government custody, whichever is the later

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- (2) Despite subsection (1), a reportable offender must report his or her personal details to the Commissioner before leaving Western Australia unless he or she entered Western Australia from a foreign jurisdiction and remained in Western Australia for less than 14 consecutive days, not counting any days spent in government custody.

**25. When new initial report must be made by offender whose previous reporting obligations have ceased**

- (1) If a reportable offender's reporting period expires but he or she is then sentenced for a reportable offence, he or she must report his or her personal details to the Commissioner —
- (a) within 7 days after being sentenced for the reportable offence; or
  - (b) if he or she is in government custody — within 7 days after ceasing to be in government custody,

whichever is the later.

- (2) If a reportable offender's reporting period expires but he or she then becomes a corresponding reportable offender who must under section 49 continue to comply with the reporting obligations imposed by this Part for any period, he or she must report his or her personal details to the Commissioner —
- (a) within 7 days after becoming a corresponding reportable offender; or
  - (b) if he or she is in government custody — within 7 days after ceasing to be in government custody,

whichever is the later.

- (3) If a reportable offender's reporting obligations are suspended by an order made under section 53 (or an equivalent order in a foreign jurisdiction) and that order ceases to have effect under section 59 (or an equivalent provision of the laws of a foreign jurisdiction), the reportable offender must report his or her personal details to the Commissioner —
- (a) within 7 days after the order ceases to have effect; or
  - (b) if he or she is in government custody — within 7 days after ceasing to be in government custody,

whichever is the later.

- (4) If a reportable offender's reporting obligations are suspended by an approval granted under section 61 and that approval ceases to have effect under section 62, the reportable offender must report his or her personal details to the Commissioner —
- (a) within 7 days after the approval ceases to have effect; or
  - (b) if he or she is in government custody — within 7 days after ceasing to be in government custody,

whichever is the later.

- (5) If a reportable offender is not in Western Australia at the time he or she would be required under subsection (1), (2), (3) or (4) to report his or her personal details to the Commissioner, then he or she must report his or her personal details within 14 days after entering Western Australia.
- (6) A person does not commit an offence against section 63 because of a failure to comply with the reporting obligation imposed by subsection (5) if he or she does not remain in Western Australia for 14 or more consecutive days, not counting any days spent in government custody.
- (7) Despite subsections (1), (2), (3) and (4), a reportable offender must report his or her personal details to the Commissioner before leaving Western Australia unless he or she entered Western Australia from a foreign jurisdiction and remained in Western Australia for less than 14 consecutive days, not counting any days spent in government custody.

**26. Initial report by reportable offender of personal details**

- (1) The details the reportable offender must report are —
- (a) his or her name, together with any other name by which he or she is, or has previously been, known; and
  - (b) in respect of each name other than his or her current name, the period during which he or she was known by that other name; and

- (c) his or her date of birth; and
- (d) the address of each of the premises at which he or she generally resides or, if he or she does not generally reside at any particular premises, the name of each of the localities in which he or she can generally be found; and
- (da) any telephone number that he or she has or that he or she regularly uses; and
- (db) any email address that he or she has or that he or she regularly uses; and
- (dc) the name of any Internet service provider whose Internet carriage service —
  - (i) he or she is supplied with; or
  - (ii) he or she regularly uses;and
- (dd) any name (other than a name reported under paragraph (a)) that he or she uses, or by which he or she is known, when using the internet for the purposes of communication; and
- (de) any —
  - (i) internet website; or
  - (ii) communication service provided by means of the internet,  
  
in connection with which he or she uses a name referred to in paragraph (a) or (dd) or an email address referred to in paragraph (db); and
- (e) the names and ages of any children who generally reside in the same household as that in which he or she generally resides, or with whom he or she has regular unsupervised contact; and
- (f) if he or she is employed —
  - (i) the nature of his or her employment; and
  - (ii) the name of his or her employer (if any); and

(iii) the address of each of the premises at which he or she is generally employed or, if he or she is not generally employed at any particular premises, the name of each of the localities in which he or she is generally employed;

and

- (g) details of his or her affiliation with any club or organisation that has members who are children or that conducts activities in which children participate; and
- (h) the make, model, colour and registration number of any motor vehicle owned by, or generally driven by, him or her; and
- (i) details of any tattoos or permanent distinguishing marks that he or she has (including details of any tattoo or mark that has been removed); and
- (j) whether he or she has ever been found guilty in any foreign jurisdiction of a reportable offence or of an offence that required him or her to report to a corresponding registrar or been subject to a corresponding offender reporting order or a corresponding prohibition order recognised under section 108 and, if so, where that finding occurred or that order was made; and
- (k) if he or she has been in government custody since he or she was sentenced or released from government custody (as the case may be) in respect of a reportable offence or corresponding reportable offence — details of when and where that government custody occurred; and
- (l) if, at the time of making a report under this Division, he or she leaves, or intends to leave, Western Australia 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.

(1a) In subsection (1)(dc) —

***Internet carriage service*** and ***Internet service provider*** have the same meanings as they have in Schedule 5 to the *Broadcasting Services Act 1992* of the Commonwealth.

(2) For the purposes of this section —

- (a) a reportable offender does not generally reside at any particular premises unless he or she resides at those premises for at least 14 days (whether consecutive or not) in any period of 12 months;
- (b) a child does not generally reside in the same household as a reportable offender unless they reside together in that household for at least 14 days (whether consecutive or not) in any period of 12 months;
- (c) a reportable offender does not have regular unsupervised contact with a child unless he or she has unsupervised contact with the child for at least 14 days (whether consecutive or not) in any period of 12 months;
- (d) a reportable offender is not generally employed at any particular premises unless he or she is employed at those premises for at least 14 days (whether consecutive or not) in any period of 12 months; and
- (e) a reportable offender does not generally drive a particular motor vehicle unless the person drives that vehicle for at least 14 days (whether consecutive or not) in any period of 12 months.

(3) For the purposes of this section, a person is taken to be employed if he or she —

- (a) carries out work under a contract of employment;
- (b) carries out work as a self-employed person or as a subcontractor;

- (c) carries out work as a volunteer for an organisation;
  - (d) undertakes practical training as part of an educational or vocational course; or
  - (e) carries out work as a minister of religion or in any other capacity for the purposes of a religious organisation.
- (4) For the purposes of this section, a person is taken to be an employer of a reportable offender if the person —
- (a) arranges, in the course of business, for the reportable offender to be employed by another person; or
  - (b) engages the reportable offender under contract to carry out work.

*[Section 26 amended by No. 27 of 2008 s. 4.]*

**27. Persons required to report under corresponding Act**

- (1) This section applies to a person (other than a person to whom Division 10 applies) who has been required to report to a corresponding registrar, whether or not he or she is a reportable offender for the purposes of this Act.
- (2) Unless the person has previously complied with the obligation imposed by this section, he or she must, within 7 days after entering Western Australia, contact (by telephone or another means prescribed by the regulations) an authorised person nominated by the Commissioner for the purposes of this section.
- (3) The contacted authorised person must advise the person whether he or she is a reportable offender for the purposes of this Act and any reporting obligations that he or she has under this Act.
- (4) A person does not commit an offence against section 63 because of a failure to comply with the reporting obligation imposed by subsection (2) if he or she —
- (a) is not a reportable offender for the purposes of this Act;
  - (b) has not been notified of that reporting obligation;



- (c) does not remain in Western Australia for 14 or more consecutive days, not counting any days spent in government custody; or
- (d) reports in accordance with section 24.

**Division 2 — Ongoing reporting obligations**

**28. Reportable offender to report annually and as required by Commissioner**

- (1) A reportable offender must report his or her personal details to the Commissioner each year.
- (2) The reportable offender must make the report in each year during the calendar month in which he or she first reported in accordance with this Act or a corresponding Act.
- (3) The Commissioner may, at any time, cause written notice to be given to a reportable offender requiring the reportable offender to report his or her personal details to the Commissioner at the time or times stated in the notice.
- (4) A reportable offender must report his or her personal details to the Commissioner in accordance with a notice under subsection (3).
- (5) If the reportable offender has been in government custody for any period since he or she last reported his or her personal details under this section, the details he or she must report include details of when and where that custody occurred.
- (6) If a reportable offender's reporting period expires but he or she is then required to report again under section 25, the reference in subsection (2) to the month during which he or she first reported is to be read as a reference to the month during which he or she first reported in respect of the current reporting period.

**29. Reportable offender to report changes to relevant personal details**

- (1) A reportable offender must report to the Commissioner any change in his or her personal details within 7 days after that change occurs.
- (2) For the purposes of subsection (1), a change occurs —
  - (a) in the place where the reportable offender or a child generally resides;
  - (b) as to when the reportable offender has unsupervised contact with a child;
  - (c) in the place where the reportable offender is generally employed; or
  - (d) in the motor vehicle that the reportable offender generally drives,

only on the expiry of the relevant 14 day period referred to in section 26(2).

- (3) If the personal details of a reportable offender (other than one to whom Division 10 applies) change while he or she is not in Western Australia, he or she must report the change to the Commissioner within 7 days after entering Western Australia.
- (4) A person does not commit an offence against section 63 because of a failure to comply with the reporting obligation imposed by subsection (3) if he or she does not remain in Western Australia for 14 or more consecutive days, not counting any days spent in government custody.
- (5) A reportable offender who is in government custody for 14 or more consecutive days must report his or her personal details to the Commissioner —
  - (a) within 7 days after ceasing to be in government custody; or

- (b) before leaving Western Australia, if he or she leaves within that 7 day period.

**29A. Intended absence from place of residence to be reported**

- (1) In this section, a reference to the place where a reportable offender generally resides is a reference to —
  - (a) the premises, or each of the premises, where he or she generally resides, as determined in accordance with section 26(2)(a); or
  - (b) if he or she does not generally reside at any particular premises, the localities in which he or she can generally be found.
- (2) This section applies to a reportable offender who —
  - (a) intends to leave the place where he or she generally resides for 7 or more consecutive days; and
  - (b) does not intend to leave Western Australia.
- (3) At least 7 days before leaving the place where he or she generally resides, the reportable offender must report the intended absence to the Commissioner and must provide details of —
  - (a) the dates, or approximate dates, of the period during which he or she intends to be absent from the place where he or she generally resides; and
  - (b) each address or location within Western Australia at which he or she intends to reside (to the extent that they are known) and the dates, or approximate dates, of the periods during which he or she intends to reside at those addresses or locations.
- (4) If circumstances arise making it impracticable for a reportable offender to make the report at least 7 days before he or she leaves, it is sufficient compliance with subsection (3) if the reportable offender reports the required information to the

Commissioner no later than 24 hours after leaving the place where he or she generally resides.

- (5) If the reportable offender decides not to leave the place where he or she generally resides, he or she must report his or her change of intention to the Commissioner within 7 days after deciding not to leave.
- (6) This section does not limit any requirement under this Act for a reportable offender to report a change in the place where he or she generally resides.

*[Section 29A inserted by No. 27 of 2008 s. 5.]*

**30. Intended absence from Western Australia to be reported**

- (1) This section applies to a reportable offender who intends to leave Western Australia, whether to travel elsewhere in Australia or to travel out of Australia.
- (2) At least 7 days before leaving Western Australia, the reportable offender must report the intended travel to the Commissioner and must provide details of —
  - (a) each State, Territory or country to which he or she intends to go while out of Western Australia;
  - (b) the approximate dates of the periods during which he or she intends to be in each of those States, Territories or countries;
  - (c) each address or location within each State, Territory or country at which he or she intends to reside (to the extent that they are known) and the approximate dates of the periods during which he or she intends to reside at those addresses or locations;
  - (d) if he or she intends to return to Western Australia, the approximate date on which he or she intends to return; and
  - (e) if he or she does not intend to return to Western Australia, a statement of that intention.

- (3) If circumstances arise making it impracticable for a reportable offender to make the report at least 7 days before he or she leaves, it is sufficient compliance with subsection (2) if the reportable offender reports the required information to the Commissioner no later than 24 hours after leaving Western Australia.
- (4) A reportable offender who reports under subsection (3) after leaving Western Australia must make the report —
- (a) by facsimile or email sent to the Commissioner or to any other address permitted by the regulations; or
  - (b) in any other manner permitted by the regulations.

*[Section 30 amended by No. 27 of 2008 s. 6.]*

**31. Change of travel plans while out of Western Australia to be reported**

- (1) This section applies to a reportable offender who —
- (a) is in Western Australia, having left the place where he or she generally resides (as described in section 29A(1)), and decides to change any details given to the Commissioner under section 29A; or
  - (b) is out of Western Australia and decides to change any details given to the Commissioner under section 30.
- (2) As soon as is practicable after making the decision, the reportable offender must report the changed details to the Commissioner.
- (3) If subsection (1)(b) applies, the reportable offender must make the report —
- (a) by facsimile or email sent to the Commissioner or to any other address permitted by the regulations; or
  - (b) in any other manner permitted by the regulations.

*[Section 31 amended by No. 27 of 2008 s. 7.]*

**32. Reportable offender to report return to Western Australia or decision not to leave**

- (1) This section applies to a reportable offender who was required to report under section 30 that he or she intended to leave Western Australia.
- (2) If the reportable offender left Western Australia, he or she must report his or her return to Western Australia to the Commissioner within 7 days after entering Western Australia.
- (2a) If the reportable offender left Western Australia to travel out of Australia, he or she must, in addition to reporting under subsection (2), produce to the Commissioner within 7 days after entering Western Australia —
  - (a) his or her passport; and
  - (b) any other document in his or her possession that contains information indicating where he or she travelled while out of Australia.
- (3) A person does not commit an offence against section 63 because of a failure to comply with the reporting obligation imposed by subsection (2) or (2a) if he or she does not remain in Western Australia for 14 or more consecutive days, not counting any days spent in government custody.
- (4) If the reportable offender decides not to leave Western Australia, he or she must report his or her change of intention to the Commissioner within 7 days after deciding not to leave.

*[Section 32 amended by No. 27 of 2008 s. 8.]*

**33. Report of other absences from Western Australia**

- (1) This section applies to a reportable offender who, at the time of making a report under this Division, leaves or intends to leave Western Australia to travel elsewhere in Australia on an average of at least once a month (irrespective of the length of any such absence).

- (2) The reportable offender must report to the Commissioner —
  - (a) in general terms, the reason for travelling; and
  - (b) in general terms, the frequency and destinations of the travel.

### **Division 3 — Provisions applying to all reporting obligations**

#### **34. Where reports must be made**

- (1) A report under this Part must be made —
  - (a) at any police station in the locality in which the reportable offender is currently residing;
  - (b) at another place approved (either generally or in a particular case) by the Commissioner; or
  - (c) if a direction is given in accordance with the regulations as to the police station or approved place at which the report must be made, at the police station or approved place so directed.
- (2) This section does not apply if, under section 35(2), a report is permitted to be made in a way that is inconsistent with this section.

*[Section 34. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]*

#### **35. How reports must be made**

- (1) A reportable offender must make the following reports under this Part in person —
  - (a) a report required by Division 1;
  - (b) a report required by section 28;
  - (c) a report of a change of address of the premises at which he or she generally resides or, if he or she does not generally reside at any particular premises, of the localities in which he or she can generally be found;

- (d) a report of the acquisition of, removal of, or change to any tattoo or distinguishing mark.
- (2) A reportable offender may make any other report he or she is required to make under this Part in person or in any other way permitted by the regulations or by the Commissioner, either generally or in a particular case.
- (3) Only an authorised person may receive a report made under this Part.
- (4) If a reportable offender attending in person is a child, or has a disability that makes it impossible or impracticable for him or her to make a report, any parent, guardian, carer or other person nominated by the reportable offender who is accompanying the reportable offender may make the report on the reportable offender's behalf.
- (5) If a reportable offender who is permitted to make a report otherwise than in person in accordance with subsection (2) has a disability that makes it impossible or impracticable for him or her to make the report, a parent, guardian, carer or other person nominated by the reportable offender may make the report on the reportable offender's behalf.

**36. Right to privacy and support when reporting**

- (1) A person making a report under this Part at a police station or approved place —
  - (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 his or her own choosing.
- (2) An authorised person receiving the report may arrange for an interpreter to be present when a person is making a report under this Part.
- (3) An authorised person receiving the report may allow an interpreter to be present when a person is making a report under



this Part only if the interpreter has signed an undertaking not to disclose any information derived from the report unless required or authorised by or under any written or other law to do so.

**37. Receipt of information to be acknowledged**

- (1) As soon as is practicable after receiving a report under this Part, the authorised 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 authorised person who received the report;
  - (b) the date and time when, and the place where, the report was received; and
  - (c) a copy of the information that was reported in accordance with this Part.
- (3) If a report is made otherwise than in person, the authorised person who received the report must as soon as is practicable —
  - (a) give the person making the report a unique reference number; and
  - (b) record that number on the relevant reportable offender's file and on the acknowledgment.
- (4) The Commissioner may make an agreement with the reportable offender as to the manner in which any reference number or acknowledgment required to be given by this section may be given.
- (5) The Commissioner must ensure —
  - (a) that there is a method of recording an agreement made under subsection (4);
  - (b) that a copy of the agreement is given to the reportable offender; and

- (c) that, except with the written consent of the reportable offender, 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 must ensure that a copy of every acknowledgment is retained.

**38. 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 the form of identification or other document, relating to the identity of the reportable offender, specified by the regulations for the purposes of this paragraph to verify or support details in the report;
  - (b) provide a photograph of the reportable offender's head and face of a type suitable for use in an Australian passport; and
  - (c) if not the reportable offender — present for inspection the form of identification or other document, relating to the identity of the person making the report, specified by the regulations for the purposes of this paragraph.
- (2) The authorised person receiving the report may waive the requirements of subsection (1)(a) if —
  - (a) the reportable offender permits his or her fingerprints to be taken immediately before or after the report is made; or
  - (b) the authorised person is otherwise satisfied as to the reportable offender's identity.
- (3) The authorised person receiving the report may waive the requirement of subsection (1)(c) if he or she is otherwise satisfied as to the person's identity.

- (4) The authorised person receiving a report may copy any document presented to the person for inspection under subsection (1)(a).
- (5) For the purposes of a report that is made otherwise than in person, the regulations may specify —
  - (a) the circumstances in which —
    - (i) information concerning the identity of the reportable offender and the identity of the person making the report; and
    - (ii) a document verifying or supporting details in the report,
  - (b) the manner in which that information or document must be provided,

but cannot require an original document to be provided.

**39. Power to take fingerprints**

- (1) This section applies if an authorised person receiving a report made in person under this Part is not reasonably satisfied as to the identity of the reportable offender after the authorised person has examined all the material relating to identity provided or presented to him or her by, or on behalf of, the reportable offender.
- (2) The authorised person may take, or may cause to be taken by a person authorised by him or her, the fingerprints of the reportable offender.

**40. Power to take photographs**

- (1) An authorised person receiving a report made in person under this Part may require the reportable offender —
  - (a) to be photographed; and

(b) to expose any part of his or her body to enable that part of the body to be photographed by the officer or a person authorised by the officer.

(2) An authorised person cannot, under this section, require a reportable offender to expose his or her genitals, the anal area of his or her buttocks or, in the case of females, or males undergoing a reassignment procedure within the meaning of the *Gender Reassignment Act 2000*, their breasts.

**41. Reasonable force may be used to obtain fingerprints and photographs**

(1) Before attempting to exercise a power under section 39 or 40, the authorised person must inform the reportable offender in language likely to be understood by him or her —

(a) of the purpose for which the power is to be exercised and, in the case of section 39, why the authorised person is not satisfied as to the identity of the reportable offender;

(b) that reasonable force may be used if the reportable offender does not voluntarily give his or her fingerprints or expose part of his or her body (as the case may be); and

(c) that the fingerprints or photographs will be retained by the Commissioner.

(2) If the reportable offender does not voluntarily cooperate and the use of reasonable force is authorised by a police officer in charge of a police station at the time of the request to use reasonable force or by a police officer of or above the rank of sergeant, a police officer or a person authorised by him or her may use reasonable force —

(a) to take the fingerprints of the reportable offender; or

(b) to expose a part of the body of the reportable offender that an authorised person is authorised under section 40

to require the reportable offender to expose to enable that part of the body to be photographed.

- (3) If reasonable force is to be used under section 39 or 40, a person of the same sex as the reportable offender must, if practicable, be the person who uses the reasonable force.

**42. Retention of material for certain purposes**

The Commissioner may retain for law enforcement, crime prevention or community protection purposes any of the following taken under this Division from, or in relation to, a reportable offender —

- (a) copies of any documents;
- (b) any fingerprints;
- (c) any photographs.

**43. Reporting by remote offenders**

- (1) This section applies to a reportable offender who resides more than the distance prescribed by the regulations from the nearest police station or approved place.
- (2) Different distances may be prescribed for the purposes of subsection (1) in respect of different areas of Western Australia.
- (3) The reportable offender need not comply with a time limit concerning the making of a report in person under this Part if —
- (a) he or she, or a person entitled to make the report on his or her behalf, contacts the Commissioner before the time limit expires;
  - (b) the Commissioner agrees to allow the report to be made at a specific time that is after the time limit expires and at a specific place; and
  - (c) before the time limit expires he or she provides the Commissioner by telephone or other means acceptable

to the Commissioner with the information required to be reported under Division 1 or 2 (as the case may be).

- (4) The Commissioner must ensure that there is a method of recording —
  - (a) all information provided under subsection (3); and
  - (b) the agreements made under this section.
- (5) Without limiting subsection (4)(b), the recording method adopted must result in the creation of a written record for each agreement —
  - (a) that is identified by a unique reference number;
  - (b) that identifies when and where the agreement is made;
  - (c) that identifies the person who enters into the agreement; and
  - (d) that contains the terms of the agreement.
- (6) If an agreement is made under this section, the Commissioner must ensure that the reportable offender is provided with the reference number required by subsection (5)(a).

#### **Division 4 — Suspension and extension of reporting obligations**

##### **44. Suspension and extension of reporting obligations**

- (1) Any obligation imposed on a reportable offender by this Part is suspended for any period during which he or she —
  - (a) is in government custody;
  - (b) is outside Western Australia, unless he or she is a person to whom Division 10 applies or the obligation is under section 30(4) or 31;
  - (c) is the subject of an order made under Division 6 (or an equivalent order in a foreign jurisdiction); or
  - (d) is the subject of an approval granted by the Commissioner under Division 7.

- (2) The period for which a reportable offender's reporting obligations continue is extended by any length of time for which those obligations are suspended under subsection (1)(a).
- (3) If a child protection prohibition order is made under section 90 in respect of a reportable offender whose reporting obligations would (apart from this subsection) expire during the period that the reportable offender is subject to the order, the reportable offender must continue to comply with those obligations until the expiry of that period.
- (4) If a child protection prohibition order is made under section 90 in respect of a reportable offender whose reporting obligations have expired —
  - (a) the reportable offender is taken, for the purposes of this Part, to have been sentenced for a reportable offence; and
  - (b) the reportable offender must continue to comply with the reporting obligations imposed by this Part until the expiry of the period during which he or she is subject to the order.

### **Division 5 — Reporting period**

#### **45. When reporting obligations begin**

For the purposes of this Division, a reportable offender's reporting obligations in respect of a reportable offence begin when the reportable offender —

- (a) is sentenced for the offence; or
- (b) ceases to be in government custody in respect of the offence,

whichever is the later.

**46. Length of reporting period**

- (1) A reportable offender must continue to comply with the reporting obligations imposed by this Part for 8 years, if he or she has only ever been found guilty of a single Class 2 offence.
- (2) A reportable offender must continue to comply with the reporting obligations imposed by this Part for 15 years, if he or she —
  - (a) has only ever been found guilty of a single Class 1 offence;
  - (b) has only ever been found guilty of 2 Class 3 offences; or
  - (c) has ever been found guilty of more than one reportable offence but is not covered by subsection (3).
- (3) A reportable offender must continue to comply with the reporting obligations imposed by this Part for the remainder of his or her life, if he or she is a reportable offender in respect of —
  - (a) a Class 1 offence, and he or she then commits and is found guilty of a Class 1 offence, a Class 2 offence or a Class 3 offence;
  - (b) a Class 2 offence or a Class 3 offence, and he or she then commits and is found guilty of a Class 1 offence;
  - (c) a Class 2 offence, and he or she then commits and is found guilty of a Class 2 offence or a Class 3 offence and has ever been found guilty of —
    - (i) 3 or more Class 2 offences; or
    - (ii) 2 or more Class 3 offences;
  - (d) a Class 3 offence, and he or she then commits and is found guilty of a Class 2 offence and has ever been found guilty of 3 or more Class 2 offences; or
  - (e) a Class 3 offence, and he or she then commits and is found guilty of a Class 3 offence.



- (4) A reference in this section to an offence includes an offence committed before the commencement of this section.
- (5) For the purposes of this section, a person is a reportable offender in respect of a Class 3 offence if the person is sentenced for a Class 3 offence and has previously been found guilty of another Class 3 offence.
- (6) For the purposes of this section —
  - (a) 2 or more offences arising from the same incident are to be treated as a single offence;
  - (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; and
  - (c) 2 or more offences arising from the same incident are to be treated as a single Class 3 offence if at least one of those offences is a Class 3 offence.

**47. Reduced period applies for young reportable offenders**

- (1) The reporting periods specified in section 46 do not apply to a person who was a child at the time he or she committed each relevant offence.
- (2) Instead, a reporting period that is half the reporting period that would otherwise apply to the person under section 46 (or 7½ years in the case of a reporting period for life) applies to him or her.

**48. Extended reporting period if reportable offender still on parole**

- (1) This section applies if —
  - (a) a reportable offender is on parole, or is an existing licensee, in respect of a reportable offence; and
  - (b) the reporting period in respect of the offence will end before the expiry of the term of imprisonment or

detention to which the parole relates or in relation to which the reportable offender is an existing licensee.

- (2) Despite anything to the contrary in this Division, the reporting period is extended until the expiry of the term of imprisonment or detention to which the parole relates or in relation to which the reportable offender is an existing licensee.

**49. Reporting period for corresponding reportable offenders**

- (1) Despite anything in this Part, a corresponding reportable offender must continue to comply with the reporting obligations imposed by this Part for the longer period (the *recognised foreign reporting period*) referred to in section 7(b)(i).
- (2) For the purposes of this section, if a corresponding reportable offender is a corresponding reportable offender under the laws of more than one jurisdiction, the recognised foreign reporting period is the longest period for which he or she would be required to report to the corresponding registrar of a foreign jurisdiction.

**50. Reporting period for New South Wales reportable offenders**

- (1) Subject to subsection (2), a New South Wales reportable offender must continue to comply with the reporting obligations imposed by this Part for the period he or she is required to report in accordance with the New South Wales Act.
- (2) A New South Wales reportable offender who, on or after the date specified by the regulations for the purposes of section 8, is sentenced for a reportable offence or becomes a corresponding reportable offender must continue to comply with the reporting obligations imposed by this Part for —
- (a) the period referred to in subsection (1); or
  - (b) the period that he or she is required to report in accordance with this Division (apart from this section),

whichever is longer.

## **Division 6 — Exemption from reporting obligations**

### **51. Application of Division**

- (1) Subject to subsection (2), this Division applies to a reportable offender who is required to continue to comply with the reporting obligations imposed by this Part for the remainder of his or her life.
- (2) This Division does not apply to a reportable offender who is required to comply with those obligations for the remainder of his or her life as a result of being found guilty of —
  - (a) an offence under *The Criminal Code* section 279(1);
  - (b) an offence under a law of a foreign jurisdiction the elements of which, if they had occurred in Western Australia, would have constituted an offence of the kind referred to in paragraph (a); or
  - (c) an offence that, at the time it was committed, was an offence of the kind referred to in this subsection.

### **52. District Court may exempt certain reportable offenders**

If —

- (a) a period of 15 years has passed (ignoring any period during which the reportable offender was in government custody) since he or she was last sentenced or released from government custody in respect of a reportable offence or a corresponding reportable offence, whichever is later;
- (b) he or she 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 Western Australia; and
- (c) he or she is not on parole in respect of a reportable offence,

the reportable offender may apply to the District Court for an order suspending his or her reporting obligations.

**53. Order for suspension**

- (1) On an application under section 52, the District Court may make an order suspending the reportable offender's reporting obligations.
- (2) The Court may make the order only if it is satisfied that the reportable offender does not pose a risk to the lives or the sexual safety of one or more persons, or persons generally.
- (3) In deciding whether to make the order, the Court must take into account the following —
  - (a) the seriousness of the reportable offender's reportable offences and corresponding reportable offences;
  - (b) the period of time since those offences were committed;
  - (c) the age of the reportable offender and the age of the victims of those offences at the time the offences were committed;
  - (d) the difference in age between the reportable offender and the victims of those offences;
  - (e) the reportable offender's present age;
  - (f) the seriousness of the reportable offender's total criminal record;
  - (g) any other matter the Court considers relevant.

**54. Commissioner and certain chief executive officers entitled to be parties to proceedings**

- (1) In this section —

**relevant authority** means —

  - (a) the Commissioner;
  - (b) the chief executive officer of the department of the Public Service principally assisting the Minister in the administration of the *Children and Community Services Act 2004*; or

- (c) the chief executive officer of the department of the Public Service principally assisting the Minister in the administration of the *Sentence Administration Act 2003*.
- (2) Each relevant authority is entitled to be a party to any proceedings for an order under this Division and may make submissions in opposition to, or in support of, the making of the order.
- (3) As soon as is practicable after receiving an application under this Division, the Registrar of the District Court must notify the relevant authorities of the application.
- (4) For the purposes of preparing submissions, a relevant authority may, by notice in writing, direct any public authority to provide to the relevant authority, on or before a day specified in the notice, any information held by the public authority that is relevant to an assessment of whether the applicant poses a risk to the lives or the sexual safety of one or more persons, or persons generally.
- (5) A public authority to which a direction under subsection (4) is given is authorised and required to provide to the relevant authority the information sought by the direction.
- (6) A public authority is not required to give information that is subject to legal professional privilege.

**55. Commissioner to be notified of order**

Unless the Commissioner was a party to the proceedings for the order, the Registrar of the District Court must notify the Commissioner of the terms of an order made under this Division.

**56. No costs to be awarded**

The District Court must not award costs in respect of proceedings under this Division.

**57. Applications not to be heard in public on application of party to proceedings**

If, on the application of a party to the proceedings for an order under this Division, the District Court is satisfied that there is good reason for those proceedings to be heard in the absence of the public, the proceedings must be heard accordingly.

**58. Restriction on right of unsuccessful applicant to re-apply for order**

A reportable offender in respect of whom the District Court refuses to make an order under this Division cannot make a further application to the Court until 5 years have elapsed from the date of the refusal, unless the Court otherwise orders at the time of the refusal.

**59. Cessation of order**

- (1) An order made under this Division ceases to have effect if, at any time after the making of the order, the reportable offender —
  - (a) is made subject to an offender reporting order, a past offender reporting order or a prohibition order;
  - (b) is found guilty of a reportable offence; or
  - (c) becomes a corresponding reportable offender who must under section 49 continue to comply with the reporting obligations imposed by this Part for any period.
- (2) An order that ceased 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 —
    - (i) the offender reporting order, past offender reporting order or prohibition order is quashed on appeal; or

- (ii) in the case of an offender reporting order or past offender reporting order — the reportable offender'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 an offender reporting order, past offender reporting order or prohibition order.

**60. Application for new order**

- (1) If an order ceases to have effect in accordance with section 59(1), the reportable offender may apply under this Division for a new order.
- (2) Section 58 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 59(1)(b) or (c), on an application under this Division for a new order, section 52(a) applies as if the period referred to were a period of 15 years (ignoring any period during which the reportable offender was in government custody) since he or she last committed a reportable offence or a corresponding reportable offence.

**Division 7 — Suspension of reporting obligations of certain reportable offenders**

**61. Commissioner may approve suspension of reporting obligations**

- (1) If —
  - (a) a person is a reportable offender only in respect of an offence prescribed by the regulations that was committed by the person when a child; and

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- (b) the offence results in the person being subject to a sentence prescribed by the regulations,

the Commissioner must consider whether or not to approve the suspension of the reportable offender's reporting obligations.

- (2) The Commissioner may approve the suspension of the reportable offender's reporting obligations only if the Commissioner is satisfied that the reportable offender does not pose a risk to the lives or the sexual safety of one or more persons, or persons generally.
- (3) In deciding whether to grant approval, the Commissioner must take into account the following —
- (a) the seriousness of the reportable offender's reportable offences and corresponding reportable offences;
  - (b) the period of time since those offences were committed;
  - (c) the age of the reportable offender and the age of the victims of those offences at the time those offences were committed;
  - (d) the difference in age between the reportable offender and the victims of those offences;
  - (e) the reportable offender's present age;
  - (f) the seriousness of the reportable offender's total criminal record;
  - (g) any other matter the Commissioner considers relevant.
- (4) If the Commissioner approves the suspension of the reportable offender's reporting obligations, the Commissioner must give the reportable offender written notice of the suspension.
- (5) For the purposes of section 44(1)(d), the approval of the suspension of the reportable offender's reporting obligations has effect from the date of the notice given to him or her under subsection (4) or from any later date specified in the notice.



**62. Cessation of approval**

- (1) The approval of the suspension of a reportable offender's reporting obligations under this Division ceases to have effect if, at any time after the suspension, the reportable offender —
  - (a) is made subject to an offender reporting order, a past offender reporting order or a prohibition order;
  - (b) is found guilty of a reportable offence; or
  - (c) becomes a corresponding reportable offender who must under section 49 continue to comply with the reporting obligations imposed by this Part for any period.
- (2) The approval of the suspension of a reportable offender's reporting obligations that ceased to have effect in accordance with subsection (1) is revived if —
  - (a) the finding of guilt that caused the approval to cease to have effect is quashed or set aside by a court; or
  - (b) the approval ceased to have effect in accordance with subsection (1)(a) and —
    - (i) the offender reporting order, past offender reporting order or prohibition order is quashed on appeal; or
    - (ii) in the case of an offender reporting order or past offender reporting order — the 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 an offender reporting order, past offender reporting order or prohibition order.

### **Division 8 — Offences**

#### **63. Failure to comply with reporting obligations**

- (1) A reportable offender who, without reasonable excuse, fails to comply with any of his or her reporting obligations commits an offence.

Penalty: a fine of \$12 000 and imprisonment for 2 years.

- (2) In determining whether a person had a reasonable excuse for failing to comply with his or her reporting obligations, a court must 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;
- (c) whether the form of notification given to the reportable offender as to his or her obligations was adequate to inform him or her of those obligations, having regard to the offender's circumstances;
- (d) any matter specified by the regulations for the purposes of this section;
- (e) any other matter the court considers appropriate.

- (3) It is a defence to proceedings for an offence of failing to comply with a reporting obligation if it is established that, at the time the offence is alleged to have occurred, the person had not received notice, and was otherwise unaware, of the obligation.

#### **64. Providing false or misleading information**

A person who, in purported compliance with this Part, provides information that the person knows to be false or misleading in a material particular commits an offence.

Penalty: a fine of \$12 000 and imprisonment for 2 years.

**65. No time limit for prosecutions**

Proceedings for an offence against this Act may be commenced at any time.

**66. Bar to prosecution for failing to report leaving Western Australia**

- (1) This section applies if a reportable offender leaves Western Australia and is found guilty of failing to report his or her presence in a foreign jurisdiction as required by a corresponding Act.
- (2) The reportable offender is not to be prosecuted for a failure to comply with section 30 in respect of the travel out of Western Australia.

**Division 9 — Notification of reporting obligations**

**67. Notice to be given to reportable offender**

- (1) A reportable offender must be given written notice of —
  - (a) his or her reporting obligations; and
  - (b) the consequences that may arise if he or she fails to comply with those obligations.
- (2) A reportable offender must be given a notice under this section as soon as is practicable after he or she —
  - (a) is sentenced for a reportable offence;
  - (b) is released from government custody (whether in government custody for a reportable offence or otherwise);
  - (c) enters Western Australia, if he or she has not previously been given notice of his or her reporting obligations in Western Australia; or
  - (d) becomes a corresponding reportable offender, if he or she is in Western Australia at that time.

- (3) Subsection (2)(b) is taken to have been complied with if the reportable offender is given the notice within 7 days before his or her release from government custody.
- (4) A notice under this section must be given by the person, or a person who falls within a class of persons, specified in, or determined in accordance with, the regulations.
- (5) A person is not required to give a notice under this section if the notice has been given by another person.
- (6) Despite anything in this Division, the regulations may provide that a notice given under this section is not required to specify the reportable offender's reporting period if the regulations require a notice containing that information to be given at the time the reportable offender first reports his or her personal details to the Commissioner.

**68. Courts to provide sentencing information to Commissioner**

- (1) In this section —  
*court* does not include a court of a foreign jurisdiction.
- (2) This section applies if a court —
  - (a) makes an order in relation to a person or sentences a person with the effect of making the person a reportable offender for the purposes of this Act;
  - (b) sentences a person for a reportable offence; or
  - (c) makes an order in relation to a reportable offender with the effect of removing the person from the ambit of this Act.
- (3) The court must ensure that details of the order or sentence are provided to the Commissioner as soon as is practicable after the order is made or the person is sentenced.

**69. Notice to be given when reporting period changes**

- (1) This section applies to a reportable offender whose reporting period has changed since he or she was last notified of his or her reporting period in Western Australia.
- (2) The Commissioner must give written notice to the reportable offender of the changed reporting period as soon as is practicable after the change occurs and, in any event, no later than the time the offender next reports in accordance with this Act.

**70. Supervising authority to notify Commissioner of certain events**

- (1) This section applies if a reportable offender —
  - (a) ceases to be in strict government custody;
  - (b) ceases to be in government custody;
  - (c) ceases to be subject to a custody order made under the *Criminal Law (Mentally Impaired Accused) Act 1996*<sup>2</sup> Part 4;
  - (d) ceases to be subject to a community order;
  - (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,

regardless of the reason why the reportable offender was in custody, was subject to the order, was on parole or was an existing licensee.

- (2) As soon as is practicable before or after the relevant event listed in subsection (1) occurs, the supervising authority must give written notice of the event to the Commissioner.
- (3) The notice must include any details prescribed by the regulations.

- (4) For the purposes of subsection (2), the Commissioner may inform a supervising authority whether or not a person is a reportable offender.

**71. Notices may be given by Commissioner**

The Commissioner may, at any time, cause written notice to be given to a reportable offender of —

- (a) his or her reporting obligations; and
- (b) the consequences that may arise if he or she fails to comply with those obligations.

**72. Power of detention to enable notice to be given**

- (1) This section applies if there are reasonable grounds to suspect that a person is a reportable offender and that he or she has not been given notice, or is otherwise unaware, of his or her reporting obligations.
- (2) A police officer may detain the person if it is reasonably necessary to do so —
- (a) to enable a determination to be made as to whether or not the person is a reportable offender, or if the person is a reportable offender, as to whether or not he or she has been given notice, or is aware, of his or her reporting obligations; and
  - (b) to enable the person to be given notice of those obligations if he or she is not aware of them.
- (3) In detaining the person, the police officer must tell the person —
- (a) why he or she is being detained;
  - (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;
  - (b) must not be held merely because he or she has refused to sign an acknowledgment that he or she has been given notice of his or her reporting obligations; and
  - (c) must be released immediately after the purpose of the detention is fulfilled.

**73. Failure to comply with procedural requirements does not affect reportable offender's obligations**

A failure by any person other than a reportable offender to comply with any procedural requirement imposed on the person by this Part or the regulations does not, of itself, affect a reportable offender's reporting obligations.

**Division 10 — Modified reporting procedures for participants in witness protection programs**

**74. Term used: witness protection program**

In this Division —

**witness protection program** has the meaning given to the term “State Witness Protection Program” in the *Witness Protection (Western Australia) Act 1996* section 3.

**75. Application of this Division**

- (1) This Division applies to the following —
- (a) a reportable offender who is a participant in a witness protection program;
  - (b) a reportable offender who is the subject of an order in force under this Division declaring that he or she is a person to whom this Division applies.

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- (2) This Division (except sections 77 and 78) also applies to a reportable offender 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.

**76. Report need not be made in person**

It is sufficient compliance with the requirements of this Part —

- (a) if a person to whom this Division applies reports the information he or she is required to report under this Part —
- (i) to the extent that that information is required by the Commissioner to be reported by the person; and
  - (ii) at the times, and in a manner, authorised by the Commissioner for the purposes of this section; and
- (b) if the acknowledgment of the making of a report is given in a manner approved by the Commissioner.

**77. Determination as to whether this Division applies**

- (1) The Commissioner must make a determination that a reportable offender who is a participant in a witness protection program either is or is not a person to whom this Division applies —
- (a) when the reportable offender ceases to be a participant in the program as a consequence of a request under the *Witness Protection (Western Australia) Act 1996* section 25(1); or
  - (b) when the Commissioner makes a decision under the *Witness Protection (Western Australia) Act 1996* section 25(2) that the protection and assistance given to the reportable offender under the program be terminated.



- (2) On making the determination, the Commissioner must take reasonable steps to notify the reportable offender of the terms of the determination.
- (3) A reportable offender may, within 28 days after receiving such a notification, apply in writing to the Commissioner for a review of the determination.
- (4) On receiving an application for a review, the Commissioner —
  - (a) must review the determination and confirm or reverse it;
  - (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.
- (5) Subject to subsection (3), the determination cannot be the subject of appeal or judicial review or otherwise be called in question in any proceedings.

**78. When determination takes effect**

- (1) A determination that a reportable offender is a person to whom this Division applies takes effect immediately.
- (2) A determination that a reportable offender is not a person to whom this Division applies takes effect —
  - (a) at the end of 28 days after notification of the terms of the determination is given to the reportable offender; or
  - (b) if an application referred to in section 77(3) 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 section 77(4)(c),

whichever is the later.

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**79. Modification of reporting obligations**

Sections 26(1), 29A to 33 and 66 apply with respect to a person to whom this Division applies as if any reference in them to Western Australia were a reference to the jurisdiction in which the person generally resides.

*[Section 79 amended by No. 27 of 2008 s. 9.]*

## **Part 4 — Community Protection Offender Register**

### **80. Requirement to establish and maintain Community Protection Offender Register**

- (1) The Commissioner must establish and maintain a Community Protection Offender Register or arrange with another person for the establishment and maintenance of a Community Protection Offender Register on his or her behalf.
- (2) The Register must contain the following information in respect of each reportable offender (to the extent that it is known by the Commissioner) —
  - (a) the reportable offender's name, address and date of birth;
  - (b) details of each Class 1 offence, Class 2 offence or Class 3 offence of which the reportable offender has been found guilty or with which he or she has been charged;
  - (c) details of each offence of which the reportable offender has been found guilty that resulted in the making of an offender reporting order or a past offender reporting order;
  - (d) details of any prohibition order made in respect of the reportable offender;
  - (e) the date on which the reportable offender was sentenced for any reportable offence;
  - (f) the date on which the reportable offender ceased to be in government custody in respect of a reportable offence, or entered or ceased to be in government custody in respect of any offence during his or her reporting period;
  - (g) any information reported in respect of the reportable offender under Part 3;
  - (h) any other information that the Commissioner considers appropriate to include in the Register.

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**81. Access to the Register to be restricted**

- (1) The Commissioner must ensure —
  - (a) that the Register, or any part of the Register, is only accessed by a person who is authorised to do so by the Commissioner; and
  - (b) that personal information in the Register is only disclosed by a police officer with access to the Register, or the relevant part of the Register, in circumstances authorised by the Commissioner or as otherwise required or authorised by or under any written or other law.
- (2) Personal information in the Register that is to be disclosed under subsection (1)(b) otherwise than to a police officer or a law enforcement agency may only be disclosed by a police officer of or above the rank of inspector.
- (3) In subsection (2) —

***law enforcement agency*** means —

  - (a) the Commissioner of the Australian Federal Police; or
  - (b) the Commissioner (however designated) of the police force of another State or a Territory or another country.
- (4) The Commissioner must develop guidelines in relation to the accessing and disclosure of personal information in the Register that attempt to ensure that access to the personal information in the Register is restricted to the greatest extent that is possible without interfering with the purposes of this Act.
- (5) For the purposes of this section, the Register includes any information from any register maintained under a corresponding Act that is accessible by the Commissioner, whether or not that information is contained in the Register.
- (6) This section has effect despite any written or other law to the contrary.

**82. Confidentiality**

- (1) A person must not, directly or indirectly, record, disclose, or make use of any personal information in the Register except —
- (a) in the course of the person's duty;
  - (b) as required or authorised by or under this Act or another written law;
  - (c) for the purpose of proceedings for an offence under this Act;
  - (d) with the written authority of the Minister or the person to whom the information relates; or
  - (e) in other circumstances prescribed by the regulations.

Penalty:

- (a) in the case where the person recording, disclosing or making use of the information gained a benefit from the recording, disclosure or use of the information, and the value of the benefit was more than \$10 000 — a fine of \$60 000 and imprisonment for 10 years;
  - (b) in the case where the person recording, disclosing or making use of the information gained or intended to gain a benefit from the recording, disclosure or use of the information, and paragraph (a) does not apply — a fine of \$30 000 and imprisonment for 5 years;
  - (c) in any other case — a fine of \$18 000 and imprisonment for 3 years.
- (2) An offence under subsection (1) is a crime.
- (3) The prohibition in subsection (1) extends to the giving of evidence or the production of a book, document or record in civil proceedings in a court or tribunal.

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**83. Restriction on who may access personal information on protected witnesses**

The Commissioner must ensure that any personal information in the Register about a person to whom Part 3 Division 10 applies cannot be accessed otherwise than by a person authorised by the officer responsible for the day to day operation of the witness protection program.

**84. Reportable offender's rights in relation to Register**

- (1) In this section —  
*reportable information* means any information supplied to the Commissioner by, or on behalf of, a reportable offender that the reportable offender is required under Part 3 to report to the Commissioner and that is held in the Register.
- (2) If asked to do so by a reportable offender, the Commissioner must, as soon as is practicable, provide the reportable offender with a copy of all the reportable information that is held in the Register in relation to the reportable offender.
- (3) A reportable offender may ask the Commissioner to amend any reportable information held on the Register in relation to the reportable offender that is incorrect.
- (4) The Commissioner must comply with the request on being satisfied that the information is incorrect.

## Part 5 — Prohibition orders

### Division 1 — Preliminary

#### 85. Terms used in this Part

In this Part —

**child protection prohibition order** means a child protection prohibition order made under section 90 or 95(1);

**conduct** includes an act or omission or a course of conduct;

**corresponding prohibition order** means an order made by a court of a foreign jurisdiction that falls within a class of orders that are prescribed by the regulations to be corresponding prohibition orders for the purposes of this Act;

**court** means —

- (a) if the respondent is a young reportable offender — the Children’s Court; or
- (b) otherwise, the District Court;

**interim prohibition order** means an interim child protection prohibition order made under section 92 or 95(2);

**prohibition order** means a child protection prohibition order or an interim prohibition order;

**registrar** means the clerk or registrar of the court to which an application for a prohibition order is made;

**respondent** means —

- (a) in the case of an application by the Commissioner for a prohibition order to be made, varied or revoked — the reportable offender who is subject to the prohibition order or in respect of whom the prohibition order is sought;
- (b) in the case of an application by a reportable offender for a child protection prohibition order to be varied or revoked — the Commissioner.

**86. Evidence**

Evidence may be given at a hearing under this Part (including a further hearing fixed under section 92) orally or by affidavit.

**Division 2 — Orders**

**87. Commissioner may apply for orders**

The Commissioner may apply to a court for a prohibition order prohibiting a reportable offender from engaging in specified conduct.

**88. Fixing a hearing**

When an application for a prohibition order is made the registrar must —

- (a) fix a day, time and place for the hearing;
- (b) prepare a summons in the prescribed form;
- (c) cause the summons to be served on the reportable offender; and
- (d) notify the applicant of the hearing.

**89. How application to be disposed of**

The court may dispose of the application —

- (a) by making a prohibition order;
- (b) by dismissing the application; or
- (c) at the request of the applicant — by discontinuing the application.

**90. Court may make child protection prohibition orders**

- (1) A court may make a child protection prohibition order prohibiting a person from engaging in conduct specified in the order only if the court is satisfied that the person is a reportable offender and —
  - (a) that the person poses a risk to the lives or sexual safety of one or more children, or children generally; and



- (b) that making the order will reduce that risk.
- (2) For the purposes of subsection (1), it is not necessary that the court be able to identify a risk to a particular child or particular children or a particular class of children.
- (3) In determining whether to make an order under this section in respect of a reportable offender, a court must take into account the following —
  - (a) the seriousness of the reportable offender's reportable offences and corresponding reportable offences;
  - (b) the period of time since those offences were committed;
  - (c) the age of the reportable offender and the age of the victims of those offences at the time those offences were committed;
  - (d) the difference in age between the reportable offender and the victims of those offences;
  - (e) the reportable offender's present age;
  - (f) the seriousness of the reportable offender's total criminal record;
  - (g) the effect of the order sought on the reportable offender in comparison with the level of the risk that a further reportable offence, or an offence that may give rise to an offender reporting order, may be committed by the reportable offender;
  - (h) to the extent that they relate to the conduct sought to be prohibited — the circumstances of the reportable offender, including the reportable offender's accommodation, employment needs and integration into the community;
  - (i) in the case of a young reportable offender — the educational needs of the young reportable offender;
  - (j) any other matter the court considers relevant.

- (4) If a reportable offender in respect of whom an order (the *new order*) is sought is already subject to a prohibition order (the *existing order*) and no application has been made to revoke the existing order, the court must if it decides to make the new order —
- (a) revoke the existing order and replace it with the new order (which may contain matters relating to the existing order); or
  - (b) vary the existing order to include the matters with respect to which the court has decided to make the new order.
- (5) An order is not invalidated by a failure to comply with subsection (4).

**91. Term of child protection prohibition orders**

- (1) The court must specify the term for which a child protection prohibition order remains in force.
- (2) The term cannot be more than 5 years or, for an order made in respect of a young reportable offender, more than 2 years, after it is made, but an application can be made for a further order.

**92. Interim child protection prohibition orders**

- (1) A court may make an interim child protection prohibition order prohibiting a reportable offender from engaging in conduct specified in the order if it appears to the court that it is necessary to do so to prevent an immediate risk to the lives or the sexual safety of one or more children, or children generally.
- (2) For the purposes of subsection (1), it is not necessary that the court be able to identify a risk to a particular child or particular children or a particular class of children.
- (3) Section 90 does not apply to an application for an interim prohibition order.

- (4) An interim prohibition order may be made by a court whether or not —
  - (a) the reportable offender is present at the proceedings; or
  - (b) the reportable offender has been notified of the proceedings.
- (5) When an interim prohibition order is made by a court, the court must —
  - (a) fix a day, time and place for a further hearing of the application as soon as is practicable after the interim prohibition order is made; and
  - (b) issue a summons requiring the reportable offender to attend the court for the further hearing.
- (6) The registrar must —
  - (a) prepare the summons in the prescribed form;
  - (b) cause the summons to be served on the reportable offender; and
  - (c) notify the applicant of the further hearing.
- (7) An interim prohibition order remains in force until the further hearing unless, at the request of the applicant, the application is sooner discontinued.
- (8) At the further hearing, section 90 applies to the application.

**93. Conduct that may be the subject of orders**

- (1) A prohibition order may prohibit conduct of any of the following kinds —
  - (a) associating with or other contact with specified persons or kinds of persons;
  - (b) being in specified locations or kinds of locations;
  - (c) engaging in specified behaviour;
  - (d) being in specified employment or employment of a specified kind.

- (2) Subsection (1) does not limit the kinds of conduct that may be prohibited by a prohibition order.
- (3) A prohibition order may prohibit conduct absolutely or on the terms that the court considers appropriate.
- (4) A prohibition order may prohibit a person from entering or remaining in a place even if the person has a legal or equitable right to be at the place.
- (5) If a court makes a prohibition order that imposes a prohibition referred to in subsection (4) and the court is satisfied that it is necessary to do so, the court must ensure that the order provides for the person in respect of whom the order is made to recover personal property, or other property prescribed by the regulations, from a place specified in the order —
  - (a) in the manner set out in the order; or
  - (b) in accordance with procedures prescribed by the regulations.

**94. Explanation of orders**

- (1) A court that makes a prohibition order must ensure that all reasonable steps are taken to explain to the reportable offender in language likely to be understood by him or her —
  - (a) his or her obligations under the order; and
  - (b) the consequences that may arise if he or she fails to comply with those obligations.
- (2) An order is not invalidated by a failure to comply with subsection (1).

**95. Consent orders**

- (1) A court may make a child protection prohibition order without being subject to section 90 if the applicant and the reportable offender consent to the making of the order.

- (2) A court may make an interim prohibition order without being subject to section 92 if the applicant and the reportable offender consent to the making of the order.
- (3) The court is not required to conduct a hearing before making an order under this section unless the court considers that it is in the interests of justice to conduct the hearing.
- (4) Without limiting subsection (3), in determining whether it is in the interests of justice to conduct the hearing the court may have regard to the following —
  - (a) whether the reportable offender has obtained legal advice in relation to the order concerned;
  - (b) whether the reportable offender —
    - (i) has impaired intellectual functioning;
    - (ii) is a person in respect of whom a guardianship order is in force under the *Guardianship and Administration Act 1990*;
    - (iii) is illiterate or is not literate in the English language; or
    - (iv) is subject to some other condition that may prevent the reportable offender from understanding the effect of giving consent to the making of the order.

### **Division 3 — Variation or revocation**

#### **96. Variation or revocation of child protection prohibition orders**

- (1) The Commissioner may apply to a court for an order varying or revoking a child protection prohibition order.
- (2) A reportable offender subject to a child protection prohibition order may apply to a court for an order varying or revoking the order.

- (3) A reportable offender cannot make an application under subsection (2) except by leave of the court.
- (4) The court may grant leave only if the court is satisfied that, having regard to changes in the reportable offender's circumstances since the order was made or last varied, it is in the interests of justice that leave be granted.

**97. Fixing a hearing**

- (1) When an application for the variation or revocation of a child protection prohibition order is made by a reportable offender, the registrar must —
  - (a) fix a day, time and place for a hearing at which the court will consider whether to grant leave for the reportable offender to continue the application; and
  - (b) notify the applicant of the hearing.
- (2) The hearing in relation to the granting of leave must be held in the absence of the Commissioner.
- (3) When an application for the variation or revocation of a child protection prohibition order is made by the Commissioner, or a reportable offender has been granted leave to continue such an application, the registrar must —
  - (a) fix a day, time and place for the hearing;
  - (b) prepare a summons in the prescribed form;
  - (c) cause the summons to be served on the respondent; and
  - (d) notify the applicant of the hearing.

**98. How application to be disposed of**

The court may dispose of the application —

- (a) by varying or revoking the child protection prohibition order;
- (b) by dismissing the application; or

- (c) at the request of the applicant — by discontinuing the application.

#### **Division 4 — Attendance at hearings**

##### **99. Attendance at hearings**

- (1) If the applicant does not attend a hearing fixed under section 88 or 97 or a further hearing fixed under section 92, the court —
  - (a) if it is satisfied the applicant was notified of the hearing — must dismiss the application; or
  - (b) otherwise, must adjourn the hearing.
- (2) If the respondent does not attend a hearing fixed under section 88 or 97 or a further hearing fixed under section 92 and the applicant does attend, the court —
  - (a) if it is satisfied that the respondent was served with a summons requiring the respondent to attend the hearing — must hear the matter in the absence of the respondent; or
  - (b) otherwise, must adjourn the hearing.
- (3) The registrar of a court that adjourns a hearing must notify any party permitted to attend the hearing who was not present when the hearing was adjourned.

##### **100. Notification of orders made in absence of respondent**

The registrar of a court that makes, varies or revokes a prohibition order in the absence of the respondent must cause a copy of the order to be served on the respondent.

### **Division 5 — Offence**

#### **101. Failure to comply with orders**

- (1) A person subject to a prohibition order who, without reasonable excuse, fails to comply with the prohibition order commits an offence.

Penalty: a fine of \$12 000 and imprisonment for 2 years.

- (2) A police officer who suspects on reasonable grounds that a person has committed an offence under subsection (1) may, without a warrant, arrest the person.

### **Division 6 — Appeals**

#### **102. Appeals**

- (1) A person aggrieved by the decision of a court —
- (a) under section 89(b) or 98(b) to dismiss an application; or
  - (b) to make, vary or revoke a prohibition order,

may appeal against that decision in accordance with this Division.

- (2) If the decision was made by the District Court, the appeal is to be made to the Court of Appeal in accordance with the *District Court of Western Australia Act 1969* section 79(1)(a).
- (3) If the decision was made by the Children's Court when constituted so as not to consist of or include a judge, the appeal is to be made as if the decision were a decision to which the *Children's Court of Western Australia Act 1988* section 41 applied.
- (4) If the decision was made by the Children's Court when constituted so as to consist of or include a judge, the appeal is to be made as if the decision were a decision to which the *Children's Court of Western Australia Act 1988* section 43 applied.

*[Section 102 amended by No. 5 of 2008 s. 127(3).]*



**103. Appeal does not stay order**

An appeal against an order made under this Part does not operate to stay the operation of the order unless the court to which the appeal is made so orders.

**Division 7 — Miscellaneous**

**104. Applications not to be heard in public**

- (1) Proceedings under this Part must be heard in the absence of the public.
- (2) Despite subsection (1), the court hearing the proceedings may, if it considers it to be appropriate, permit to be present during the hearing of the proceedings persons who are not —
  - (a) parties to the proceedings; or
  - (b) the legal representatives of those parties.

**105. Commissioner to be given information relating to reportable offenders**

- (1) When determining whether to make an application under this Part, or when making or responding to an application under this Part, the Commissioner may, by notice in writing, direct any public authority to provide to the Commissioner, on or before a day specified in the notice, any information held by the public authority that is relevant to an assessment of whether the reportable offender poses a risk to the lives or the sexual safety of one or more children, or children generally.
- (2) A public authority to which a direction under subsection (1) is given is authorised and required to provide to the Commissioner the information sought by the direction.
- (3) A public authority is not required to give information that is subject to legal professional privilege.

**106. Restriction on publication of identity of reportable offenders and victims**

- (1) A person must not, in relation to any proceedings relating to a prohibition order, publish —
- (a) personal information relating to the person in respect of whom the order is sought or any such order is made;
  - (b) the name of any victim of a reportable offence committed by a reportable offender;
  - (c) the name of any particular person referred to as a person at risk because of the conduct proposed to be prohibited;
  - (d) any matter reasonably likely to enable a person referred to in paragraph (b) or (c) to be identified.

Penalty: a fine of \$12 000 and imprisonment for 2 years.

- (2) Subsection (1) does not apply in relation to the publication of any matter with the authority of the court to which the application was made or any publication by a person of his or her name.
- (3) Subsection (1) does not apply in relation to the publication of any matter to —
- (a) the reportable offender;
  - (b) a person specified, or of a class specified, in the order concerned;
  - (c) a police officer or a member of a law enforcement agency of the Commonwealth or another State or a Territory in that police officer's or member's official capacity;
  - (d) a person involved in the administration of the order;
  - (e) a member of staff of a public authority involved in the assessment and management of the reportable offender;
  - (f) a person for the purpose of an investigation of an alleged breach of the order or to a person involved in proceedings for any such breach; or

- (g) any other person to whom the matter is required or authorised to be disclosed by or under any written or other law.

**107. Prohibition orders have no effect to extent of inconsistency with certain other orders**

- (1) In this section —
  - family order* has the meaning given to that term in the *Restraining Orders Act 1997* section 5;
  - misconduct restraining order*, *police order* and *violence restraining order* have the meanings given to those terms in the *Restraining Orders Act 1997* section 3;
  - restraining order* means —
    - (a) a violence restraining order;
    - (b) a misconduct restraining order; or
    - (c) a police order.
- (2) If a prohibition order is inconsistent with a family order or restraining order (whether the prohibition order is made before or after the family order or restraining order), the family order or restraining order prevails and the prohibition order has no effect to the extent of the inconsistency.
- (3) For the purposes of subsection (2), a prohibition order is not inconsistent with another order merely because the prohibition order imposes a longer term in relation to any prohibited conduct than was imposed by the other order.

**108. Recognition of prohibition orders made in other jurisdictions**

- (1) The regulations may provide for the recognition in Western Australia of corresponding prohibition orders.

- (2) In particular, the regulations may provide for the following matters —
- (a) applications for the recognition in Western Australia of corresponding prohibition orders;
  - (b) the conferral on courts of jurisdiction with respect to the recognition in Western Australia of corresponding prohibition orders;
  - (c) the modification of corresponding prohibition orders for the purposes of their recognition in Western Australia;
  - (d) the effect of the recognition in Western Australia of corresponding prohibition orders;
  - (e) the conferral on courts of jurisdiction with respect to the variation or revocation of corresponding prohibition orders.

## Part 6 — Other matters

### 109. Protection from liability

- (1) An action in tort does not lie against a person for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act.
- (2) The State is also relieved of any liability that it might otherwise have had for another person having done anything as described in subsection (1).
- (3) The protection given by this section applies even though the thing done as described in subsection (1) may have been capable of being done whether or not this Act had been enacted.
- (4) In this section, a reference to the doing of anything includes a reference to the omission to do anything.

### 110. Delegation by Commissioner

- (1) The Commissioner may delegate any power or duty of the Commissioner under another provision of this Act to —
  - (a) a police officer who is specified, or of a class specified, in the delegation; or
  - (b) a person employed under the *Public Sector Management Act 1994* Part 3 who is specified, or of a class specified, in the delegation.
- (2) The delegation must be in writing signed by the Commissioner.
- (3) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (4) A person exercising or performing a power or duty that has been delegated to the person under this section is taken to do so in accordance with the terms of the delegation unless the contrary is shown.

**s. 111**

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- (5) Nothing in this section limits the ability of the Commissioner to perform a function through an officer or agent.

**111. Effect of spent convictions**

- (1) The fact that an offence in respect of which a reportable offender has been found guilty becomes spent does not affect —
- (a) the status of the offence as a reportable offence for the purposes of this Act in respect of the reportable offender;
  - (b) the consideration of the offence as part of the reportable offender's total criminal record for the purposes of section 53(3)(f), 61(3)(f) or 90(3)(f);
  - (c) the inclusion of information about the offence in the Register;
  - (d) any reporting obligations of the reportable offender; or
  - (e) any prohibition order in respect of the reportable offender.
- (2) For the purposes of this section, an offence becomes spent if, under a law in any jurisdiction, the reportable offender is permitted not to disclose the fact that he or she was convicted or found guilty of the offence.

**112. Civil standard of proof**

When a court is determining whether it is satisfied as to a matter for the purposes of making an order under section 13, 19, 53 or 90, the standard of proof is proof on the balance of probabilities.

**113. Certificate concerning evidence**

- (1) In this section —  
*specified* means specified in the relevant certificate.

- (2) In proceedings under this Act, a certificate signed by the Commissioner certifying that the Register —
- (a) at any particular date contained specified information; or
  - (b) indicated that, during any particular period, a specified person failed to notify information as required by this Act,

is evidence, and in the absence of evidence to the contrary is proof, of the matters stated in the certificate.

- (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 matters stated in the certificate.

#### **114. Regulations**

- (1) The Governor may make regulations prescribing all matters that are required or authorised by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.
- (2) Without limiting subsection (1), regulations may be made for or with respect to —
- (a) matters incidental to the making of reports under Part 3 including —
    - (i) the manner and form in which a report must be made;
    - (ii) the nature of any verifying documentation or evidence to be produced in support of a report; and
    - (iii) requiring that a report contain information additional to that required by that Part;

**s. 114**

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- (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 reportable offenders;
- (c) 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;
- (d) requiring or authorising the Commissioner to remove specified information, or information of a specified class, from the Register;
- (e) the notification of reporting obligations to reportable offenders, including —
  - (i) the manner and form in which the information is to be given to reportable offenders;
  - (ii) requiring the reportable offender to acknowledge being given the notice and prescribing how that acknowledgment is to be given;
  - (iii) making special provision for the notification of reportable offenders who are children or who have disabilities or other special needs;
  - (iv) requiring or authorising a person to be notified of a reportable offender's status as a child or person who has a disability or other special need to facilitate notification and reporting;
  - (v) providing for the notification to be given to a carer of, or a person nominated by, a reportable offender who may be unable to understand his or her reporting obligations or the consequences of failing to comply with those obligations;
  - (vi) requiring that a reportable offender be given additional information to that required by this Act;



- (vii) requiring a person to provide specified information to reportable offenders concerning their reporting obligations;
  - (viii) requiring a person to inform the Commissioner —
    - (I) that a reportable offender has left the custody or control of the person;
    - (II) that the person has given specified information to a reportable offender;
    - (III) that, in the opinion of the person, a reportable offender does or does not have the legal capacity to understand specified information;
- and
- (ix) requiring a person to give the Commissioner any acknowledgment by a reportable offender of the receipt of a notice or any other specified information that is held by the person;
  - (f) empowering the Commissioner to give directions as to which police stations or approved places are to be used as a venue for the making of reports;
  - (g) requiring a person to create records for the purposes of this Act and to retain those records for a specified period or an unlimited period;
  - (h) prescribing a person who falls within a specified class of persons as a corresponding reportable offender for the purposes of this Act; and
  - (i) stating that an order of a specified class made under a specified corresponding Act is a corresponding offender reporting order for the purposes of this Act.
- (3) The regulations may provide that a contravention of a regulation is an offence and prescribe, for an offence against the regulations, a penalty not exceeding a fine of \$6 000.

**s. 115**

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**115. Minister to review and report on Act**

- (1) The Minister must carry out a review of the operation and effectiveness of this Act as soon as is practicable after the fifth anniversary of the commencement day.
- (2) The Minister must prepare a report based on the review and, as soon as is practicable after the report is prepared, must cause it to be laid before each House of Parliament.

**115A. Transitional arrangements for certain offenders**

- (1) A person who was sentenced for an offence against *The Criminal Code* section 204B(2) or (3) (a **relevant offence**) before the day on which the *Community Protection (Offender Reporting) Amendment Act 2008* section 12 came into operation (the **relevant day**) is taken for the purposes of this Act —
  - (a) to be a reportable offender in respect of a Class 2 offence; and
  - (b) to have been sentenced for that offence on the relevant day.
- (2) Subsection (1) does not apply to a person who was sentenced for a relevant offence before the relevant day and is subject to an offender reporting order in respect of that offence.
- (3) Nothing in this section limits the operation of this Act in respect of a person who is sentenced for a relevant offence on or after the relevant day.

*[Section 115A inserted by No. 27 of 2008 s. 10.]*

**[116.** *Omitted under the Reprints Act 1984 s. 7(4)(e).]*

## Schedule 1 — Class 1 offences

[s. 10]

Enactment	Description of offence
<i>The Criminal Code</i>	
s. 187	Facilitating sexual offences against children outside Western Australia
s. 279	Murder (if the person against whom the offence is committed is a child)
s. 320 (except s. 320(6))	Sexual offences against child under 13
s. 321 (except s. 321(6))	Sexual offences against child of or over 13 and under 16
s. 321A	Persistent sexual conduct with child under 16
s. 322 (except s. 322(6))	Sexual offences against child of or over 16 by person in authority etc.
s. 325	Sexual penetration without consent (if the person against whom the offence is committed is a child)
s. 326	Aggravated sexual penetration without consent (if the person against whom the offence is committed is a child)
s. 327	Sexual coercion (if the person against whom the offence is committed is a child)
s. 328	Aggravated sexual coercion (if the person against whom the offence is committed is a child)
s. 329 (except s. 329(8))	Sexual offences by relatives and the like
s. 330	Sexual offences against incapable person
<i>Crimes Act 1914 of the Commonwealth</i>	
s. 50BA	Sexual intercourse with child under 16

**Community Protection (Offender Reporting) Act 2004**  
**Schedule 1**      Class 1 offences

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<b>Enactment</b>	<b>Description of offence</b>
s. 50BB	Inducing child under 16 to engage in sexual intercourse

*[Schedule 1<sup>4</sup> amended by No. 2 of 2008 s. 58; No. 27 of 2008 s. 11;  
No. 29 of 2008 s. 25(2) and (3).]*

## Schedule 2 — Class 2 offences

[s. 11]

<b>Enactment</b>	<b>Description of offence</b>
<i>The Criminal Code</i>	
s. 186	Occupier or owner allowing child to be on premises for unlawful carnal knowledge
s. 204B(2)	Using electronic communication to procure, or to expose to indecent matter, a child under 16
s. 204B(3)	Using electronic communication to procure, or to expose to indecent matter, a child under 13
s. 217	Involving child in child exploitation
s. 218	Production of child exploitation material
s. 219	Distribution of child exploitation material
s. 220	Possession of child exploitation material
s. 320(6)	Indecently recording child under 13
s. 321(6)	Indecently recording child of or over 13 and under 16
s. 322(6)	Indecently recording child of or over 16 by person in authority etc.
s. 323	Indecent assault (if the person against whom the offence is committed is a child)
s. 324	Aggravated indecent assault (if the person against whom the offence is committed is a child)
s. 331B	Sexual servitude (if the person against whom the offence is committed is a child)
s. 331C	Conducting business involving sexual servitude (if the person against whom the offence is committed is a child)

**Community Protection (Offender Reporting) Act 2004**

**Schedule 2** Class 2 offences

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<b>Enactment</b>	<b>Description of offence</b>
s. 331D	Deceptive recruiting for commercial sexual services (if the person against whom the offence is committed is a child)
s. 557K(4)	Child sex offender habitually consorting with another child sex offender
s. 557K(6)	Child sex offender being in or near a place where children are regularly present
<i>Prostitution Act 2000</i>	
s. 16	Causing, permitting or seeking to induce child to act as prostitute
s. 17	Obtaining payment for prostitution by a child
<i>Classification (Publications, Films and Computer Games) Enforcement Act 1996</i>	
the deleted s. 60	Child pornography
s. 101	Objectionable material offences (if the objectionable material is child pornography)
<i>Children and Community Services Act 2004</i>	
s. 192	Employment of child to perform in indecent manner
<i>Crimes Act 1914 of the Commonwealth</i>	
s. 50BC	Sexual conduct involving child under 16
s. 50BD	Inducing child under 16 to be involved in sexual conduct
s. 50DA	Benefiting from offence against Part IIIA
s. 50DB	Encouraging offence against Part IIIA
<i>Customs Act 1901 of the Commonwealth</i>	

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<b>Enactment</b>	<b>Description of offence</b>
s. 233BAB	Special offences relating to tier 2 goods (if the offence involves items of child pornography or of child abuse material)

*[Schedule 2 amended by No. 27 of 2008 s. 12; No. 21 of 2010 s. 13.]*

*[Schedule 3 has not come into operation<sup>3</sup>.]*

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**Notes**

<sup>1</sup> This is a compilation of the *Community Protection (Offender Reporting) Act 2004* and includes the amendments made by the other written laws referred to in the following table <sup>1M, 1a</sup>. The table also contains information about any reprint.

**Compilation table**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Community Protection (Offender Reporting) Act 2004</i>	72 of 2004	8 Dec 2004	s. 1 and 2: 8 Dec 2004; s. 3-5, Pt. 4 and 6: 25 Dec 2004 (see s. 2 and <i>Gazette</i> 24 Dec 2004 p. 6266); Pt. 2 (except s. 6(2)(b) and 12) and Pt. 3 and 5 and Sch. 1 and 2: 1 Feb 2005 (see s. 2 and <i>Gazette</i> 24 Dec 2004 p. 6266); s. 6(2)(b): 1 Jul 2005 (see s. 2 and <i>Gazette</i> 24 Dec 2004 p. 6266)
<i>Criminal Law and Evidence Amendment Act 2008 s. 58</i>	2 of 2008	12 Mar 2008	27 Apr 2008 (see s. 2 and <i>Gazette</i> 24 Apr 2008 p. 1559)
<i>Acts Amendment (Justice) Act 2008 s. 127</i>	5 of 2008	31 Mar 2008	30 Sep 2008 (see s. 2(d) and <i>Gazette</i> 11 Jul 2008 p. 3253)
<i>Criminal Law Amendment (Homicide) Act 2008 s. 25(1)-(3)</i>	29 of 2008	27 Jun 2008	1 Aug 2008 (see s. 2(b) and (d) and <i>Gazette</i> 22 Jul 2008 p. 3353)
<i>Community Protection (Offender Reporting) Amendment Act 2008 s. 4-12</i>	27 of 2008	1 Jul 2008	2 Jul 2008 (see s. 2(b))
<b>Reprint 1: The <i>Community Protection (Offender Reporting) Act 2004</i> as at 14 Nov 2008</b> (includes amendments listed above)			
<i>Child Pornography and Exploitation Material and Classification Legislation Amendment Act 2010 s. 13</i>	21 of 2010	7 Jul 2010	28 Aug 2010 (see s. 2(b) and <i>Gazette</i> 27 Aug 2010 p. 4105)
<i>Statutes (Repeals and Minor Amendments) Act 2011 s. 15</i>	47 of 2011	25 Oct 2011	26 Oct 2011 (see s. 2(b))

<sup>1M</sup> Under the *Cross-border Justice Act 2008* section 14, in order to give effect to that Act, this Act must be applied with the modifications prescribed by the *Cross-*



*border Justice Regulations 2009 Part 3 Division 5 as if this Act had been altered in that way. If a modification is to replace or insert a numbered provision, the new provision is identified by the superscript 1M appearing after the provision number. If a modification is to replace or insert a definition, the new definition is identified by the superscript 1M appearing after the defined term.*

- <sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

**Provisions that have not come into operation**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Community Protection (Offender Reporting) Act 2004 s. 12 and Sch. 3</i> <sup>3</sup>	72 of 2004 (as amended by No. 29 of 2008 s. 25(4))	8 Dec 2004	s. 12 and Sch. 3: to be proclaimed (see s. 2)
<i>Prostitution Amendment Act 2008 s. 29</i> <sup>5</sup>	13 of 2008	14 Apr 2008	To be proclaimed (see s. 2(b))
<i>Community Protection (Offender Reporting) Amendment Act 2012 Pt. 2</i> <sup>6</sup>	1 of 2012	15 Mar 2012	To be proclaimed (see s. 2(b))

<sup>2</sup> Formerly referred to the *Criminal Law (Mentally Impaired Defendants) Act 1996* the short title of which was changed to the *Criminal Law (Mentally Impaired Accused) Act 1996* by the *Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 82*. This reference was changed under the *Reprints Act 1984 s. 7(3)(gb)*.

<sup>3</sup> On the date as at which this compilation was prepared, the *Community Protection (Offender Reporting) Act 2004 s. 12 and Sch. 3* (as amended by the *Criminal Law Amendment (Homicide) Act 2008 s. 25(4)*) had not come into operation. They read as follows:

“

**12. Class 3 offences**

A Class 3 offence is —

- (a) an offence against a provision listed in Schedule 3;
- (b) an offence under a law of a foreign jurisdiction the elements of which, if they had occurred in Western

- Australia, would have constituted an offence of a kind referred to in this section;
- (c) an offence under a law of a foreign jurisdiction that is prescribed by the regulations to be a Class 3 offence;
  - (d) an offence an element of which is an intention to commit an offence of a kind referred to in this section;
  - (e) an offence of attempting, or of conspiracy or incitement, to commit an offence of a kind referred to in this section; or
  - (f) an offence that, at the time it was committed —
    - (i) was a Class 3 offence for the purposes of this Act; or
    - (ii) in the case of an offence committed before the commencement day — was an offence of a kind referred to in this section.

**Schedule 3 — Class 3 offences**

[s. 12]

<b>Enactment</b>	<b>Description of offence</b>
<i>The Criminal Code</i>	
s. 279	Murder (if the person against whom the offence is committed is not a child)
s. 325	Sexual penetration without consent (if the person against whom the offence is committed is not a child)
s. 326	Aggravated sexual penetration without consent (if the person against whom the offence is committed is not a child)
s. 327	Sexual coercion (if the person against whom the offence is committed is not a child)
s. 328	Aggravated sexual coercion (if the person against whom the offence is committed is not a child)

[Schedule 3 amended by No. 29 of 2008 s. 25(4).]

<sup>4</sup> Schedule 1. This is a list of enactments and descriptions of offences formerly in Schedule 1

*The Criminal Code*

s. 321A Sexual relationship with child under 16.

<sup>5</sup> On the date as at which this compilation was prepared, the *Prostitution Amendment Act 2008* s. 29 had not come into operation. It reads as follows:

“

**29. Community Protection (Offender Reporting) Act 2004 amended**

- (1) The amendments in this section are to the *Community Protection (Offender Reporting) Act 2004*.
- (2) Schedule 2 is amended by deleting the entry relating to the *Prostitution Act 2000* and inserting instead —

“

*Sexual Services Act 2000*

- |       |   |
|-------|---|
| s. 16 | Causing, permitting or seeking to induce a child to act as a sex worker |
| s. 17 | Obtaining payment for commercial sexual act by a child                  |

”

<sup>6</sup> On the date as at which this compilation was prepared, the *Community Protection (Offender Reporting) Amendment Act 2012* Pt. 2 had not come into operation. It reads as follows:

**Part 2 — Community Protection (Offender Reporting) Act 2004 amended**

**3. Act amended**

This Part amends the *Community Protection (Offender Reporting) Act 2004*.

**4. Long title amended**

In the long title after “may commit,” insert:

**to enable information to be published about certain offenders,**

**5. Part 5A inserted**

After section 84 insert:

**Part 5A — Publication of information about offenders**

**Division 1 — Preliminary**

**85A. Terms used**

In this Part —

**DSO supervision order** means a supervision order under the *Dangerous Sexual Offenders Act 2006*;

**locality**, of a person, means a description of the general locality, such as the town or suburb, in which the person resides;

**publish**, except in section 85M, means make available for inspection by members of the public on a website maintained by the Commissioner.

**85B. Delegation by Commissioner**

The Commissioner may delegate under section 110 a power of the Commissioner under Division 2 only to a police officer who holds or is acting in the office of Deputy Commissioner or Assistant Commissioner.

**85C. Commissioner not required to publish or provide information**

Nothing in this Part requires the Commissioner to publish or provide information about any reportable offender or other person.

**85D. Restriction on information about protected witnesses**

Nothing in this Part authorises the Commissioner to publish or provide information about a person to whom Part 3 Division 10 applies.

**Division 2 — Commissioner may publish information**

**85E. Application**

This Division has effect despite any written or other law to the contrary.

**85F. Commissioner may publish personal details of certain reportable offenders**

(1) In this section —

**personal details**, in relation to a reportable offender, means the information listed in section 26(1) and —

- (a) includes a photograph or digital image of the offender; but
- (b) does not include any details that the offender reports under section 26(1)(e) or any other details that would identify a child.

(2) The Commissioner may publish any or all of the personal details of a reportable offender, other than a reportable offender who is a child, if —

- (a) the Commissioner is satisfied that the reportable offender —

- (i) has failed to comply with any of his or her reporting obligations; or
    - (ii) in purported compliance with Part 3, has provided information that is false or misleading in a material particular;
  - and
  - (b) the reportable offender's whereabouts are not known to the Commissioner.
- (3) The Commissioner may at any time —
- (a) remove any or all of the personal details of a reportable offender from the website on which they are published under subsection (2); or
  - (b) again publish under subsection (2) any or all of the personal details of the reportable offender after their removal under paragraph (a).
- (4) If —
- (a) the Commissioner has published any personal details of a reportable offender under subsection (2); and
  - (b) the reportable offender subsequently reports his or her whereabouts to the Commissioner under Part 3,
- the Commissioner must, as soon as is practicable after receiving the report, remove those personal details from the website on which they are published.

**85G. Commissioner may publish photograph and locality of certain persons**

- (1) In this section —
- Department of Corrective Services*** means the department of the Public Service principally assisting the Minister in the administration of the *Prisons Act 1981*;
- photograph*** includes a digital image;
- prescribed offence*** means a Class 1 offence, a Class 2 offence or a sexual offence, as defined in the *Evidence Act 1906* section 36A.
- (2) Subject to this section, the Commissioner may publish a photograph and the locality of a person, other than a person who is a child —
- (a) if the person is subject to a DSO supervision order and that order does not provide that the person's photograph and locality are not to be published under this section; or
  - (b) if —

- (i) the person, after becoming a reportable offender, commits and is found guilty of a prescribed offence; and
    - (ii) any offence committed by the person, including the prescribed offence, is a Class 1 offence or an offence committed against a child under *The Criminal Code* section 323 or 324;
  - or
  - (c) if —
    - (i) the person has been found guilty of an offence punishable by imprisonment for 5 years or more; and
    - (ii) on application by the Commissioner, that publication is authorised by the Minister on being satisfied that the person poses a risk to the lives or sexual safety of one or more persons, or persons generally.
- (3) If the Commissioner proposes to publish the photograph and locality of a person under subsection (2), the Commissioner —
  - (a) must give the person written notice of the proposal and the reasons for it; and
  - (b) must inform the person in that notice that he or she has a specified period (of not less than 21 days) to make submissions or be heard in relation to the proposal; and
  - (c) if subsection (2)(a) applies in relation to the person, must give written notice of the proposal to the chief executive officer of the Department of Corrective Services.
- (4) Before publishing the photograph and locality of the person, the Commissioner must have regard to —
  - (a) any submission made, or information or document provided, by the person within the period referred to in subsection (3)(b); and
  - (b) if notice is given under subsection (3)(c), any submission made by the chief executive officer of the Department of Corrective Services within the period of 21 days after that notice is given.
- (5) For the purposes of subsection (2)(c), it is not necessary that the Minister be able to identify a risk to a particular person or particular persons or a particular class of persons.

- (6) In determining whether to authorise publication under subsection (2)(c), the Minister may take into account the following —
- (a) any medical, psychiatric, psychological or other assessment relating to the person;
  - (b) any information indicating whether or not the person is likely to commit a prescribed offence in the future;
  - (c) whether or not there is any pattern of offending behaviour on the part of the person;
  - (d) the person's antecedents and the seriousness of his or her total criminal record;
  - (e) the person's age and the age of any victims of any offences committed by the person at the time those offences were committed;
  - (f) the difference in age between the person and any victims of those offences;
  - (g) any other matter the Minister considers relevant.
- (7) The Commissioner must provide with an application under subsection (2)(c) any information available to the Commissioner that is relevant to the Minister's determination whether to authorise publication.
- (8) The fact that an offence in respect of which a person has been found guilty becomes spent does not affect the consideration of the offence as part of the person's total criminal record for the purposes of subsection (6)(d).

**85H. Removal of photograph and locality from website**

- (1) The Commissioner may at any time —
- (a) remove the photograph and locality of a person from the website on which they are published under section 85G(2); or
  - (b) again publish under section 85G(2) the photograph and locality of a person after their removal under paragraph (a).
- (2) If —
- (a) the Commissioner has published a photograph and the locality of a person under section 85G(2)(a); and
  - (b) the person ceases to be subject to the DSO supervision order; and
  - (c) neither section 85G(2)(b) nor (c) applies in relation to the person,

the Commissioner must, as soon as is practicable, remove the photograph and locality from the website on which they are published.

- (3) If—
- (a) the Commissioner has published a photograph and the locality of a person under section 85G(2)(b); and
  - (b) the person's reporting obligations expire; and
  - (c) neither section 85G(2)(a) nor (c) applies in relation to the person,

the Commissioner must, as soon as is practicable, remove the photograph and locality from the website on which they are published.

**85I. Commissioner may take into account certain matters**

- (1) In determining whether or not —
- (a) to publish any personal details of a person who is a reportable offender under section 85F(2) or a photograph and the locality of a person under section 85G(2) (the *identifying information*); or
  - (b) to remove the identifying information from a website under section 85F(3) or 85H(1),

the Commissioner may take into account the matters to which this section applies.

- (2) This section applies to these matters —
- (a) whether the publication of the identifying information about a person would interfere with —
    - (i) an investigation by police officers in relation to the person; or
    - (ii) the person's compliance with the reporting obligations of this Act; or
    - (iii) the operation of a community order under the *Sentencing Act 1995*, a DSO supervision order or any other order or requirement under a written law to which the person is subject;
  - (b) whether the publication of the identifying information about the person might identify a victim of an offence, or the school attended by a victim of an offence, committed by the person;
  - (c) the effect that the publication of the identifying information about the person might have on a victim of an offence committed by the person;



- (d) whether, in statements made by the victim to the Commissioner, the publication of the identifying information about the person has been supported or opposed by a victim of an offence committed by the person;
- (e) whether the publication of the identifying information about the person would increase the risk of the person committing offences;
- (f) the Commissioner's assessment of the benefit to the community of the publication of the identifying information about the person;
- (g) if the identifying information is about a person who is awaiting trial on a charge of an offence — whether the publication of the identifying information might prejudice the fair trial of the person;
- (h) any other matter the Commissioner considers relevant.

**85J. Commissioner may inform child's parent or guardian whether specified person is a reportable offender**

- (1) A person may apply to the Commissioner to be informed whether or not a person specified in the application (the *specified person*), other than a person who is a child, is a reportable offender.
- (2) The application must be made in a manner approved by the Commissioner.
- (3) The applicant must provide, in support of the application, any evidence required by the Commissioner to be satisfied that the specified person has regular unsupervised contact with a child of whom the applicant is a parent or guardian.
- (4) For the purposes of subsection (3), a person does not have regular unsupervised contact with a child unless he or she has unsupervised contact with the child for at least 3 days (whether consecutive or not) in any period of 12 months.
- (5) If the Commissioner is satisfied that the specified person has regular unsupervised contact with a child of whom the applicant is a parent or guardian, the Commissioner may inform the applicant whether or not the specified person is a reportable offender.

**85K. Protection as to publication and other provision of information**

- (1) In this section —  
*information* includes the identifying information referred to in section 85I.

- (2) If the Commissioner determines in good faith —
- (a) to publish or provide any information under this Division; or
  - (b) not to publish or provide any information under this Division,
- no civil or criminal liability attaches to the Commissioner or the State by reason of publishing or providing that information or omitting to publish or provide that information.
- (3) If information is published or provided by the Commissioner under this Division, that publication or provision of information is not to be regarded —
- (a) as a breach of any duty of confidentiality or secrecy imposed by law; or
  - (b) as a breach of professional ethics or standards or as unprofessional conduct.

### **Division 3 — Offences**

#### **85L. Conduct intended to incite animosity towards or harassment of identified offenders**

- (1) In this section —
- animosity towards*** means hatred of or serious contempt for;
- harassment*** includes threat, serious and substantial abuse and severe ridicule;
- identified offender*** means —
- (a) a person whose personal details are published by the Commissioner under section 85F; or
  - (b) a person whose photograph and locality are published by the Commissioner under section 85G; or
  - (c) a person in relation to whom the Commissioner provides the information under section 85J that the person is a reportable offender;
- public place*** includes —
- (a) a place to which the public, or any section of the public, has or is permitted to have access, whether on payment or otherwise; and
  - (b) a privately owned place to which the public has access with the express or implied approval of, or without interference from, the owner, occupier or person who has the control or management of the place; and

- (c) a school, university or other place of education, other than a part of it to which neither students nor the public usually have access.
- (2) A reference in subsection (4) or (6) to conduct includes a reference to conduct occurring on a number of occasions over a period of time.
- (3) For the purposes of subsection (4) or (6), conduct is taken not to occur in private if it —
  - (a) consists of any form of communication with the public or a section of the public; or
  - (b) occurs in a public place or in sight or hearing of people who are in a public place.
- (4) A person must not engage in any conduct, otherwise than in private, by which the person intends to create, promote or increase animosity towards, or harassment of, a person as an identified offender.  
Penalty: imprisonment for 10 years.
- (5) An offence under subsection (4) is a crime.
- (6) A person must not engage in any conduct, otherwise than in private, that is likely to create, promote or increase animosity towards, or harassment of, a person as an identified offender.  
Penalty: imprisonment for 2 years.

**85M. Publication, display and distribution of identifying information**

- (1) In this section —
  - display* means display in or within view of a public place, as defined in section 85L(1);
  - distribute* means distribute to the public or a section of the public;
  - identifying information* means information that is identifiable as —
    - (a) the personal details of a person published by the Commissioner under section 85F; or
    - (b) the photograph and locality of a person published by the Commissioner under section 85G; or
    - (c) the information that a person is a reportable offender provided by the Commissioner under section 85J;
  - publish* means publish to the public or a section of the public.
- (2) A person must not, without having first obtained the written approval of the Minister, publish, distribute or display any identifying information.

Penalty: imprisonment for 2 years.

**6. Section 115 amended**

- (1) After section 115(1) insert:
  - (2A) The Minister must carry out a review of the operation and effectiveness of the amendments made to this Act by the *Community Protection (Offender Reporting) Amendment Act 2012* as soon as is practicable after the third anniversary of the coming into operation of section 5 of that Act.
- (2) In section 115(2) delete “the review” and insert:

each review

## Defined Terms

*[This is a list of terms defined and the provisions where they are defined.  
The list is not part of the law.]*

Defined Term	Provision(s)
approved place .....	3
authorised person .....	3
child .....	3
child protection prohibition order .....	85
Class 1 offence.....	3
Class 2 offence.....	3
Class 3 offence.....	3
commencement day .....	3
Commissioner .....	3
community order.....	3
conduct.....	85
corresponding Act.....	3
corresponding offender reporting order .....	3
corresponding prohibition order.....	85
corresponding registrar .....	3
corresponding reportable offence.....	3
corresponding reportable offender .....	3
court .....	3, 14, 68(1), 85
detainee .....	3
disability.....	3
existing controlled reportable offender .....	3
existing licensee .....	3
existing order .....	90(4)
family order.....	107(1)
finding of guilt .....	3
foreign jurisdiction.....	3
foreign witness protection law .....	3
government custody .....	3
in person.....	5(2)
interim prohibition order.....	85
Internet carriage service .....	26(1a)
Internet service provider .....	26(1a)
law enforcement agency.....	81(3)
mentally impaired accused.....	3
misconduct restraining order.....	107(1)
new order .....	90(4)
New South Wales Act.....	3
New South Wales reportable offender .....	3
offender reporting order.....	3

**Defined Terms**

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parole .....	3
past offender reporting order.....	3
personal details .....	3
personal information .....	3
police order .....	107(1)
prisoner .....	3
prohibition order .....	3, 85
public authority .....	3
recognised foreign reporting period.....	49(1)
Register .....	3
registrar .....	14, 85
relevant authority .....	54(1)
relevant day.....	115A(1)
relevant offence.....	115A(1)
reportable information .....	84(1)
reportable offence .....	3
reportable offender.....	3
reporting obligations .....	3
reporting order .....	14
reporting period.....	3
respondent.....	14, 85
restraining order .....	107(1)
sentence.....	3
specified .....	113(1)
strict government custody .....	3
supervising authority.....	3
violence restraining order.....	107(1)
witness protection program.....	74
young reportable offender.....	3