

Western Australia

Community Protection (Offender Reporting) Act 2004

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

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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*¹.

2. Commencement

These regulations come into operation on 1 February 2005.

3. Terms used in these regulations

In these regulations —

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;

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

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 prohibition order, means —

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- (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.

[Regulation 3 inserted in Gazette 1 Jun 2007 p. 2525-6.]

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.

[Regulation 5 amended in Gazette 8 Sep 2006 p. 3641; 22 Jun 2007 p. 2862; 28 Mar 2008 p. 914.]

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), 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;
 - (b) in government custody;
 - (c) subject to a community order;
 - (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* Part 4² unless the offender —
- (a) is detained in a prison or detention centre; 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*² section 35.

[Regulation 7 amended in Gazette 1 Jun 2007 p. 2528.]

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

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

- (a) an offence under the *Classification (Publications, Films and Computer Games) Enforcement Act 1996* section 60³;
- (b) an offence under the *Classification (Publications, Films and Computer Games) Enforcement Act 1996* section 101³.

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.

11. Class 2 offences (s. 11)

- (1) For the purposes of section 11(c) of the Act, the following offences are prescribed to be Class 2 offences —

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- (aa) an offence under the Code Act section 271.4;
- (ab) an offence under the Code Act section 271.7;
 - (a) an offence under the Code Act section 474.19;
 - (b) an offence under the Code Act section 474.20;
 - (c) an offence under the Code Act section 474.22;
 - (d) an offence under the Code Act section 474.23;
 - (e) an offence under the Code Act section 474.26;
 - (f) an offence under the Code Act section 474.27.
- (1a) Subregulation (1)(aa) and (ab) have effect as if the Code Act sections 271.4(1)(c) and (2)(c) and 271.7(1)(c) were amended by deleting “or will be otherwise exploited” in each place where it occurs.
- (2) In this regulation —
Code Act means the *Criminal Code Act 1995* of the Commonwealth.

[Regulation 11 amended in Gazette 9 Dec 2005 p. 5887.]

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. Form of identification for reporting in person (s. 38)

- (1) For the purposes of section 38(1)(a) of the Act, the following forms of identification of, or other documents relating to, a reportable offender that are to be presented for inspection when the reportable offender or another person makes a report in person are specified —
 - (a) any one of the forms of identification to which subregulation (3) applies; and
 - (b) any one of the forms of identification or other documents to which subregulation (4) applies.
- (2) For the purposes of section 38(1)(c) of the Act, the following forms of identification of, or documents relating to, a person (other than the reportable offender) that are to be presented when the person makes a report (in this regulation called the *relevant report*) in person are specified —
 - (a) any one of the forms of identification to which subregulation (3) applies; and
 - (b) any one of the forms of identification or other documents to which subregulation (4) applies.

- (3) This subregulation applies to —
- (a) a current motor driver's licence that displays a photograph of the licence holder;
 - (b) a current Australian or overseas passport;
 - (c) an Australian naturalisation or citizenship document; and
 - (d) an original birth certificate or a certified copy, or certified extract, of a birth certificate.
- (4) This subregulation applies to —
- (a) a current signed credit or debit card, a passbook or a statement of account issued by a bank, building society or credit union;
 - (b) a current Medicare card;
 - (c) a gas, water, electricity or telephone account issued within 12 months before the relevant report is made;
 - (d) a notice of rates from a local government (however described) or a notice of water service charges or land valuation;
 - (e) a pensioner concession card, a Commonwealth seniors health card, an entitlement card issued under the *Veterans' Entitlements Act 1986* of the Commonwealth, or another entitlement card issued by the Commonwealth government or a State or Territory government;
 - (f) a lease or rental agreement;
 - (g) a motor vehicle registration notice or certificate;
 - (h) a renewal notice for a home building or contents, or a motor vehicle, policy of insurance;
 - (i) a student identity card or a certificate or statement of enrolment from an educational institution; and
 - (j) an electoral enrolment card or other evidence of electoral enrolment.

- (5) A form of identification or other document is not valid for the purposes of subregulation (4)(d) to (j) unless it was issued or entered into, as the case requires, within 2 years before the relevant report is made.
- (6) Except as stated in subregulation (3)(d), a form of identification or other document is not valid for the purposes of this regulation unless it is an original.

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;
- (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* section 60³;
- (h) an offence under the *Classification (Publications, Films and Computer Games) Enforcement Act 1996* section 101³;
- (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.

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.

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) — 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.]

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 prohibition orders (s. 85)

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

- (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.

22. Application for recognition of corresponding prohibition 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 prohibition order.
- (2) An application does not need to be served on the person who is subject to the corresponding prohibition order.

[Regulation 22 inserted in Gazette 1 Jun 2007 p. 2526.]

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

- (1) If an application is made under regulation 22, the relevant court is to recognise the corresponding prohibition order that is the subject of the application.
- (2) When the relevant court recognises a corresponding prohibition 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]

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

- (1) A recognised order operates in Western Australia as if it were a child protection prohibition 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 prohibition order.
- (2) Without limiting subregulation (1), for the purposes of applying Part 5 of the Act to a recognised order —

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- (a) a reference in that Part to varying a child protection prohibition 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 prohibition 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.]

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.]

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**

Community Protection (Offender Reporting) Act 2004 Summons Application for order		<input type="radio"/> Children's Court <input type="radio"/> District Court
		Location
		Number
Respondent	Name _____ Date of birth ____/____/____	
	Address _____	
	Postcode _____	
	Phone no. _____	
Order sought	The Commissioner of Police has applied to the court for the following order to be made in respect of you — <input type="checkbox"/> Past offender reporting order (s. 19 of Act) <input type="checkbox"/> Child protection prohibition order (s. 90 of Act) <input type="checkbox"/> Interim protection order (s. 92 of Act)	
Hearing	You must attend the hearing 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.
Issue of summons	_____ [Signature of Registrar] _____ Date ____/____/20____	
For more information	For more information about this matter contact:	
	Name _____	
	Position _____	
	Phone no. _____	Ref no. _____

Service certificate	
Person serving summons	Name _____
	Address _____ Postcode _____
Service	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.
Certificate	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.]

cl. 2

2. Summons: Further hearing after interim order

<i>Community Protection (Offender Reporting) Act 2004</i> Summons Further hearing after interim order		<input type="radio"/> Children's Court <input type="radio"/> District Court
		Location
		Number
Respondent	Name _____ Date of birth ____/____/____	
	Address _____	
	Postcode _____	
	Phone no. _____	
Order sought	The Commissioner of Police has applied to the court for a child protection prohibition order to be made in respect of you. An interim protection order was made on ____/____/20____. A further hearing will now be held at which the court will decide whether to make a child protection prohibition order.	
Hearing	You must attend the hearing 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.	
Issue of summons	_____ [Signature of Registrar] _____ Date ____/____/20____	
For more information	For more information about this matter contact:	
	Name _____	
	Position _____	
	Phone no. _____ Ref no. _____	

Service certificate	
Person serving summons	Name _____
	Address _____ Postcode _____

Service	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.
Certificate	I certify that I served this summons on the respondent in the manner described above.
	_____ [Signature] Date ____/____/20____

[Form 2 inserted in Gazette 9 Dec 2005 p. 5889-90.]

cl. 3

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

<i>Community Protection (Offender Reporting) Act 2004</i> Summons Application to vary or revoke child protection prohibition order		<input type="radio"/> Children's Court <input type="radio"/> District Court
		Location
		Number
Order	Person subject to order Date made ____/____/20____ Expiry date ____/____/20____	
Applicant	<input type="radio"/> Commissioner of Police <input type="radio"/> Person subject to order Leave to apply granted ____/____/20____ Address _____ _____ _____ Postcode	
Application	<input type="radio"/> To revoke order <input type="radio"/> To vary order to <i>[details of variation sought]</i> _____ _____	
Respondent	<input type="radio"/> Person subject to order <input type="radio"/> Commissioner of Police Address _____ _____ _____ Postcode Phone no. _____	
Hearing	You must attend the hearing 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.	
Issue of summons	_____ <i>[Signature of Registrar]</i> Date ____/____/20____	
For more information	For more information about this matter contact: Name _____ Position _____ Phone no. _____ Ref no. _____	

Service certificate	
Person serving summons	Name _____
	Address _____ Postcode _____
Service	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.
Certificate	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.]

Notes

- ¹ 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
Reprint 1: The <i>Community Protection (Offender Reporting) Regulations 2004</i> as at 21 Sep 2007 (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))

- ² 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).
- ³ 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).