



Western Australia

Community Protection (Offender Reporting) Act 2004

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



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## Community Protection (Offender Reporting) Regulations 2004

### 1. Citation

These regulations are the *Community Protection (Offender Reporting) Regulations 2004*<sup>1</sup>.

### 2. Commencement

These regulations come into operation on 1 February 2005.

### 3. Terms used

In these regulations —

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

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

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

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

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

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

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

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

***Department of Corrective Services*** means the department of the Public Service principally assisting in the administration of the *Prisons Act 1981*;

***foreign court*** means a court of a foreign jurisdiction;

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

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

***recognised order*** means a corresponding protection order recognised under regulation 23(1);

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

***registrar*** has the same meaning as it has in —

- (a) the *Children's Court of Western Australia Act 1988*; or
- (b) the *District Court of Western Australia Act 1969*,

as the case requires;

***relevant court***, in relation to a corresponding protection order, means —

- (a) if the order is made by a foreign court that corresponds to the Children's Court — the Children's Court;
- (b) otherwise, the District Court;



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

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

[Regulation 3 inserted in Gazette 1 Jun 2007 p. 2525-6;  
amended in Gazette 8 Nov 2013 p. 4995-7.]

**4. Authorised persons (s. 3)**

A person is prescribed to be an authorised person for the purposes of the definition of that term in section 3 of the Act if the person is —

- (a) an employee of the Police Service (other than a police officer); and
- (b) authorised in writing by the Commissioner for the purposes of this regulation.

**5. Corresponding Acts (s. 3)**

Each of the following laws is prescribed to be a corresponding Act for the purposes of the definition of that term in section 3 of the Act —

- (a) the *Child Protection (Offenders Registration) Act 2000* of New South Wales;
- (b) the *Sex Offenders Registration Act 2004* of Victoria;
- (c) the *Child Protection (Offender Reporting) Act 2004* of Queensland;
- (d) the *Child Protection (Offender Reporting and Registration) Act 2004* of the Northern Territory;
- (e) the *Crimes (Child Sex Offenders) Act 2005* of the Australian Capital Territory;
- (f) the *Community Protection (Offender Reporting) Act 2005* of Tasmania;
- (g) the *Child Sex Offenders Registration Act 2006* of South Australia;

- (h) the *Sexual Offences Act 2003* (United Kingdom);
- (i) the *Sex Offender Information Registration Act* (2004 c. 10) (Canada).

*[Regulation 5 amended in Gazette 8 Sep 2006 p. 3641;  
22 Jun 2007 p. 2862; 28 Mar 2008 p. 914; 25 Nov 2008  
p. 4990; 20 Feb 2009 p. 354.]*

**6. Corresponding offender reporting orders (s. 3)**

Each of the following orders is prescribed to be a corresponding offender reporting order for the purposes of the definition of that term in section 3 of the Act —

- (a) a child protection registration order made under the *Child Protection (Offenders Registration) Act 2000* of New South Wales section 3D;
- (b) a sex offender registration order made under the *Sex Offenders Registration Act 2004* of Victoria section 11;
- (c) an offender reporting order made under the *Child Protection (Offender Reporting) Act 2004* of Queensland Part 3;
- (d) an offender reporting order made under the *Child Protection (Offender Reporting and Registration) Act 2004* of the Northern Territory section 13;
- (e) a child sex offender registration order made under the *Crimes (Child Sex Offenders) Act 2005* of the Australian Capital Territory section 15;
- (f) an offender reporting order made under the *Community Protection (Offender Reporting) Act 2005* of Tasmania sections 6, 7 and 9;
- (g) a child sex offender registration order made under the *Child Sex Offenders Registration Act 2006* of South Australia section 9.

*[Regulation 6 amended in Gazette 8 Sep 2006 p. 3642;  
22 Jun 2007 p. 2862; 28 Mar 2008 p. 914.]*

**6A. Sentences (s. 3)**

A pre-sentence order made under the *Sentencing Act 1995* Part 3A, in force on or after the commencement of this regulation, is prescribed to be a sentence for the purposes of the definition of that term in section 3 of the Act.

*[Regulation 6A inserted in Gazette 1 Jun 2007 p. 2526.]*

**7. Supervising authorities (s. 3)**

- (1) Except as stated in subregulation (2) or (4), the chief executive officer of the Department of Corrective Services is prescribed to be the supervising authority for the purposes of the definition of that term in section 3 of the Act in relation to a reportable offender who is —
  - (a) in strict government custody; or
  - (b) in government custody; or
  - (c) subject to a community order; or
  - (d) subject to supervision as a condition of parole; or
  - (e) an existing licensee.
- (2) The chief executive officer of the Department of Health is prescribed to be the supervising authority for the purposes of the definition of that term in section 3 of the Act in relation to a reportable offender who is subject to a custody order made under the *Criminal Law (Mentally Impaired Accused) Act 1996*<sup>2</sup> Part 4 unless the offender —
  - (a) is detained in a prison or detention centre; or
  - (ba) is a resident as defined in the *Declared Places (Mentally Impaired Accused) Act 2015* section 3; or
  - (b) as a condition of being released under a release order, is subject to supervision by an officer of the Department of Corrective Services.
- (3) In subregulation (2) —

**Department of Health** means the department of the Public Service principally assisting in the administration of the *Health Act 1911*;

**detention centre** has the same meaning as it has in the *Young Offenders Act 1994* section 3;

**prison** has the same meaning as it has in the *Prisons Act 1981* section 3;

**release order** means an order made under the *Criminal Law (Mentally Impaired Accused) Act 1996*<sup>2</sup> section 35.

- (4) The chief executive officer of the Commission is prescribed to be the supervising authority for the purposes of the definition of that term in section 3 of the Act in relation to a reportable offender who is a resident.

- (5) In subregulation (4) —

**Commission** means the Disability Services Commission referred to in the *Disability Services Act 1993* section 6;

**resident** has the meaning given in the *Declared Places (Mentally Impaired Accused) Act 2015* section 3.

[Regulation 7 amended in Gazette 1 Jun 2007 p. 2528;  
16 Jun 2015 p. 2077-8.]

## 8. Offences — relevance if committed by child (s. 6)

For the purposes of section 6(4) of the Act, the following offences are prescribed —

- (aa) an offence under *The Criminal Code* section 218;
- (ab) an offence under *The Criminal Code* section 219;
- (ac) an offence under *The Criminal Code* section 220;
- (a) an offence under the *Classification (Publications, Films and Computer Games) Enforcement Act 1996*<sup>3</sup> section 60 (deleted);

- (b) an offence under the *Classification (Publications, Films and Computer Games) Enforcement Act 1996*<sup>3</sup> section 101.

[Regulation 8 amended in Gazette 1 Jul 2011 p. 2746-7.]

**9. Foreign witness protection laws (s. 6 and 75)**

For the purposes of sections 6(5) and 75(2) of the Act, the following foreign witness protection laws are specified —

- (a) the *Witness Protection Act 1994* of the Commonwealth;
- (b) the *Witness Protection Act 1995* of New South Wales;
- (c) the *Witness Protection Act 1991* of Victoria;
- (d) the *Witness Protection Act 2000* of Queensland;
- (e) the *Witness Protection Act 1996* of South Australia;
- (f) the *Witness Protection Act 2000* of Tasmania;
- (g) the *Witness Protection (Northern Territory) Act* of the Northern Territory;
- (h) the *Witness Protection Act 1996* of the Australian Capital Territory.

**10. Specified date for determining New South Wales reportable offenders (s. 8)**

For the purposes of section 8 of the Act, 1 February 2005 is specified.

**11A. Class 1 offences (s. 10)**

For the purposes of section 10(c) of the Act, the offences under the provisions of the *Criminal Code* (Commonwealth) listed in the Table are prescribed to be Class 1 offences.

**Table**

s. 272.8	s. 272.10	s. 272.11
s. 272.12	s. 273.7	s. 471.22

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s. 474.24A		
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[Regulation 11A inserted in Gazette 21 Jan 2011 p. 158.]

**11. Class 2 offences (s. 11)**

For the purposes of section 11(c) of the Act, the offences under the provisions of the *Criminal Code* (Commonwealth) listed in the Table are prescribed to be Class 2 offences.

**Table**

s. 271.4	s. 271.7	s. 272.9
s. 272.13	s. 272.14	s. 272.15
s. 272.18	s. 272.19	s. 272.20
s. 273.5	s. 273.6	s. 471.16
s. 471.17	s. 471.19	s. 471.20
s. 471.24	s. 471.25	s. 471.26
s. 474.19	s. 474.20	s. 474.22
s. 474.23	s. 474.25A	s. 474.25B
s. 474.26	s. 474.27	s. 474.27A

[Regulation 11 inserted in Gazette 21 Jan 2011 p. 158.]

**12. Means of contacting authorised person for certain persons entering Western Australia (s. 27)**

- (1) For the purposes of section 27(2) of the Act, the following means of contacting an authorised person are prescribed —
  - (a) by facsimile;
  - (b) by email;
  - (c) by mail.

- (2) The Commissioner is to nominate the relevant facsimile number, email address and postal address for the purposes of subregulation (1).

**13. Manner of reporting change of reportable offender's travel plans while out of Western Australia (s. 31)**

For the purposes of section 31(3)(b) of the Act, the reportable offender is permitted to make a report by mail to a postal address nominated by the Commissioner.

**14. Directions as to police station or approved place at which reportable offender must report (s. 34)**

For the purposes of section 34(1)(c) of the Act, a direction as to the police station or approved place at which a report is to be made may be given by an approved person.

**15. Prescribed form of identification (s. 38(2A)(a)(iv))**

A current photo card, as defined in the *Western Australian Photo Card Regulations 2014* regulation 3, is prescribed for the purposes of section 38(2A)(a)(iv) of the Act.

*[Regulation 15 inserted in Gazette 5 Aug 2014 p. 2830.]*

**16. Prescribed distance — reporting by remote offenders (s. 43)**

For the purposes of section 43(1) of the Act, the prescribed distance is 100 km.

**17. Offences — approval by Commissioner of suspension of reporting obligations (s. 61)**

For the purposes of section 61(1)(a) of the Act, the following offences are prescribed —

- (a) an offence under *The Criminal Code* section 186;
- (ba) an offence under *The Criminal Code* section 218;
- (bb) an offence under *The Criminal Code* section 219;
- (bc) an offence under *The Criminal Code* section 220;

- (bd) an offence under *The Criminal Code* section 320(4);
- (be) an offence under *The Criminal Code* section 320(5);
- (bf) an offence under *The Criminal Code* section 320(6);
- (b) an offence under *The Criminal Code* section 321, but only if, when the offence was committed —
  - (i) the offender was under the age of 18 years; and
  - (ii) the child against whom the offence was committed was not under the care, supervision or authority of the offender;
- (c) an offence under *The Criminal Code* section 321A;
- (d) an offence under *The Criminal Code* section 323;
- (e) an offence under *The Criminal Code* section 324, but only if the ***circumstances of aggravation***, as defined in *The Criminal Code* section 319(1), that applied to the offence were those circumstances described in paragraph (a)(ii) or (b) of that definition;
- (f) an offence under *The Criminal Code* section 329;
- (g) an offence under the *Classification (Publications, Films and Computer Games) Enforcement Act 1996*<sup>3</sup> section 60 (deleted);
- (h) an offence under the *Classification (Publications, Films and Computer Games) Enforcement Act 1996*<sup>3</sup> section 101;
- (i) an offence under the *Crimes Act 1914* of the Commonwealth section 50BA;
- (j) an offence under the *Crimes Act 1914* of the Commonwealth section 50BC.

[Regulation 17 amended in Gazette 1 Jul 2011 p. 2747; 8 Nov 2013 p. 4997.]



**18. Sentences — approval by Commissioner of suspension of reporting obligations (s. 61)**

For the purposes of section 61(1)(b) of the Act, the following sentences are prescribed —

- (a) an exercise of power under the *Sentencing Act 1995* Part 6;
- (b) a conditional release order under the *Sentencing Act 1995* Part 7;
- (c) a fine under the *Sentencing Act 1995* Part 8;
- (d) a community based order under the *Sentencing Act 1995* Part 9;
- (e) an exercise of power under the *Young Offenders Act 1994* section 66, 67, 69 or 70;
- (f) a fine under the *Young Offenders Act 1994* Part 7 Division 5;
- (g) a youth community based order under the *Young Offenders Act 1994* Part 7 Division 6;
- (h) an intensive youth supervision order under the *Young Offenders Act 1994* Part 7 Division 7 that is made without imposing on the offender a sentence of detention.

*[Regulation 18 amended in Gazette 8 Nov 2013 p. 4998.]*

**19. Persons required to give notice of reporting obligations etc. to reportable offenders (s. 67)**

For the purposes of section 67(4) of the Act, the following persons are specified —

- (a) for a reportable offender who is sentenced for a reportable offence and enters government custody as a result of that sentence — an officer of the Department of Corrective Services, or other person, authorised in writing for the purposes of this paragraph by the chief executive officer of that department;

- (b) for a reportable offender who is present in court when sentenced for a reportable offence in the District Court and does not enter government custody as a result of that sentence — an officer of the District Court;
- (c) for a reportable offender who is not present in court when sentenced for a reportable offence in the District Court and does not enter government custody as a result of that sentence — the Commissioner;
- (d) for a reportable offender who is sentenced for a reportable offence in a court other than the District Court and does not enter government custody as a result of that sentence — the Commissioner;
- (e) for a reportable offender who is released from government custody (whether in government custody for a reportable offence or otherwise) —
  - (i) in the case of a reportable offender who is, or was before his or her release, a resident as defined in the *Declared Places (Mentally Impaired Accused) Act 2015* section 3, the chief executive officer of the Disability Services Commission referred to in the *Disability Services Act 1993* section 6;
  - (ii) in any other case, an officer of the Department of Corrective Services, or other person, authorised in writing for the purposes of this paragraph by the chief executive officer of that department;
- (f) for a reportable offender who enters Western Australia, if he or she has not previously been given notice of his or her reporting obligations in Western Australia — the Commissioner;

- (g) for a person who becomes a corresponding reportable offender, if he or she is in Western Australia at that time — the Commissioner.

*[Regulation 19 amended in Gazette 1 Jun 2007 p. 2528;  
16 Jun 2015 p. 2078.]*

**20. Details to be included in notice given by supervising authority to Commissioner (s. 70)**

For the purposes of section 70(3) of the Act, the following details are prescribed —

- (a) the name of the reportable offender;
- (b) the relevant event listed in section 70(1) of the Act that has occurred;
- (c) the date on which that event occurred;
- (d) the name, title and signature of the supervising authority who gives the notice;
- (e) the date on which the notice is given.

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

Each of the following orders is prescribed to be a corresponding protection order for the purposes of the definition of that term in section 85 of the Act —

- (aa) a prohibition order made under the *Crimes (Child Sex Offenders) Act 2005* (Australian Capital Territory) Part 5A.2;
- (a) an order made under the *Child Protection (Offenders Prohibition Orders) Act 2004* of New South Wales Part 2;
- (b) a prohibition order made under the *Child Protection (Offender Reporting and Registration) Act 2004* of the Northern Territory Part 5;
- (c) an offender prohibition order made under the *Child Protection (Offender Prohibition Order) Act 2008* of

Queensland Part 2, other than a temporary order made under Part 2 Division 2 of that Act;

- (d) a sexual offences prevention order made under the *Sexual Offences Act 2003* (United Kingdom) section 104 or 105.

*[Regulation 21 amended in Gazette 14 Nov 2008 p. 4878; 25 Nov 2008 p. 4990; 30 Nov 2012 p. 5802; 8 Nov 2013 p. 4998.]*

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

- (1) A police officer may, on behalf of the Commissioner, apply to the relevant court for the recognition in Western Australia of a corresponding protection order.
- (2) An application does not need to be served on the person who is subject to the corresponding protection order.

*[Regulation 22 inserted in Gazette 1 Jun 2007 p. 2526; amended in Gazette 8 Nov 2013 p. 4998.]*

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

- (1) If an application is made under regulation 22, the relevant court is to recognise the corresponding protection order that is the subject of the application.
- (2) When the relevant court recognises a corresponding protection order, the registrar is to —
  - (a) notify —
    - (i) the foreign court in which the recognised order was made; and
    - (ii) the Commissioner; and
    - (iii) the person who is subject to the recognised order, of that recognition; and

- (b) cause a copy of the recognised order to be delivered to the Commissioner.

*[Regulation 23 inserted in Gazette 1 Jun 2007 p. 2526-7; amended in Gazette 8 Nov 2013 p. 4999.]*

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

- (1) A recognised order operates in Western Australia as if it were a child protection order made under Part 5 of the Act —
  - (a) with the terms (including as to its duration) set out in the recognised order or applying to it under the law under which it was made; and
  - (b) from the day on which the recognition of the recognised order was notified to the person who is subject to it,and the provisions of the Act apply to the recognised order as if it were a child protection order.
- (2) Without limiting subregulation (1), for the purposes of applying Part 5 of the Act to a recognised order —
  - (a) a reference in that Part to varying a child protection order is to be read as a reference to making an order varying the operation in Western Australia of the recognised order; and
  - (b) a reference in that Part to revoking a child protection order is to be read as a reference to making an order revoking the recognition of the recognised order.
- (3) In proceedings for failing to comply, in Western Australia, with a recognised order, no proof is required of —
  - (a) the making of the recognised order or a variation of it that operates under regulation 25; or
  - (b) the service of such an order or variation on the person who is subject to the order.

*[Regulation 24 inserted in Gazette 1 Jun 2007 p. 2527; amended in Gazette 8 Nov 2013 p. 4999.]*

**25. Variation or revocation of recognised order in a foreign jurisdiction**

(1) If —

- (a) a recognised order is varied by a foreign court of the foreign jurisdiction in which the order was made; and
- (b) notice of the variation is given to the registrar of the relevant court by an officer of the foreign court,

the variation operates in Western Australia as if the recognised order, as varied, was recognised under regulation 23 on the day on which the registrar received notice of the variation.

(2) If —

- (a) a recognised order is revoked by a foreign court of the foreign jurisdiction in which the order was made; and
- (b) notice of the revocation is given to the registrar of the relevant court by an officer of the foreign court,

the recognition in Western Australia of the recognised order is revoked from the day on which the registrar receives notice of the revocation.

- (3) A registrar who is given notice of the variation or revocation of a recognised order by a foreign court is to notify the Commissioner accordingly.

*[Regulation 25 inserted in Gazette 1 Jun 2007 p. 2527-8.]*

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

- (1) A reportable offender who is required by an order of the Commissioner to undergo assessment or treatment under section 94A(1) of the Act may request the Commissioner to authorise his or her absence from assessment or treatment if —

- (a) the reportable offender has an illness or an injury which prevents him or her from undergoing the assessment or treatment; or

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

*[Regulation 26A inserted in Gazette 8 Nov 2013 p. 4999-5001.]*

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

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

*[Regulation 26B inserted in Gazette 8 Nov 2013 p. 5001.]*

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

- (1) In this regulation —  
***approved form*** means a form approved by the Commissioner.



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

*[Regulation 26C inserted in Gazette 8 Nov 2013 p. 5002.]*

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

- (1) In this regulation —  
***authorised breath tester*** means a person certified under a written law by the chief executive officer of the Chemistry Centre (WA) as being competent to operate all types of breath testing equipment.
- (2) A breath test may be conducted only by an authorised breath tester in the presence of an authorised police officer.
- (3) A sample of a reportable offender's breath may only be tested for the purposes of a breath test —
  - (a) by breath testing equipment, other than self-testing breath analysing equipment, that is operated in accordance with the instructions set out in the Breath Analysis Regulations Second Schedule Part 1; or
  - (b) by self-testing breath analysing equipment that is operated in accordance with the instructions set out in the Breath Analysis Regulations Second Schedule Part 3.
- (4) A reportable offender who is directed under regulation 26C(2) to give a sample of breath for a breath test must comply with the

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directions of an authorised breath tester in relation to the giving of the sample.

- (5) A person who fails to comply with subregulation (4) commits an offence.

Penalty: a fine of \$2 000.

- (6) As soon as is practicable after conducting a breath test, an authorised breath tester must give a written certificate of the result of the breath test to the reportable offender to whom the result relates.

- (7) Subregulation (6) does not apply to a breath test conducted by self-testing breath analysing equipment.

- (8) A certificate given under subregulation (6) must be in the form of Schedule 1 Form 4.

*[Regulation 26D inserted in Gazette 8 Nov 2013 p. 5002-3.]*

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

- (1) If a reportable offender is required under section 94B(2)(b) of the Act to give a sample of his or her blood or urine for analysis, the sample may be taken or collected only by an authorised sample collector.

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

*[Regulation 26E inserted in Gazette 8 Nov 2013 p. 5003-4.]*

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

- (1) In this regulation —  
***blood sampling equipment*** means —

- (a) a sterile syringe with a capacity of approximately 30 ml; and
- (b) a sterile needle to be attached to the syringe; and
- (c) 2 sterile bottles, each of which —
  - (i) is numbered with the serial number of the package referred to in regulation 26G(2)(c); and
  - (ii) contains approximately 25 mg of potassium oxalate and 10 mg of sodium fluoride; and
  - (iii) is closed with a cap fitted with a rubber disk; and
- (d) a container containing a solution of one part mercury bichloride to 1 000 parts distilled water; and
- (e) 2 swabs of cotton wool; and
- (f) a pair of disposable gloves;

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

**urine sampling equipment** means —

- (a) one container for collecting urine; and
  - (b) 2 specimen containers; and
  - (c) one pair of disposable gloves.
- (2) An authorised sample collector may take or collect a sample under section 94B(2)(b) of the Act only if the authorised police officer who requires the reportable offender to give the sample has given the authorised sample collector a request in the form of Schedule 1 Form 5.
- (3) A reportable offender who is required to give a sample must comply with the directions of an authorised sample collector in relation to the taking or collecting of the sample.
- (4) A person who fails to comply with subregulation (3) commits an offence.

Penalty: a fine of \$2 000.

**r. 26G**

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- (5) The authorised sample collector must take or collect a sufficient quantity of a sample from the reportable offender to enable —
  - (a) approximately one half of the sample to be given to the reportable offender; and
  - (b) approximately one half of the sample to be given to an authorised police officer; and
  - (c) an analysis of the samples referred to in paragraphs (a) and (b) to be made.
- (6) A sample of blood may be taken only by means of blood sampling equipment.
- (7) A sample of urine may be collected only by means of urine sampling equipment.

*[Regulation 26F inserted in Gazette 8 Nov 2013 p. 5004-6.]*

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

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

- (b) seal each of the specimen containers; and
  - (c) place each specimen container into its own serially numbered package.
- (4) The authorised sample collector must —
  - (a) seal each of the serially numbered packages by fixing a certificate, completed and signed by the authorised sample collector, over the opening of each package; and
  - (b) give one of the sealed serially numbered packages referred to in paragraph (a) to the reportable offender from whom the sample was taken; and
  - (c) give the other sealed serially numbered package to an authorised police officer.
- (5) The certificate of the authorised sample collector referred to in subregulation (4)(a) must be in the form of Schedule 1 Form 6.

*[Regulation 26G inserted in Gazette 8 Nov 2013 p. 5006-7.]*

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

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

*[Regulation 26H inserted in Gazette 8 Nov 2013 p. 5007.]*

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

- (1) This regulation applies to a sample of blood or urine taken or collected in accordance with regulation 26F.
- (2) When a sample of blood or urine has been analysed by an analyst to determine the blood alcohol content or the presence of drugs, the analyst must give a written certificate of the result of the analysis to —
  - (a) the reportable offender to whom the result relates; and
  - (b) the Commissioner.
- (3) A certificate given under subregulation (2) must be in the form of Schedule 1 Form 7.

*[Regulation 26I inserted in Gazette 8 Nov 2013 p. 5007-8.]*

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

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

*[Regulation 26J inserted in Gazette 8 Nov 2013 p. 5008.]*

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

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

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

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

*[Regulation 26K inserted in Gazette 8 Nov 2013 p. 5008-9.]*

**26. Forms**

The forms set out in Schedule 1 are prescribed in relation to the matters specified in those forms.

*[Regulation 26 inserted in Gazette 1 Jun 2007 p. 2528.]*



## Schedule 1 — Forms

[r. 26]

[Heading inserted in Gazette 9 Dec 2005 p. 5888; amended in  
Gazette 1 Jun 2007 p. 2528.]

## 1. Summons: Application for order

<i>Community Protection (Offender Reporting) Act 2004</i> <b>Summons</b> <b>Application for order</b>		<input type="radio"/> Children's Court <input type="radio"/> District Court
		Location
		Number
<b>Respondent</b>	Name _____ Date of birth ____/____/____	
	Address _____	
	Postcode _____	
	Phone no. _____	
<b>Order sought</b>	The Commissioner of Police has applied to the court for the following order to be made in respect of you — <input type="checkbox"/> <b>Past offender reporting order</b> (s. 19 of Act) <input type="checkbox"/> <b>Child protection order</b> (s. 90 of Act) <input type="checkbox"/> <b>Interim protection order</b> (s. 92 of Act)	
<b>Hearing</b>	<b>You must attend the hearing</b> at the day, time and place set out below. If you do not attend, the application may be heard in your absence.	
	Place _____	
	Date ____/____/20____ Time ____ a.m./p.m.	
<b>Issue of summons</b>	_____ <i>[Signature of Registrar]</i> Date ____/____/20____	
<b>For more information</b>	For more information about this matter contact:	
	Name _____	
	Position _____	
	Phone no. _____ Ref no. _____	

**Form 1**

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Service certificate	
<b>Person serving summons</b>	Name _____
	Address _____ Postcode _____
<b>Service</b>	Method <input type="checkbox"/> Handed to respondent in person <input type="checkbox"/> Posted to respondent's last known address <input type="checkbox"/> Left at respondent's last known address
	Place <i>[if applicable]</i> _____
	Date ____/____/20____      Time ____ a.m./p.m.
<b>Certificate</b>	I certify that I served this summons on the respondent in the manner described above.
	_____ <i>[Signature]</i> Date ____/____/20____

*[Form 1 inserted in Gazette 9 Dec 2005 p. 5888-9; amended in Gazette 8 Nov 2013 p. 5010.]*

**2. Summons: Further hearing after interim order**

<i>Community Protection (Offender Reporting) Act 2004</i> <b>Summons</b> <b>Further hearing after interim order</b>		<input type="radio"/> Children's Court <input type="radio"/> District Court
		Location
		Number
<b>Respondent</b>	Name _____ Date of birth ____/____/____	
	Address _____ Postcode _____	
	Phone no. _____	
<b>Order sought</b>	The Commissioner of Police has applied to the court for a child protection order to be made in respect of you. An interim protection order was made on ____/____/20____. <b>A further hearing will now be held at which the court will decide whether to make a child protection order.</b>	
<b>Hearing</b>	<b>You must attend the hearing</b> at the day, time and place set out below. If you do not attend, the application may be heard in your absence.	
	Place _____	
	Date ____/____/20____ Time ____ a.m./p.m.	
<b>Issue of summons</b>	_____ <i>[Signature of Registrar]</i> Date ____/____/20____	
<b>For more information</b>	For more information about this matter contact:	
	Name _____	
	Position _____	
	Phone no. _____ Ref no. _____	

Service certificate	
<b>Person serving summons</b>	Name _____
	Address _____ Postcode _____

## Schedule 1 Forms

*[Form 2 inserted in Gazette 9 Dec 2005 p. 5889-90; amended in Gazette 8 Nov 2013 p. 5010.]*

## 3. Summons: Application to vary or revoke child protection order

<i>Community Protection (Offender Reporting) Act 2004</i> <b>Summons</b> <b>Application to vary or revoke child protection order</b>		<input type="radio"/> Children's Court <input type="radio"/> District Court
		Location
		Number
<b>Order</b>	Person subject to order	
	Date made ____ / ____ /20 ____	
	Expiry date ____ / ____ /20 ____	
<b>Applicant</b>	<input type="radio"/> Commissioner of Police <input type="radio"/> Person subject to order Leave to apply granted ____ / ____ /20 ____ Address _____ <div style="text-align: right;">Postcode _____</div>	
<b>Application</b>	<input type="radio"/> To revoke order <input type="radio"/> To vary order to [details of variation sought] _____ _____	
<b>Respondent</b>	<input type="radio"/> Person subject to order <input type="radio"/> Commissioner of Police	
	Address _____ <div style="text-align: right;">Postcode _____</div>	
	Phone no. _____	
<b>Hearing</b>	<b>You must attend the hearing</b> at the day, time and place set out below. If you do not attend, the application may be heard in your absence.	
	Place _____	
	Date ____ / ____ /20 ____ Time ____ a.m./p.m.	
<b>Issue of summons</b>	_____ [Signature of Registrar] Date ____ / ____ /20 ____	
<b>For more information</b>	For more information about this matter contact:	
	Name _____	
	Position _____	
	Phone no. _____ Ref no. _____	

**Form 3**

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Service certificate	
<b>Person serving summons</b>	Name _____
	Address _____ Postcode _____
<b>Service</b>	Method <input type="radio"/> Handed to respondent in person <input type="radio"/> Posted to respondent's last known address <input type="radio"/> Left at respondent's last known address
	Place <i>[if applicable]</i> _____
	Date ____/____/20____ Time ____ a.m./p.m.
<b>Certificate</b>	I certify that I served this summons on the respondent in the manner described above.
	_____ <i>[Signature]</i> Date ____/____/20____

*[Form 3 inserted in Gazette 9 Dec 2005 p. 5890-1; amended in  
Gazette 8 Nov 2013 p. 5010.]*

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

*Community Protection (Offender Reporting) Act 2004*

**Certificate of authorised breath tester**

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

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

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

.....  
[Date]

[Form 4 inserted in Gazette 8 Nov 2013 p. 5010-11.]

**Form 5**

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

<p align="center"><i>Community Protection (Offender Reporting) Act 2004</i></p> <p align="center"><b>Request to take sample of blood or urine</b></p>	
<b>To</b>	<p>[Name of medical practitioner, registered nurse or phlebotomist]</p>
<b>Place where sample is to be taken</b>	<p>[Name of hospital/medical centre/place]</p>
<b>Date and time sample is to be taken</b>	
<b>Request for sample to be taken</b>	<p>Under the <i>Community Protection (Offender Reporting) Regulations 2004</i> regulation 26F(2), I request you, a</p> <p>.....</p> <p>[Insert description, e.g. medical practitioner, nurse practitioner, phlebotomist]</p> <p>to take —</p> <p>(a) a blood sample*;</p> <p>(b) a urine sample*;</p> <p>      [* delete inapplicable]</p> <p>from —</p> <p>.....</p> <p>[Name of person from whom sample is to be taken or collected]</p> <p>in accordance with the <i>Community Protection (Offender Reporting) Regulations 2004</i>.</p>
<b>Date form was issued</b>	<p>.....</p>



<b>Authorised police officer</b>	.....
	[Signature] .....
	.....
	[Date] .....
	Name .....
	Rank and Number .....
Telephone no. ....	
Ref no. ....	

*[Form 5 inserted in Gazette 8 Nov 2013 p. 5011-12.]*

Form 6

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**6. Certificate of authorised sample collector (r. 26G(5))**

*Community Protection (Offender Reporting) Act 2004*

**Certificate of authorised sample collector**

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

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

took —

(a) a blood sample\*;

(b) a urine sample\*;

[\*delete inapplicable]

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

at .....  
.....

[Place where sample was taken or collected]

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

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

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

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

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

.....  
[Signature and qualification]

.....  
[Date]

Witnessed by .....

[Authorised police officer's signature]

[Rank and number]

.....  
[Date]

*[Form 6 inserted in Gazette 8 Nov 2013 p. 5013-14.]*

**Form 7**

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

*Community Protection (Offender Reporting) Act 2004*

**Certificate of analyst**

Laboratory reference no. ....

Police reference no. ....

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

(a) the Chemistry Centre (WA), Perth received for analysis the following  
sample —

(i) a blood sample\*;

(ii) a urine sample\*;

[\* *delete inapplicable*]

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

on .....;

and

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

.....

.....

.....;

and

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

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

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

.....  
[Signature of analyst]

.....  
[Address of analyst]

[Form 7 inserted in Gazette 8 Nov 2013 p. 5014-15.]

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## Notes

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

### Compilation table

Citation	Gazettal	Commencement
<i>Community Protection (Offender Reporting) Regulations 2004</i>	31 Dec 2004 p. 7025-39	1 Feb 2005 (see r. 2)
<i>Community Protection (Offender Reporting) Amendment Regulations 2005</i>	9 Dec 2005 p. 5886-7	9 Dec 2005
<i>Community Protection (Offender Reporting) Amendment Regulations (No. 2) 2005</i>	9 Dec 2005 p. 5887-91	9 Dec 2005
<i>Community Protection (Offender Reporting) Amendment Regulations 2006</i>	8 Sep 2006 p. 3641-2	8 Sep 2006
<i>Community Protection (Offender Reporting) Amendment Regulations 2007</i>	1 Jun 2007 p. 2525-8	1 Jun 2007
<i>Community Protection (Offender Reporting) Amendment Regulations (No. 2) 2007</i>	22 Jun 2007 p. 2862	22 Jun 2007
<b>Reprint 1: The Community Protection (Offender Reporting) Regulations 2004 as at 21 Sep 2007</b> (includes amendments listed above)		
<i>Community Protection (Offender Reporting) Amendment Regulations 2008</i>	28 Mar 2008 p. 913-14	r. 1 and 2: 28 Mar 2008 (see r. 2(a)); Regulations other than r. 1 and 2: 29 Mar 2008 (see r. 2(b))
<i>Community Protection (Offender Reporting) Amendment Regulations (No. 2) 2008</i>	14 Nov 2008 p. 4878	r. 1 and 2: 14 Nov 2008 (see r. 2(a)); Regulations other than r. 1 and 2: 15 Nov 2008 (see r. 2(b))
<i>Community Protection (Offender Reporting) Amendment Regulations (No. 3) 2008</i>	25 Nov 2008 p. 4989-90	r. 1 and 2: 25 Nov 2008 (see r. 2(a)); Regulations other than r. 1 and 2: 26 Nov 2008 (see r. 2(b))

<b>Citation</b>	<b>Gazettal</b>	<b>Commencement</b>
<i>Community Protection (Offender Reporting) Amendment Regulations 2009</i>	20 Feb 2009 p. 353-4	r. 1 and 2: 20 Feb 2009 (see r. 2(a)); Regulations other than r. 1 and 2: 21 Feb 2009 (see r. 2(b))
<b>Reprint 2: The Community Protection (Offender Reporting) Regulations 2004 as at 3 Jul 2009</b> (includes amendments listed above)		
<i>Community Protection (Offender Reporting) Amendment Regulations 2010</i>	21 Jan 2011 p. 157-8	r. 1 and 2: 21 Jan 2011 (see r. 2(a)); Regulations other than r. 1 and 2: 22 Jan 2011 (see r. 2(b))
<i>Community Protection (Offender Reporting) Amendment Regulations 2011</i>	1 Jul 2011 p. 2746-7	r. 1 and 2: 1 Jul 2011 (see r. 2(a)); Regulations other than r. 1 and 2: 2 Jul 2011 (see r. 2(b))
<i>Community Protection (Offender Reporting) Amendment Regulations 2012</i>	30 Nov 2012 p. 5802	r. 1 and 2: 30 Nov 2012 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Dec 2012 (see r. 2(b))
<i>Community Protection (Offender Reporting) Amendment Regulations 2013</i>	8 Nov 2013 p. 4995-5015	r. 1 and 2: 8 Nov 2013 (see r. 2(a)); Regulations other than r. 1 and 2: 9 Nov 2013 (see r. 2(b) and <i>Gazette</i> 8 Nov 2013 p. 4969)
<b>Reprint 3: The Community Protection (Offender Reporting) Regulations 2004 as at 11 Apr 2014</b> (includes amendments listed above)		
<i>Community Protection (Offender Reporting) Amendment Regulations 2014</i>	5 Aug 2014 p. 2830	r. 1 and 2: 5 Aug 2014 (see r. 2(a)); Regulations other than r. 1 and 2: 6 Aug 2014 (see r. 2(b))
<i>Community Protection (Offender Reporting) Amendment Regulations 2015</i>	16 Jun 2015 p. 2077-8	r. 1 and 2: 16 Jun 2015 (see r. 2(a)); Regulations other than r. 1 and 2: 17 Jun 2015 (see r. 2(b) and <i>Gazette</i> 16 Jun 2015 p. 2071)

<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. The reference was changed under the *Reprints Act 1984* s. 7(3)(gb).

<sup>3</sup> Formerly referred to the *Censorship Act 1996* the short title of which was changed to the *Classification (Publications, Films and Computer Games) Enforcement Act 1996* by the *Censorship Amendment Act 2006* s. 4(1). The reference was changed under the *Reprints Act 1984* s. 7(3)(gb).



## 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)
analyst .....	3
approved form .....	26C(1)
authorised breath tester .....	3, 26D(1)
authorised sample collector .....	3
blood alcohol content .....	3
blood sampling equipment .....	3, 26F(1)
Breath Analysis Regulations .....	3
breath test .....	3
breath testing equipment .....	3
Department of Corrective Services .....	3
Department of Health .....	7(3)
detention centre .....	7(3)
foreign court .....	3
medical practitioner .....	3
phlebotomist .....	3
prison .....	7(3)
recognised order .....	3
registered nurse .....	3
registrar .....	3
release order .....	7(3)
relevant court .....	3
sample .....	26F(1)
self-testing breath analysing equipment .....	3
urine sampling equipment .....	3, 26F(1)