

Community Protection (Offender Reporting) Amendment Bill 2011

CONTENTS

Part 1 — Preliminary

- | | | |
|----|--------------|---|
| 1. | Short title | 2 |
| 2. | Commencement | 2 |

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

Division 1 — Main amendments

- | | | |
|-----|----------------------|----|
| 3. | Act amended | 3 |
| 4. | Section 3 amended | 3 |
| 5. | Section 7 amended | 3 |
| 6. | Section 13 amended | 4 |
| 7. | Section 14A inserted | 5 |
| | 14A. Consent orders | 5 |
| 8. | Section 17 amended | 5 |
| 9. | Section 19 amended | 6 |
| 10. | Section 20A inserted | 7 |
| | 20A. Consent orders | 7 |
| 11. | Section 22 amended | 8 |
| 12. | Section 24 amended | 8 |
| 13. | Section 26 amended | 9 |
| 14. | Section 29 amended | 11 |
| 15. | Section 37 amended | 12 |
| 16. | Section 38 amended | 12 |
| 17. | Section 40 amended | 13 |
| 18. | Section 41 amended | 13 |
| 19. | Section 49 amended | 14 |
| 20. | Section 62 amended | 14 |

Community Protection (Offender Reporting) Amendment Bill 2011

Contents

21.	Section 63 amended	14
22.	Section 64 amended	15
23.	Part 4A inserted	15
	Part 4A — Change of name	
	80A. Terms used	15
	80B. Application	16
	80C. Application for change of name by or in respect of reportable offender	16
	80D. Approval by Commissioner	17
	80E. Registration of change of name	18
	80F. WA Registrar to correct Registration Act Register	18
	80G. Exchange of information between Commissioner and WA Registrar	19
24.	Section 80 amended	19
25.	Section 82 amended	20
26.	Section 85 amended	20
27.	Section 86 amended	20
28.	Section 87 replaced	21
	87. Commissioner may apply for orders	21
29.	Section 90 amended	22
30.	Section 91 amended	22
31.	Section 92 amended	23
32.	Section 93 amended	24
33.	Sections 94A, 94B and 94C inserted	25
	94A. Reportable offenders may be required to undergo assessment and treatment	25
	94B. Reportable offenders may be required to submit to tests or give samples for analysis	27
	94C. Authorised police officers may enter premises to inspect computers	29
34.	Section 101 amended	31
35.	Section 105 deleted	31
36.	Section 110A inserted	31
	110A. Public authorities to provide Commissioner with certain information	31
37.	Section 115B inserted	32
	115B. Further transitional arrangements for certain offenders sentenced for Class 2 offences	32
38.	Schedule 2 amended	34

	Division 2 — Various references to “prohibition order” or “prohibition orders” amended	
39.	Section 3 amended	34
40.	Part 5 heading amended	35
41.	Section 85 amended	35
42.	Other references to “prohibition order” or “prohibition orders” amended	36
	Part 3 — Freedom of Information Act 1992 amended	
43.	Act amended	38
44.	Schedule 1 clause 14 amended	38

Western Australia

LEGISLATIVE ASSEMBLY

**Community Protection (Offender Reporting)
Amendment Bill 2011**

A Bill for

An Act to amend the *Community Protection (Offender Reporting) Act 2004* and to make consequential amendments to the *Freedom of Information Act 1992*.

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

1. Short title

This is the *Community Protection (Offender Reporting) Amendment Act 2011*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

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

3 **Division 1 — Main amendments**

4 **3. Act amended**

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

7 **4. Section 3 amended**

8 (1) In section 3 in the definition of *past offender reporting order*
9 delete “section 19;” and insert:

10 section 19 or 20A;

11 section 19 or 20A;

12

13 (2) In section 3 in the definition of *public authority* delete
14 paragraph (c) and insert:

15

16 (c) a body, whether incorporated or not, or the
17 holder of an office, being a body or office that
18 is established for a public purpose under a
19 written law and that, under the authority of a
20 written law, performs a function on behalf of
21 the State;

22

23 **5. Section 7 amended**

24 In section 7(b)(i) delete “longer period than he or she would be
25 required to report under this Act; or” and insert:

26

27 particular period; or

28

Community Protection (Offender Reporting) Amendment Bill 2011

Part 2 Community Protection (Offender Reporting) Act 2004
amended

Division 1 Main amendments

s. 6

1 **6. Section 13 amended**

2 (1) In section 13(5) delete “must” and insert:

3

4 may

5

6 (2) After section 13(6) insert:

7

8 (7A) If the order is not made at the time the person is
9 sentenced for the offence, an application for the
10 imposition of the order may be made to the court by the
11 Commissioner —

12 (a) within the period of 6 months after the person is
13 sentenced for the offence; or

14 (b) if the person is in government custody during
15 all or any part of that period — within the
16 period that begins when the person is sentenced
17 for the offence and ends 6 months after the
18 person ceases to be in government custody.

19 (7B) For the purposes of an application made under
20 subsection (7A), the reference in subsection (4)(b) to
21 the prosecution is taken to include a reference to the
22 Commissioner.

23 (7C) Sections 16, 17, 18, 20 and 21 apply in relation to an
24 application made under subsection (7A) —

25 (a) as if any reference to a court in those sections
26 were a reference to the court referred to in this
27 section; and

28 (b) as if any reference to a reporting order in those
29 sections were a reference to an order made
30 under this section; and

- 1 (c) as if any reference to the respondent in those
2 sections were a reference to the offender
3 referred to in this section; and
4 (d) with any other necessary modifications.
5

6 **7. Section 14A inserted**

7 At the end of Part 2 Division 1 insert:
8

9 **14A. Consent orders**

10 On an application under section 13(6) or (7A), a court
11 may make an offender reporting order without being
12 subject to section 13 if the applicant and the offender
13 consent to the making of the order.
14

15 **8. Section 17 amended**

16 (1) In section 17 delete “Evidence” and insert:
17

18 (1) Evidence
19

20 (2) At the end of the section insert:
21

22 (2) An affidavit for use in the hearing must be confined to
23 the evidence the person making it could give orally,
24 except that it may contain statements based on
25 information and belief if the person making the
26 affidavit states the source of the information and the
27 grounds for the belief.

28 (3) For the purposes of the hearing, the Commissioner is
29 entitled, on request, to inspect or obtain a copy of any

Community Protection (Offender Reporting) Amendment Bill 2011

Part 2 Community Protection (Offender Reporting) Act 2004
amended

Division 1 Main amendments

s. 9

- 1 document relating to the respondent held by the
2 Children’s Court —
- 3 (a) that is part of the court record; or
4 (b) that was received by that court in sentencing
5 proceedings.
- 6 (4) In subsection (3) —
7 *court record* has the meaning given in the *Children’s*
8 *Court of Western Australia Act 1988* section 51A(1).
- 9 (5) Subsection (3) does not limit the *Children’s Court of*
10 *Western Australia Act 1988* section 51A(3).
11

12 **9. Section 19 amended**

- 13 (1) In section 19(1):
14 (a) after “that a person” insert:
15
16 (the *past offender*)
17
18 (b) delete “person poses” and insert:
19
20 past offender poses
21
- 22 (2) After section 19(2) insert:
23
- 24 (3A) In deciding whether to make an order under this section
25 in respect of an offence, the court may take into
26 account the following —
- 27 (a) any evidence given during proceedings for the
28 offence;
29 (b) any document or record (including an
30 electronic document or record) served on the

- 1 past offender by the prosecution or the
2 Commissioner;
- 3 (c) any statement tendered, or deposition made, or
4 exhibit tendered, at any proceedings in relation
5 to the offence;
- 6 (d) the period of time since the offence was
7 committed;
- 8 (e) the age of the past offender and the age of any
9 victim of the offence at the time the offence
10 was committed;
- 11 (f) the difference in age between the past offender
12 and any victim of the offence;
- 13 (g) the seriousness of the past offender's total
14 criminal record;
- 15 (h) any other matter the court considers relevant.
- 16 (3B) The fact that an offence in respect of which a past
17 offender has been found guilty becomes spent does not
18 affect the consideration of the offence as part of the
19 past offender's total criminal record for the purposes of
20 subsection (3A)(g).
21

22 **10. Section 20A inserted**

23 After section 19 insert:
24

25 **20A. Consent orders**

- 26 (1) In this section —
27 *past offender* has the same meaning as in section 19.
- 28 (2) On an application under section 15, a court may make a
29 reporting order without being subject to section 19 if
30 the applicant and the past offender consent to the
31 making of the order.
32

Community Protection (Offender Reporting) Amendment Bill 2011

Part 2 Community Protection (Offender Reporting) Act 2004
amended

Division 1 Main amendments

s. 11

1 **11. Section 22 amended**

2 In section 22(1)(b) delete “order,” and insert:

3

4 order under section 19,

5

6 **12. Section 24 amended**

7 (1) In section 24(1) delete “A” and insert:

8

9 Subject to subsection (2A), a

10

11 (2) After section 24(1) insert:

12

13 (2A) A reportable offender who must comply with the
14 reporting obligations of this Act because of the making
15 of an offender reporting order or a past offender
16 reporting order must report his or her personal details
17 to the Commissioner —

18 (a) within 7 days after the order is made; or

19 (b) if he or she is in government custody — within
20 7 days after ceasing to be in government
21 custody.
22

23 (3) In section 24(2) delete “subsection (1),” and insert:

24

25 subsections (1) and (2A),
26

- 1 **13. Section 26 amended**
- 2 (1) In section 26(1):
- 3 (a) after paragraph (c) insert:
- 4
- 5 (daa) details of any passport that he or she holds,
6 including its number and expiry date and the
7 name of the country that issued it; and
- 8
- 9 (b) in paragraph (de)(i) delete “internet”;
- 10 (c) after paragraph (de) insert:
- 11
- 12 (df) any user name, code, password or other
13 information that he or she uses to gain access
14 to —
- 15 (i) the internet generally or a particular
16 website, other than a website operated
17 by an authorised deposit-taking
18 institution, as defined in the *Banking*
19 *Act 1959* (Commonwealth), or a website
20 approved by the Commissioner under
21 subsection (1b); or
- 22 (ii) an email address referred to in
23 paragraph (db) or a communication
24 service referred to in paragraph (de);
- 25 and
- 26
- 27 (d) after paragraph (e) insert:
- 28
- 29 (fa) the address of each of the premises at which —
- 30 (i) he or she is regularly present; and
- 31 (ii) any children generally reside;
- 32 and
- 33

Community Protection (Offender Reporting) Amendment Bill 2011

Part 2 Community Protection (Offender Reporting) Act 2004
amended

Division 1 Main amendments

s. 13

- 1 (2) After section 26(1a) insert:
2
- 3 (1b) For the purposes of subsection (1)(df)(i), the
4 Commissioner may, at the written request of a
5 reportable offender, approve a website used by the
6 offender if the Commissioner is satisfied that the
7 website is used by the offender only for lawful
8 purposes in connection with recording financial
9 information or making financial transactions.
10
- 11 (3) In section 26(2):
- 12 (a) in paragraph (a) delete “14 days” and insert:
13
14 7 days
15
- 16 (b) in paragraphs (b) and (c) delete “14 days” and insert:
17
18 3 days
19
- 20 (c) after paragraph (c) insert:
21
- 22 (da) a reportable offender is not regularly present at
23 any premises unless he or she is present at those
24 premises for at least 7 days (whether
25 consecutive or not) in any period of 12 months;
26 and
- 27 (db) a child does not generally reside at any
28 premises unless he or she resides at those
29 premises for at least 3 days (whether
30 consecutive or not) in any period of 12 months;
31 and
32

- 1 (d) in paragraphs (d) and (e) delete “14 days” and insert:
2
3 7 days
4
- 5 (e) after each of paragraphs (a), (b) and (c) insert:
6
7 and
8
- 9 **14. Section 29 amended**
- 10 (1) Delete section 29(1) and insert:
11
- 12 (1) A reportable offender must report to the Commissioner
13 any change in his or her personal details —
14 (a) if subsection (2)(a) or (b) applies to the change,
15 within 24 hours after that change occurs; or
16 (b) otherwise, within 7 days after that change
17 occurs.
18
- 19 (2) In section 29(2):
20 (a) after paragraph (b) insert:
21
22 (ca) as to when the reportable offender is present at
23 a place; or
24
25 (b) delete “14 day period referred to in section 26(2).” and
26 insert:
27
28 7 day period referred to in section 26(2)(a), (da), (d) or
29 (e) or the relevant 3 day period referred to in
30 section 26(2)(b), (c) or (db).
31

Community Protection (Offender Reporting) Amendment Bill 2011

Part 2 Community Protection (Offender Reporting) Act 2004
amended

Division 1 Main amendments

s. 15

1 (c) after each of paragraphs (a) and (b) insert:

2

3 or

4

5 **15. Section 37 amended**

6 (1) In section 37(1) delete “this Part,” and insert:

7

8 Division 1,

9

10 (2) In section 37(3):

11 (a) after “If a report” insert:

12

13 under this Part

14

15 (b) in paragraph (b) delete “and” and insert:

16

17 and, if applicable,

18

19 **16. Section 38 amended**

20 Delete section 38(1)(a) and insert:

21

22 (a) present for inspection to verify or support
23 details in the report —

24 (i) any passport that the reportable offender
25 holds; or

26 (ii) if the reportable offender does not hold
27 a passport — the form of identification
28 or other document, relating to the
29 identity of the reportable offender,
30 specified by the regulations for the
31 purposes of this paragraph;

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and

17. Section 40 amended

- (1) In section 40(2) delete “this section,” and insert:

subsection (1),
- (2) After section 40(2) insert:

- (3) An authorised person may photograph any premises or vehicle included in the personal details reported by a reportable offender under this Part.
- (4) Subsection (3) does not confer a power on an authorised person to enter any premises or vehicle.

18. Section 41 amended

- (1) In section 41(1) delete “or 40,” and insert:

or 40(1),
- (2) In section 41(2)(b) delete “section 40” and insert:

section 40(1)
- (3) In section 41(3) delete “or 40,” and insert:

or 40(1),

Community Protection (Offender Reporting) Amendment Bill 2011

Part 2 Community Protection (Offender Reporting) Act 2004
amended

Division 1 Main amendments

s. 19

1 **19. Section 49 amended**

2 In section 49(1) delete “for the longer period (the *recognised*
3 *foreign reporting period*) referred to in section 7(b)(i).” and
4 insert:

5

6 for —

7 (a) the period (the *recognised foreign reporting*
8 *period*) referred to in section 7(b)(i); or

9 (b) the period that, apart from this section, he or
10 she would be required to report under this Act,

11 whichever is the longer period.
12

13 **20. Section 62 amended**

14 After section 62(1) insert:

15

16 (2A) The approval of the suspension of a reportable
17 offender’s reporting obligations under this Division
18 also ceases to have effect if the Commissioner —

19 (a) is no longer satisfied that the reportable
20 offender does not pose a risk to the lives or the
21 sexual safety of one or more persons, or
22 persons generally; and

23 (b) gives the reportable offender written notice to
24 that effect.
25

26 **21. Section 63 amended**

27 (1) In section 63(1) delete “an offence.” and insert:

28

29 a crime.
30

1 (2) In section 63(1) delete the Penalty and insert:

2

3

Penalty: imprisonment for 5 years.

4

Summary conviction penalty: a fine of \$12 000 and
imprisonment for 2 years.

5

6

7 **22. Section 64 amended**

8 (1) In section 64 delete “an offence.” and insert:

9

10 a crime.

11

12 (2) In section 64 delete the Penalty and insert:

13

14

Penalty: imprisonment for 5 years.

15

Summary conviction penalty: a fine of \$12 000 and
imprisonment for 2 years.

16

17

18 **23. Part 4A inserted**

19 After section 79 insert:

20

21 **Part 4A — Change of name**

22 **80A. Terms used**

23 In this Part —

24

change of name application means an application
proposed to be made by or in respect of a reportable
offender for the registration of a change of the
reportable offender’s name for which approval is
required under section 80C;

25

26

27

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Community Protection (Offender Reporting) Amendment Bill 2011

Part 2 Community Protection (Offender Reporting) Act 2004
amended

Division 1 Main amendments

s. 23

1 *interstate Registrar* means an authority responsible
2 under a law of another State or a Territory for the
3 registration of births, deaths and marriages;

4 *Registration Act* means the *Births, Deaths and*
5 *Marriages Registration Act 1998*;

6 *WA Registrar* means the Registrar as defined in the
7 Registration Act section 4.

8 **80B. Application**

9 This Part applies despite anything to the contrary in the
10 Registration Act.

11 **80C. Application for change of name by or in respect of**
12 **reportable offender**

13 (1) A reportable offender must not —

14 (a) apply to the WA Registrar to register a change
15 of his or her name under the Registration Act;
16 or

17 (b) apply to an interstate Registrar to register a
18 change of his or her name under a law of
19 another State or a Territory that is the
20 equivalent of the Registration Act,

21 without having first obtained the written approval of
22 the Commissioner.

23 Penalty: a fine of \$12 000 and imprisonment for
24 2 years.

25 (2) A person must not in respect of a reportable
26 offender —

27 (a) apply to the WA Registrar to register a change
28 of the reportable offender's name under the
29 Registration Act; or

30 (b) apply to an interstate Registrar to register a
31 change of the reportable offender's name under

1 a law of another State or a Territory that is the
2 equivalent of the Registration Act,

3 without having first obtained the written approval of
4 the Commissioner.

5 Penalty: a fine of \$12 000 and imprisonment for
6 2 years.

7 **80D. Approval by Commissioner**

8 (1) A person may apply to the Commissioner for approval
9 of a change of name application.

10 (2) The application must be made in a manner approved by
11 the Commissioner.

12 (3) The Commissioner may approve a change of name
13 application only if the Commissioner is satisfied that
14 the change of name is in all the circumstances
15 necessary or reasonable.

16 (4) The Commissioner must not approve a change of name
17 application if the Commissioner is satisfied that the
18 change of name would, if registered, be reasonably
19 likely —

20 (a) to be regarded as offensive by a victim of crime
21 or a significant sector of the community; or

22 (b) to frustrate the administration of this Act in
23 respect of the reportable offender who is the
24 subject of the change of name application.

25 (5) If the Commissioner approves a change of name
26 application, the Commissioner must —

27 (a) as soon as is practicable, give written notice of
28 the approval to the person who made the
29 application under subsection (1); and

Community Protection (Offender Reporting) Amendment Bill 2011

Part 2 Community Protection (Offender Reporting) Act 2004
amended

Division 1 Main amendments

s. 23

- 1 (b) give a copy of the written notice of approval to
2 the WA Registrar or the interstate Registrar, as
3 the case requires.
- 4 **80E. Registration of change of name**
- 5 (1) The WA Registrar must not register a change of name
6 under the Registration Act if —
- 7 (a) the WA Registrar knows that the change of
8 name relates to the name of a reportable
9 offender; and
- 10 (b) the WA Registrar has not received a copy of the
11 written notice of approval of the Commissioner
12 under section 80D.
- 13 (2) If the WA Registrar does not register a change of name
14 because of the operation of subsection (1), the WA
15 Registrar must give written notice to the Commissioner
16 of the application to register the change of name.
- 17 **80F. WA Registrar to correct Registration Act Register**
- 18 (1) In this section —
- 19 ***Registration Act Register*** means the Register referred
20 to in the Registration Act section 49(1).
- 21 (2) Without limiting the Registration Act section 51, the
22 WA Registrar must correct the Registration Act
23 Register under that section if the WA Registrar knows
24 that —
- 25 (a) the name of a reportable offender on the
26 Registration Act Register has been changed on
27 or after the commencement of this Part; and
- 28 (b) the Commissioner has not approved that change
29 under this Part.

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80G. Exchange of information between Commissioner and WA Registrar

- (1) The Commissioner must notify the WA Registrar —
 - (a) of the name (including any other name by which the reportable offender is or has previously been known of which the Commissioner is aware) and date of birth of every reportable offender; and
 - (b) of an application made to the Commissioner to approve a change of name application.
- (2) Without limiting section 80E(2), the WA Registrar may notify the Commissioner of an application made to the WA Registrar to register a change of name that the WA Registrar suspects may relate to the name of a reportable offender.
- (3) The WA Registrar must maintain the confidentiality of any information given by the Commissioner under this Part.
- (4) This section has effect despite any written or other law to the contrary.

24. Section 80 amended

In section 80(2)(d) delete “prohibition order” and insert:

protection order, or supervision order under the
Dangerous Sexual Offenders Act 2006,

Community Protection (Offender Reporting) Amendment Bill 2011

Part 2 Community Protection (Offender Reporting) Act 2004
amended

Division 1 Main amendments

s. 25

1 **25. Section 82 amended**

2 In section 82(1):

3 (a) after paragraph (c) insert:

4

5 (da) for the purpose of proceedings on an
6 application for, or for the variation or
7 revocation of, a protection order; or
8

9 (b) after each of paragraphs (a), (b) and (c) insert:

10

11 or

12

13 **26. Section 85 amended**

14 In section 85 insert in alphabetical order:

15

16 *authorised police officer* means a police officer
17 authorised in writing by the Commissioner for the
18 purposes of the provision in which the term is used;
19

20 **27. Section 86 amended**

21 (1) In section 86 delete “Evidence” and insert:

22

23 (1) Evidence

24

25 (2) At the end of the section insert:

26

27 (2) An affidavit for use in the hearing must be confined to
28 the evidence the person making it could give orally,
29 except that it may contain statements based on
30 information and belief if the person making the

- 1 affidavit states the source of the information and the
2 grounds for the belief.
- 3 (3) For the purposes of the hearing, the Commissioner is
4 entitled, on request, to inspect or obtain a copy of any
5 document held by the Children’s Court relating to the
6 reportable offender —
- 7 (a) that is part of the court record; or
8 (b) that was received by that court in sentencing
9 proceedings.
- 10 (4) In subsection (3) —
11 *court record* has the meaning given in the *Children’s*
12 *Court of Western Australia Act 1988* section 51A(1).
- 13 (5) Subsection (3) does not limit the *Children’s Court of*
14 *Western Australia Act 1988* section 51A(3).
15
- 16 **28. Section 87 replaced**
17 Delete section 87 and insert:
18
- 19 **87. Commissioner may apply for orders**
- 20 (1) The Commissioner may apply to a court for a
21 protection order —
- 22 (a) prohibiting a reportable offender from engaging
23 in specified conduct; or
- 24 (b) requiring a reportable offender to comply with
25 the orders of the Commissioner, as referred to
26 in section 94A; or
- 27 (c) imposing on a reportable offender a prohibition
28 under paragraph (a) and a requirement under
29 paragraph (b).

Community Protection (Offender Reporting) Amendment Bill 2011

Part 2 Community Protection (Offender Reporting) Act 2004
amended

Division 1 Main amendments

s. 29

- 1 (2) If the reportable offender is in government custody, an
2 application may be made for an interim protection
3 order only if the offender is expected to be released
4 from government custody within the period of 30 days
5 after the application is made.
6

7 **29. Section 90 amended**

- 8 (1) In section 90(1) delete “prohibition order prohibiting a person
9 from engaging in conduct specified in the”.

- 10 (2) After section 90(3)(f) insert:
11

- 12 (ga) any document or record (including an
13 electronic document or record) served on the
14 reportable offender by the Commissioner;
15

16 **30. Section 91 amended**

17 Delete section 91(2) and insert:
18

- 19 (2) Subject to subsection (3), the term for which a child
20 protection order remains in force is at the discretion of
21 the court, but an application can be made for a further
22 order.

- 23 (3) The term for which a child protection order remains in
24 force, including the term of any further order, cannot
25 extend beyond the reporting period that applies to the
26 reportable offender.
27

1 **31. Section 92 amended**

2 (1) Delete section 92(1) and insert:

3

4 (1) A court may make an interim child protection order
5 prohibiting a reportable offender from engaging in
6 conduct specified in the order if it appears to the court
7 that it is necessary to do so —

8 (a) to prevent an immediate risk to the lives or the
9 sexual safety of one or more children, or
10 children generally; or

11 (b) if the reportable offender is in government
12 custody — to prevent such a risk from arising
13 on the offender’s release from government
14 custody.

15

16 (2) After section 92(4) insert:

17

18 (5A) Despite section 88, a court sentencing a reportable
19 offender for an offence may, after imposing the
20 sentence —

21 (a) hear an application for an interim protection
22 order; and

23 (b) dispose of the application in accordance with
24 section 89.

25

26 (3) In section 92(5)(a) delete “fix” and insert:

27

28 subject to subsection (6A), fix

29

Community Protection (Offender Reporting) Amendment Bill 2011

Part 2 Community Protection (Offender Reporting) Act 2004
amended

Division 1 Main amendments

s. 32

1 (4) After section 92(5) insert:

2

3 (6A) If the reportable offender is in government custody
4 when an interim protection order is made, the court
5 must fix the further hearing of the application for a
6 time after the offender's release from government
7 custody.
8

9 **32. Section 93 amended**

10 (1) Delete section 93(1)(c) and insert:

11

12 (ca) residing at a specified place;

13 (cb) a person changing the place where he or she
14 generally resides (as described in
15 section 29A(1)) without first having obtained
16 the permission of the Commissioner to do so;

17 (cc) travelling out of Australia without first having
18 obtained the permission of the Commissioner to
19 do so;

20 (cd) consuming or using alcohol, drugs or other
21 specified substances;

22 (c) engaging in other specified behaviour;
23

24 (2) In section 93(4) delete "a place" and insert:

25

26 a place, including a place where he or she resides,
27

28 (3) After section 93(5) insert:

29

30 (6) A protection order may, in addition to or instead of
31 prohibiting conduct, impose requirements on a

1 reportable offender as the court considers appropriate
2 to reduce the risk posed by the reportable offender to
3 the lives or sexual safety of one or more children, or
4 children generally.
5

6 **33. Sections 94A, 94B and 94C inserted**

7 After section 93 insert:
8

9 **94A. Reportable offenders may be required to undergo**
10 **assessment and treatment**

- 11 (1) Without limiting section 93(6), a protection order may
12 require a reportable offender to comply with the orders
13 of the Commissioner as to undergoing assessment by a
14 medical practitioner, a psychiatrist, a psychologist or a
15 social worker, or more than one of them and, if
16 necessary, appropriate treatment.
- 17 (2) The Commissioner must not order a reportable
18 offender to undergo treatment of any sort unless a
19 person qualified to recommend or administer the
20 treatment has recommended that the offender undergo
21 that treatment.
- 22 (3) A person must not administer treatment of any sort that
23 is the subject of an order of the Commissioner without
24 the informed consent of the reportable offender who is
25 to undergo the treatment.
- 26 (4) The requirement for a reportable offender to comply
27 with the orders of the Commissioner as to undergoing
28 any assessment or treatment ceases to be in force
29 when —
- 30 (a) the Commissioner, on the recommendation of
31 the person administering the treatment (if

Community Protection (Offender Reporting) Amendment Bill 2011

Part 2 Community Protection (Offender Reporting) Act 2004
amended

Division 1 Main amendments

s. 33

- 1 applicable), gives the offender notice to that
2 effect; or
- 3 (b) the protection order, or that requirement
4 imposed by the protection order, ceases to be in
5 force,
- 6 whichever happens first.
- 7 (5) The regulations may —
- 8 (a) provide for the authorisation of absences from
9 assessment or treatment required to be
10 undergone by the orders of the Commissioner
11 under subsection (1);
- 12 (b) regulate the consequences of injury or sickness
13 with respect to complying with the orders of the
14 Commissioner under subsection (1);
- 15 (c) prescribe the matters that a person providing
16 assessment or administering treatment for the
17 purposes of a protection order under this
18 section must report to the Commissioner;
- 19 (d) without limiting section 96, provide for the
20 variation of protection orders under this section
21 in relation to reportable offenders —
- 22 (i) who fail to comply with the orders of
23 the Commissioner under subsection (1);
24 or
- 25 (ii) whose compliance with those orders is
26 affected by an authorised absence,
27 injury or sickness,
- 28 including the variation of protection orders by
29 the imposition of additional requirements on
30 those offenders;
- 31 (e) authorise the Commissioner to approve forms
32 for the purposes of this subsection.

- 1 **94B. Reportable offenders may be required to submit to**
2 **tests or give samples for analysis**
- 3 (1) If a protection order prohibits a reportable offender
4 from consuming or using alcohol, drugs or any other
5 specified substance, an authorised police officer may
6 exercise the powers under this section to determine
7 whether there is any evidence that the person has
8 breached the order.
- 9 (2) An authorised police officer may require the reportable
10 offender to do one or more of the following —
- 11 (a) submit to a breath test or an oral fluid test;
- 12 (b) give a sample of the offender’s blood, urine or
13 oral fluid for analysis.
- 14 (3) A requirement under subsection (2)(b) must —
- 15 (a) specify the day on which and time and place at
16 which the reportable offender is to attend; and
- 17 (b) indicate what sample or samples are to be
18 given.
- 19 (4) If a requirement is made under subsection (2) —
- 20 (a) any breath test or oral fluid test is to be
21 conducted; and
- 22 (b) any sample is to be taken and dealt with,
23 in accordance with the regulations.
- 24 (5) A person who, without reasonable excuse, fails to
25 comply with a requirement under subsection (2)
26 commits an offence.
- 27 Penalty: a fine of \$12 000 and imprisonment for
28 2 years.
- 29 (6) When requiring a reportable offender to submit to a test
30 or give a sample under subsection (2), an authorised
31 police officer must warn the offender that it is an
32 offence to fail to comply with the requirement unless
33 the offender has a reasonable excuse.

Community Protection (Offender Reporting) Amendment Bill 2011

Part 2 Community Protection (Offender Reporting) Act 2004
amended

Division 1 Main amendments

s. 33

- 1 (7) A person must not use a sample provided in
2 compliance with a requirement under subsection (2) to
3 obtain the DNA of the person who provided the
4 sample.
5 Penalty: imprisonment for 12 months.
- 6 (8) The regulations may provide for the following
7 matters —
- 8 (a) the manner of making requirements under
9 subsection (2);
- 10 (b) the manner of conducting breath tests and oral
11 fluid tests and taking, collecting or dealing with
12 samples of blood, urine and oral fluid and their
13 analysis;
- 14 (c) the authorisation of persons as analysts for the
15 purposes of this section;
- 16 (d) the reporting of the results of breath or oral
17 fluid tests or blood, urine or oral fluid analysis;
- 18 (e) the collection, keeping and disposal of samples;
- 19 (f) the approval of equipment or apparatus for the
20 purposes of testing or analysis;
- 21 (g) the devices used in conducting breath tests and
22 oral fluid tests, including the calibration,
23 inspection and testing of those devices;
- 24 (h) the requirement that a person who submits to a
25 breath test or oral fluid test, or who gives a
26 sample of blood, urine or oral fluid for analysis,
27 is to provide proof of his or her identity;
- 28 (i) the admissibility in any proceedings of
29 certificate evidence, including certificate
30 evidence of —
- 31 (i) the authorisation referred to in
32 paragraph (c); and

- 1 (ii) the results referred to in paragraph (d);
2 and
3 (iii) the approval referred to in paragraph (f).
- 4 (9) The powers that a police officer may exercise under
5 this section are in addition to, and do not derogate
6 from, the powers that the police officer has under any
7 other law.
- 8 **94C. Authorised police officers may enter premises to**
9 **inspect computers**
- 10 (1) In this section —
11 *computer* includes any device capable of storing
12 electronic data;
13 *generally resides* has the meaning given to that term in
14 section 29A(1);
15 *senior police officer* means a police officer who is, or
16 is acting as, a sergeant or an officer above the rank of
17 sergeant.
- 18 (2) If a protection order prohibits conduct that relates to
19 the use by a reportable offender of the internet, an
20 authorised police officer may, at any time and without
21 a warrant, enter premises where the offender generally
22 resides and exercise a power under subsection (3) to
23 determine whether there is any evidence that the
24 offender has breached the order.
- 25 (3) The authorised police officer may —
26 (a) inspect any computer that is at the premises; or
27 (b) seize any computer at the premises and remove
28 it from the premises for the purpose of
29 inspecting it.

Community Protection (Offender Reporting) Amendment Bill 2011

Part 2 Community Protection (Offender Reporting) Act 2004
amended

Division 1 Main amendments

s. 33

- 1 (4) The reportable offender must if required by the
2 authorised police officer to do so —
- 3 (a) provide the officer with any user name, code,
4 password or other information the offender
5 knows is needed to gain access to the electronic
6 data stored in a computer; or
- 7 (b) otherwise assist the officer to gain access to the
8 electronic data stored in a computer.
- 9 Penalty: a fine of \$12 000 and imprisonment for
10 2 years.
- 11 (5) If a person is found guilty of an offence —
- 12 (a) under section 101 in relation to conduct of the
13 kind referred to in subsection (2); or
- 14 (b) under subsection (4),
- 15 in relation to a computer, the computer is forfeited to
16 the State.
- 17 (6) The *Criminal and Found Property Disposal Act 2006*
18 applies to and in relation to a computer that is seized
19 under subsection (3) or forfeited under subsection (5).
- 20 (7) An authorised police officer may use reasonable force
21 in the exercise of a power under subsection (2) or (3).
- 22 (8) Unless the exercise of the power is authorised by a
23 senior police officer, a power under subsection (2) or
24 (3) must not be exercised in relation to particular
25 premises more than once in any period of 12 months.
- 26 (9) The powers that a police officer may exercise under
27 this section are in addition to, and do not derogate
28 from, the powers that the police officer has under any
29 other law.
30

1 **34. Section 101 amended**

2 (1) In section 101(1) delete “an offence.” and insert:

3

4 a crime.

5

6 (2) In section 101(1) delete the Penalty and insert:

7

8 Penalty: imprisonment for 5 years.

9 Summary conviction penalty: a fine of \$12 000 and
10 imprisonment for 2 years.

11

12 (3) After section 101(1) insert:

13

14 (2A) Subsection (1) does not apply in relation to a failure to
15 comply with an order of the Commissioner under
16 section 94A(1) to undergo assessment or treatment.

17

18 **35. Section 105 deleted**

19 Delete section 105.

20 **36. Section 110A inserted**

21 After section 109 insert:

22

23 **110A. Public authorities to provide Commissioner with**
24 **certain information**

25 (1) In this section —

26 *application* means —

27 (a) an application under section 13(7A) for the
28 imposition of an offender reporting order; or

Community Protection (Offender Reporting) Amendment Bill 2011

Part 2 Community Protection (Offender Reporting) Act 2004
amended

Division 1 Main amendments

s. 37

- 1 (b) an application under section 15 for an order that
2 a person comply with the reporting obligations
3 of this Act; or
- 4 (c) an application for an order under Part 5;
5 *management*, of a reportable offender, includes
6 monitoring the reportable offender's compliance with
7 the reporting obligations of this Act.
- 8 (2) The Commissioner may, by notice in writing, direct
9 any public authority to provide to the Commissioner,
10 on or before a day specified in the notice, any
11 information held by the public authority that is relevant
12 to —
- 13 (a) the assessment and management of a reportable
14 offender; or
- 15 (b) the Commissioner's determination whether to
16 make an application; or
- 17 (c) the Commissioner's making or responding to
18 an application.
- 19 (3) A public authority given a direction under
20 subsection (2) is authorised and required to provide to
21 the Commissioner the information sought by the
22 direction.
- 23 (4) A public authority is not required to give information
24 that is subject to legal professional privilege.
25

26 **37. Section 115B inserted**

27 After section 115A insert:

28

29 **115B. Further transitional arrangements for certain**
30 **offenders sentenced for Class 2 offences**

- 31 (1) This section applies to a person —
32 (a) who was sentenced on or after the
33 commencement day and before the day (the

- 1 *relevant day*) on which the *Community*
2 *Protection (Offender Reporting) Amendment*
3 *Act 2011* section 38 came into operation for an
4 offence (a *relevant offence*) against —
- 5 (i) *The Criminal Code* section 204A; or
6 (ii) *The Criminal Code* section 332 or 343,
7 if the person against whom the offence
8 was committed was, at the time the
9 offence was committed, a child who
10 was neither a de facto child nor lineal
11 relative, as defined in *The Criminal*
12 *Code* section 329(1), of the offender;
- 13 and
- 14 (b) who is not, apart from this section, a reportable
15 offender.
- 16 (2) This section also applies to a person —
- 17 (a) who would have been an existing controlled
18 reportable offender on the commencement day
19 if the amendments made to Schedule 2 by the
20 *Community Protection (Offender Reporting)*
21 *Amendment Act 2011* section 38 were in effect
22 on that day; and
- 23 (b) who is not, apart from this section, a reportable
24 offender.
- 25 (3) If this section applies to a person, the person is taken
26 for the purposes of this Act —
- 27 (a) to be a reportable offender in respect of a
28 Class 2 offence; and
- 29 (b) to have been sentenced for that offence on the
30 relevant day.
- 31 (4) Nothing in this section limits the operation of this Act
32 in respect of a person who is sentenced for a relevant
33 offence on or after the relevant day.
34

Community Protection (Offender Reporting) Amendment Bill 2011

Part 2 Community Protection (Offender Reporting) Act 2004
amended

Division 2 Various references to “prohibition order” or “prohibition orders”
amended

s. 38

1 **38. Schedule 2 amended**

2 In Schedule 2:

3 (a) after the item relating to *The Criminal Code* section 186
4 insert:

5

s. 204A Showing offensive material to child
under 16

6

7 (b) after the item relating to *The Criminal Code*
8 section 331D insert:

9

s. 332 Kidnapping (if the person against whom the
offence is committed is a child who is
neither a de facto child nor lineal relative, as
defined in *The Criminal Code*
section 329(1), of the offender)

s. 343 Child stealing (if the child against whom the
offence is committed is neither a de facto
child nor lineal relative, as defined in
The Criminal Code section 329(1), of the
offender)

10

11 **Division 2 — Various references to “prohibition order” or**
12 **“prohibition orders” amended**

13 **39. Section 3 amended**

14 (1) In section 3 delete the definition of *prohibition order*.

15 (2) In section 3 insert in alphabetical order:

16

17 *protection order* has the meaning given to that term in
18 section 85;

19

1 **40. Part 5 heading amended**

2 In the heading to Part 5 delete “**Prohibition**” and insert:

3

4 **Protection**

5

6 **41. Section 85 amended**

7 (1) In section 85 delete the definitions of:

8 *child protection prohibition order*

9 *corresponding prohibition order*

10 *interim prohibition order*

11 *prohibition order*

12 (2) In section 85 insert in alphabetical order:

13

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

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

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

23 *protection order* means a child protection order or an
24 interim protection order;

25

26 (3) In section 85 in the definition of *registrar* delete “prohibition”
27 and insert:

28

29 protection

Community Protection (Offender Reporting) Amendment Bill 2011

Part 2 Community Protection (Offender Reporting) Act 2004
amended

Division 2 Various references to “prohibition order” or “prohibition orders”
amended

s. 42

1

2 (4) In section 85 in the definition of *respondent*:

3 (a) in paragraph (a) delete “prohibition” (each occurrence)
4 and insert:

5

6 protection

7

8 (b) in paragraph (b) delete “prohibition”.

9 **42. Other references to “prohibition order” or “prohibition**
10 **orders” amended**

11 (1) In section 108(1) and (2) delete “prohibition orders” (each
12 occurrence) and insert:

13

14 protection orders

15

16 (2) In the provisions listed in the Table delete “prohibition order”
17 (each occurrence) and insert:

18

19 protection order

20

21

Table

s. 26(1)(j)	s. 59(1)(a), (2)(b)(i) and (3)
s. 62(1)(a), (2)(b)(i) and (3)	s. 88
s. 89(a)	s. 90(4)
s. 92(3), (4), (5) and (7)	s. 93(1), (2), (3), (4) and (5)
s. 94(1)	s. 95(2)

Community Protection (Offender Reporting) Amendment Bill 2011

Community Protection (Offender Reporting) Act 2004
amended

Part 2

Various references to "prohibition order" or "prohibition orders"
amended

Division 2

s. 42

s. 100	s. 101(1)
s. 102(1)(b)	s. 106(1)
s. 107(2) and (3)	s. 111(1)(e)

1 (3) In the provisions listed in the Table delete "prohibition".

2 **Table**

s. 44(3) and (4)	s. 91(1)
s. 95(1)	s. 96(1) and (2)
s. 97(1) and (3)	s. 98(a)

3 Note: The headings to the amended sections listed in the Table are to read
4 as set out in the Table.

5 **Table**

Amended section	Heading
s. 90	Court may make child protection orders
s. 91	Term of child protection orders
s. 92	Interim child protection orders
s. 96	Variation or revocation of child protection orders
s. 107	Protection orders have no effect to extent of inconsistency with certain other orders
s. 108	Recognition of protection orders made in other jurisdictions

1 **Part 3 — Freedom of Information Act 1992 amended**

2 **43. Act amended**

3 This Part amends the *Freedom of Information Act 1992*.

4 **44. Schedule 1 clause 14 amended**

5 In Schedule 1 clause 14(5):

6 (a) in paragraph (e) delete “or (3).” and insert:

7

8 or (3); or

9

10 (b) after paragraph (e) insert:

11

12 (f) a person in respect of whom information is
13 contained in the Community Protection Offender
14 Register established under the *Community
15 Protection (Offender Reporting) Act 2004*
16 section 80.
17

=====