

EXPLANATORY NOTES

Community Protection (Offender Reporting) Bill 2004

PART 1 PRELIMINARY MATTERS

This Part contains the title of the Act, the relevant commencement provisions, definitions of terms used in the Act and other referencing provisions.

Clause 1. Short Title:- Cites the short title of the Act – *Community Protection (Offender Reporting) Act 2004*

Clause 2. Commencement:- The Act is to come into operation on a day, or different days, to be fixed by proclamation published in the Government Gazette.

Clause 3. Terms Used in this Act:- Contains definitions of terms and expressions used throughout the Act. These terms have been defined to ensure the provisions of the Act are interpreted and applied in the manner intended.

Clause 4. Meaning of finding of guilt:- Clearly defines the circumstances that are to be considered as a “finding of guilt” for the purposes of the Act and includes a Court convicting a person when there has been no formal finding of guilt and acquittal on account of unsoundness of mind.

Clause 5. Other reference provisions:- Defines the specific circumstances that apply to where a reference is made in the Act to ‘offences arising from the same incident’ and ‘doing a thing in person’.

PART 2 OFFENDERS TO WHOM ACT APPLIES

This part clearly sets out the persons to which this Act applies including inter-jurisdictional application.

Division 1 - General

This division sets out who is a reportable offender and what constitutes a reportable offence.

Clause 6. Reportable offenders:- Defines who is to be regarded as a ‘reportable offender’ for the purposes of the Act.

A reportable offender includes any person who has been sentenced by a Court for a reportable offence including persons sentenced in other jurisdictions and persons who were sentenced prior to the commencement of the Act. The retrospectivity imposed on the Act by this clause relates to persons who have committed at least 2 reportable offences before commencement, and at least one of those offences was committed within eight years prior to commencement.

Clause 7. Who a corresponding reportable offender is:- Sets out who is a “corresponding reportable offender” for the purposes of the Act.

The purpose of this clause is to include persons who have been in foreign jurisdictions and have been required to report to a registrar of a corresponding jurisdiction for a longer period than they would have been required to report under this Act.

For the purposes of the Act a “foreign jurisdiction” means a jurisdiction other than Western Australia and includes jurisdictions outside Australia.

Clause 8. Who a New South Wales reportable offender is:- Sets out who is a “New South Wales reportable offender” for the purposes of the Act.

The purpose of this clause is to include persons who had reporting obligations in respect to the original New South Wales Act {*Child Protection (Offender Registration) Act 2000*}.

Clause 9. Reportable offences:- Defines what is to be considered as a “reportable offence” for the purposes of the Act.

Includes Class 1, Class 2 or 2 Class 3 offences and any other offence that results in the making of a “offender reporting order”

Clause 10. Class 1 offences:- Class 1 offences are listed in schedule 1 of the Act and also include:

- Offences under a foreign jurisdiction that, if committed in Western Australia would constitute a Class 1 offence;
- Offences of a foreign jurisdiction that are prescribed by regulations to be a Class 1 offence;
- Offences where an intent to commit a Class 1 offence is an element;
- Attempting, conspiring or inciting to commit a Class 1 offence; and
- An offence that was a Class 1 offence at the time it was committed and in the case of offences committed prior to the commencement of the Act, includes equivalent offences to those mentioned in this clause.

Clause 11. Class 2 offences:- Class 2 offences are listed in schedule 2 of the Act and also include:

- Offences under a “foreign jurisdiction” that, if committed in Western Australia would constitute a Class 2 offence;
- Offences of a foreign jurisdiction that are prescribed by regulations to be a Class 2 offence;
- Offences where an intent to commit a Class 2 offence is an element;
- Attempting, conspiring or inciting to commit a Class 2 offence
- An offence that was a Class 2 offence at the time it was committed and in the case of offences committed prior to the commencement of the Act, includes equivalent offences to those mentioned in this clause.

Clause 12. Class 3 offences:- Class 2 offences are listed in schedule 3 of the Act and also include:

- Offences under a “foreign jurisdiction” that, if committed in Western Australia would constitute a Class 2 offence;
- Offences of a foreign jurisdiction that are prescribed by regulations to be a Class 2 offence;
- Offences where an intent to commit a Class 2 offence is an element;
- Attempting, conspiring or inciting to commit a Class 2 offence
- An offence that was a Class 2 offence at the time it was committed and in the case of offences committed prior to the commencement of the Act, includes equivalent offences to those mentioned in this clause.

This clause extends the application of the Act to offenders who have committed offences against adult victims.

Clause 13. Offender reporting orders:- Empowers a Court to order a person to comply with the reporting obligations of the Act where it is satisfied that the person poses a risk to the lives or the sexual safety of the community , in the circumstance where the person has not been found guilty of a reportable offence.

Division 2. Past offender reporting orders

This Division makes provision for a Court to impose reporting requirements on offenders sentenced prior to the commencement of the Act and who are not already reportable offenders.

Clause 14. Terms used in this Division:- This defines terms used in this Division to ensure the provisions of the Act are interpreted and applied in the manner intended.

Clause 15. Commissioner may apply for reporting orders:- This clause empowers the Commissioner of Police to apply the Children’s Court or District Court to have a person, who was sentenced prior to the commencement of this Act and who falls outside of the Acts reporting requirements, to comply with the reporting requirements of the Act.

Clause 16. Fixing a hearing:- This clause sets out what the Registrar must do upon receiving an application for a past offender reporting order.

Clause 17. Evidence:- This clause provides that evidence may given orally or by affidavit at hearings relating to ‘past offender reporting order’ applications.

Clause 18. How application to be disposed of:- This clause set out how the Court can dispose of the ‘past offender reporting order’ application.

Clause 19. Court may make reporting orders:- Empowers a Court to order a person to comply with the reporting obligations of the Act where it is satisfied that the person poses a risk to the lives or the sexual safety of the community. This clause also specifies the effect of the past offender reporting order in respect to other provisions of the Act.

Clause 20. Attendance at hearings:- This clause specifies what the Court must do if, upon fixing a hearing, the applicant or respondent fail to attend.

Clause 21. Notification of orders made in absence of respondent:- This clause requires that the registrar serve a copy of any orders made in the absence of the respondent.

Clause 22. Appeals:- This clause provides an avenue of appeal for persons aggrieved by decision of the Court in respect to a past offender reporting order.

Clause 23. Appeal does not stay order:- This clause provides that an appeal does not overturn the past offender reporting order unless ordered by the Court.

PART 3 REPORTING OBLIGATIONS

This clearly sets out the reporting obligations of a reportable offender.

Division 1 - Initial report

This Division explains when and what a reportable offender must report upon being required to provide an initial report.

Clause 24. When the report must be made:- Sets out in table format the time frames, within which a reportable offender must report his or her personal details to the Commissioner of Police (the Commissioner).

Clause 25. When new initial report must be made by offender whose previous reporting obligations have ceased:- Sets out the time frames for offenders whose previous reporting obligations have ceased, but recommenced because they have again been convicted of a reportable offence, have become a corresponding reportable offender or have had reporting obligations suspended under clause 53, but that suspension has subsequently ceased in accordance with clause 59.

The clause also provides specific time frames for persons who this section applies who are not in Western Australia at the time his or her new initial reporting obligation commences and places requirements on a reportable offender to report personal details to the Commissioner prior to leaving Western Australia.

Clause 26. Initial report by reportable offender of personal details:- This clause specifies what personal details a reportable offender must report to the Commissioner.

This includes name, date of birth, address, identifying particulars, details of involvement with children, motor vehicle details and disclosure of relevant convictions.

Clause 27. Persons required to report under a corresponding Act:- Sets out the obligations of a person who has been required to report to a corresponding registrar, however this section does not apply to persons who are “Protected Witnesses” in accordance with Division 10. It places an obligation on the person to report to an authorised person within 7 days of entering Western Australia and requires that the authorised person advise the person whether or not they are a reportable offender for the purposes of this Act.

Division 2 - Ongoing Reporting Obligations

This Division explains when and what a reportable offender must continue to report whilst they are bound by this Act.

Clause 28. Reportable offender to report annually and as required by Commissioner:- This clause requires that a reportable offender must report his or her personal details annually or more often as required by the Commissioner.

Clause 29. Reportable offender to report changes to relevant personal details:- This clause requires that a reportable offender report any changes to his personal details within 7 days of the changes occurring.

Clause 30. Intended absence from Western Australia to be reported: This clause places an obligation on reportable offenders to notify the Commissioner of travel details at least 7 days before the offender intends to travel out of Western Australia

Clause 31. Change of travel plans while out of Western Australia to be reported:- This clause requires a reportable offender, who is out of Western Australia, to report any changes to his travel details. It also requires a reportable offender to report an extended stay.

Clause 32. Reportable offender to report return to Western Australia or decision not to leave:- This clause requires that a reportable offender who, was required under clause 30 to report his travel details, must report his return to the Commissioner within 7 days after remaining in Western Australia for 14 or more consecutive days. If the reportable offender had reported his travel intentions under clause 30 but subsequently did not travel, then he or she must report his decision not to leave Western Australia within 7 days of making that decision.

Clause 33. Report of other absences from Western Australia:- This clause requires the reportable offender, who regularly leaves Western Australia, to report to the Commissioner in general terms the reason for the travel and the frequency and destinations of the travel.

Division 3 - Provisions applying to all reporting obligations

This Division sets out where and how all reports are to be made.

Clause 34. Where report must be made:- This clause details the places in which reports must be made and includes a Police Station or another place approved by the Commissioner.

Clause 35. How reports are to be made:- This clause provides that reports are to be made in person, except in certain circumstances.

Clause 36. Right to privacy and support when reporting:- This clause entitles a person to complete privacy when making a report and to bring along a person of their choice for support.

Clause 37. Receipt of information to be acknowledged:- This clause requires that the Commissioner provides a person making a report under this part with either a written receipt including a copy of the information reported, or in the case where reports are not made in person, a unique reference number relating to that person's report.

Clause 38. Additional matters to be provided:- This clause requires persons making reports in person to bring with them appropriate identification.

Clause 39. Power to take fingerprints:- This clause provides a power to an authorised person to take fingerprints of the reportable offender where the authorised person is not satisfied of the person's identity. Fingerprints can be taken even though the reportable offender has produced identification, where the authorised person is still not reasonably satisfied of the person's identity.

Clause 40. Power to take photographs:- This clause provides a power for an authorised person to photograph the reportable offender, including being able to require the reportable offender to expose a part of his/her body to be photographed.

Clause 41. Reasonable force may be used to obtain fingerprints and photographs:- This clause details how fingerprints and photographs must be obtained and prescribes the circumstances that reasonable force may be used.

Clause 42. Retention of material for certain purposes:- This clause enables the Commissioner to lawfully retain any documents, photographs or fingerprints obtained from a reportable offender for the purposes of law enforcement or crime prevention.

Clause 43. Reporting by remote offenders:- This clause allows for offenders (required to report in person) residing in certain remote locations to report outside the normal time limits.

Division 4 - Suspension and extension of reporting obligations

This Division outlines when reporting obligations are suspended or extended under certain circumstances.

Clause 44. Suspension and extension of reporting obligations:- This clause provides that reporting obligations shall be suspended or extended under certain circumstances such as being in government custody or outside Western Australia.

Division 5 – Reporting Period

This Division sets out the period to which reportable offenders are bound to report under the Act.

Clause 45. When reporting obligations begin:- This clause provides that the a reportable offender's reporting requirements begin at the point he or she is sentenced for the reportable offence, or at the conclusion of serving a custodial sentence in respect of the offence, whichever is the later.

Clause 46. Length of reporting period:- This clause prescribes the time period in which a reportable offender must continue to report. The length of the reporting period is dependent on the nature of the offence and the offender's criminal history.

Clause 47. Reduced period applies for juvenile reportable offenders:- This clause provides specific reporting periods for reportable offenders who were juveniles at the time he or she committed the reportable offence/s. Reporting periods for juveniles are half that of what applies to adults under clause 46 and in the case of life is to be 7 ½ years.

Clause 48. Extended reporting period if reportable offender still on parole:- This clause provides that where a reportable offender is subject to parole, or some other early release order in respect to a reportable offence and their reporting obligation ceased prior to the expiration date of their original prison sentence then their reporting obligations are extended to the original date of release from prison.

Clause 49. Reporting period for corresponding reportable offenders:- This clause ensures that if an offender is a corresponding reportable offender under the laws of more than one jurisdiction their reporting period for the purposes of this Part is the longest of the reporting periods imposed under the laws of the foreign jurisdictions.

Clause 50. Reporting period for New South Wales reportable offenders:- This clause ensures that a person required to report under New South Wales legislation and subsequently by Western Australian legislation and, the reporting periods are different, the reportable offender is required to continue to report for the longer of the two periods.

Division 6 – Exemption from reporting obligations

Clause 51. Application of this Division: This clause exempts a person who has been found guilty of murder (or a equivalent offence) from being able to apply to a Court under this Division.

Clause 52. District Court may exempt certain reportable offenders:- This clause provides an ability for a reportable offender with a lifetime reportable period to apply to the District Court to make an order (exemption order) to suspend their reporting obligations. A reportable offender can only make application under this section if they have already been reporting for at least 15 years.

Clause 53. Order for suspension:- This clause sets out the criteria that the District Court has to follow when considering an exemption order application.

The Court can make an exemption order if it is satisfied that the reportable offender does not pose a risk to the lives or the sexual safety of one or more children, or children generally and on deciding this, must consider the various matters, including the following;

- Seriousness of offence;
- Period since offending took place;
- Age of the offender;
- Age of the offender's victims;
- Age difference in the age of the Offender and Victim;
- The offender's criminal record; and
- Any other matter the Court considers relevant.

Clause 54. Commissioner and certain chief executive officers entitled to be parties to proceedings:- This clause provides the Commissioner and the Chief Executive Officers responsible for the administration of the *Children and Community Services Act 2004* or the *Sentence Administration Act 2003* (relevant authorities) to make submissions in opposition to exemption order applications.

It places an obligation upon the registrar of the District Court to advise the above 'relevant authorities' when an application has been made.

Further, the clause provides a power for the 'relevant authority' to source information from other public bodies in order to prepare submissions.

Clause 55. Commissioner to be notified of order:- This clause places an obligation on the Registrar of the District Court to notify the Commissioner of the terms of any exemption order made.

Clause 56. No costs to be awarded:- This clause places a prohibition on the District Court ordering any costs in respect to exemption order applications.

Clause 57. Applications not to be heard in public on application of party to proceedings:- This clause provides the Court with an ability to hear applications for an exemption order in the absence of the public, where an application is made by a party to the proceedings.

Clause 58. Restriction on right of unsuccessful applicant to re-apply for order:- This clause provides that if a reportable offender is refused an exemption order, then the reportable offender is not able to lodge a further application until the expiration of 5 years. The Court may vary this upon refusal.

Clause 59. Cessation of order:- This clause outlines the circumstances in which an exemption order ceases.

The exemption order ceases if the reportable offender is made subject to a offender reporting order or a prohibition order, is again found guilty of a reportable offence or becomes a corresponding reportable offender and must continue to report in accordance with clause 52.

If the finding of guilt or relevant order is subsequently quashed or set aside then the original exemption order is re-established. However, the mere fact that an appeal has been lodged has no effect on the cessation of the order.

Clause 60. Application for new order:- This clause sets out that a reportable offender may apply for a new exemption order in circumstances where a previous exemption order has ceased. However, as is for initial exemption order applications, 15 years must have past since the reportable offender was last sentenced for a reportable offence in accordance with clause 52.

Division 7 – Suspension of reporting obligations of certain reportable offenders

This Division provides that certain reportable offenders, who committed their offences as a child, may have their mandatory reporting requirements suspended.

Clause 61. Commissioner may approve suspension of reporting obligations: This clause empowers the Commissioner of Police with the ability to suspend the reporting requirements of a reportable offender who was a child when they committed their reportable offence. The Commissioner will only have this power in respect to certain convictions as prescribed by regulations. He must only suspend reporting requirements of the reportable offender in circumstances where he is satisfied that the juvenile does not pose a risk to the lives or sexual safety of the community.

Clause 62. Cessation of approval: This clause sets out when the Commissioner’s approval to suspend ceases to have effect. An example of when this will occur is if the offender is subsequently convicted of a reportable offence.

Division 8 - Offences

This Division provides for offences relating to the breach of reporting obligations.

Clause 63. Failing to comply with reporting requirements:- This clause creates an offence of, without reasonable excuse, failing to comply with any reporting requirements of this Act.

The clause specifically sets out what the court must consider when determining whether the person has a reasonable excuse. This includes the persons age, disability and whether the person was appropriately notified about his or her requirement to report

The penalty for this offence is \$12,000 and/or 2 years jail or both.

Clause 64. Providing false or misleading information:- This clause creates an offence of wilfully providing false or misleading information, when require to furnish it in accordance with this part of the Act.

The penalty for this offence is \$12,000 and/or 2 years jail or both.

Clause 65. No time limit for prosecutions:- This clause provides that proceedings for an offence under this Act may be commenced at any time.

Clause 66. Bar to prosecution for failing to report leaving Western Australia:- This clause provides that a person shall not be prosecuted for failing to report his or her intended absence, in accordance with clause 30, if such person is found guilty of failing to report his or her presence in a foreign jurisdiction as required by a corresponding Act.

Division 9 – Notification of reporting obligations

This Division sets out the obligations of certain public authorities to report matters relating to reportable offenders.

Clause 67. Notice to be given to reportable offender:- This clause provides when and by whom a written notice is to be given to a reportable offender setting out his or her reporting obligations and the consequences that may arise for failure to comply with those obligations.

Clause 68. Courts to provide sentencing information to the Commissioner:- This clause provides that upon certain orders being made that affect reportable offenders, or sentences imposed in relation to reportable offenders, a Court must ensure that the details of the order or sentence are provided to the Commissioner as soon as practicable.

Clause 69. Notice to be given when reporting period changes:- This provides that where a reportable offender's reporting period has changed since he or she was last notified, the Commissioner must provide written notice of the change as soon as practicable.

Clause 70. Supervising authority to notify Commissioner of certain events:- This clause places an obligation on a supervising authority to notify the Commissioner in writing when a reportable offender is released from custody or other similar specified events.

The clause also enables the Commissioner to advise a supervising authority whether a person is a reportable offender or not.

Clause 71. Notices may be given by Commissioner:- This clause empowers the Commissioner to notify a reportable offender at any time of his or her reporting obligations and or the consequences for failing to comply with their obligations.

Clause 72. Power of detention to enable notice to be given:- This clause provides police with a power to detain a person that they reasonably suspect is a reportable offender and has not been made aware of their reporting obligations.

The detention is lawful for the purposes of determining whether the person is a reportable offender; whether they have been notified; and, in the case that they are a reportable offender and have not been notified, to give notice of their obligations.

The clause specifies what a police officer must advise the person why and under what power they have been detained and that they will be released immediately after the purposes of the detention is fulfilled.

Clause 73. Failure to comply with procedural requirement does not affect reportable offender's obligations:- This clause specifies that a failure by any person, other than the reportable offender themselves, to comply with any procedural requirement of the Act or Regulations does not, of itself, affect a reportable offender's reporting obligations.

Division 10 – Modified reporting procedures for participants in witness protection programs

This Division provides modified reporting obligations for participants in witness protection programs.

Clause 74. Terms used in this Division:- Contains the definition of “Witness protection program” for the purposes of Division 10.

Clause 75. Who this Division applies to:- This clause specifies that this Division applies to reportable offenders who are currently participants in a witness protection program or a person who is subject to an order declaring them to be a person to whom this Division applies.

With limited exceptions, this Division also applies to certain other reportable offenders who are receiving protection under a foreign witness protection law made under a corresponding Act.

Clause 76. Report need not be made in person:- This clause exempts a person to which this Division applies (a protected person) from the reporting obligations of this part so long as the required information is reported at times, and in a manner authorized by the Commissioner and the Commissioner acknowledges acceptance of the report.

Clause 77. Determination as to whether this Division applies:- This clause places an obligation on the Commissioner to determine whether a person is a protected person when the person ceases to be a participant in the witness protection program of their own request or if the Commissioner terminates their participation.

The clause also places an obligation on the Commissioner to notify the reportable offender of the terms of the order and enables the reportable offender to request the Commissioner to conduct a review of the order.

Clause 78. When determination takes effect:- This clause sets out when the declaratory order is to take effect. An order declaring a reportable offender is a person to which this Division applies, takes effect immediately. An order to the contrary takes effect 28 days after the reportable offender received notice of the order, or at the point a decision is made and the offender notified of the result, in respect to a review under clause 77.

Clause 79. Modification of reporting obligations:- Protected persons may reside in safe houses outside Western Australia and so this clause ensures that the Act applies to protected persons by modifying references to Western Australia in relevant sections of the Act so that they also apply to the jurisdiction in which the protected person resides.

PART 4 – COMMUNITY PROTECTION OFFENDER REGISTER

This part provides for the formation and maintenance of a Community Protection Offender Register.

Clause 80. Requirement to establish and maintain Community Protection Offender Register:- This clause places an obligation on the Commissioner to maintain a ‘Community Protection Offender Register’ that must contain specified information including such things as the reportable offenders personal details and details of the reportable offenders charges and convictions in respect to reportable offences. The clause also allows the Commissioner to enter into an arrangement with another person or body to establish/maintain the Register on his behalf. This will give effect to the National Register which is being maintained by CrimTrac.

Clause 81. Access to register to be restricted:- This clause places considerable restrictions on the disclosure of information contained in the ‘Community Protection Offender Register’. It places an obligation on the Commissioner to develop guidelines relating to the disclosure of information, but must be restricted to disclosures that are required to give effect to the Act.

Clause 82. Confidentiality:- This clause creates an offence for a person to disclose personal information contained in the ‘Community Protection Offender Register’ except for the following circumstances:

- In the course of a person’s duty;
- As required or authorized by law;
- For the purposes of proceedings for an offence under this Act;
- With the written authority of the Minister or the person to whom the information relates;
- or
- In other circumstances prescribed by regulations.

This clause applies even when summonsed by a Court to give evidence or produce documents in civil proceedings.

The penalty for an offence under this clause is 3 years imprisonment or a fine of \$18,000 and this increases to a maximum of 10 years imprisonment or a fine of \$60,000 where a person discloses the information for personal gain or benefit.

Clause 83. Restriction on who may access personal information on protected witness:- This clause ensures that information relating to protected witnesses, which is contained in the ‘Community Protection Offender Register’, must only be accessed by a person authorised by, the Officer in Charge of the Police Services’ Witness Security Unit.

Clause 84. Reportable Offenders rights in relation to Register:- This clause enables the reportable offender to obtain his information contained in the ‘Community Protection Offender Register’ and in the event any entries are incorrect the reportable offender may request that the Commissioner change the information. The Commissioner must accede to any request for information or changes made in accordance with this clause.

PART 5 PROHIBITION ORDERS

Division 1 – Preliminary

This Division defines terms used in this part and makes provision for evidence to be given.

Clause 85. Terms used in this Part:- Contains definitions of terms and expressions used throughout this Part of the Act. These terms have been defined to ensure the provisions of the Act are interpreted and applied in the manner intended.

Clause 86. Evidence: This clause allows for evidence at prohibition order hearings to be given either orally or by affidavit.

Division 2 - Orders

This Division sets out how child protection orders may be made, including provision for interim child protection orders and orders made by consent.

Clause 87. Commissioner may apply for orders:- This clause enables the Commissioner to apply to a Court for a ‘prohibition order’ prohibiting a reportable offender from engaging in specified conduct.

Clause 88. Fixing a hearing:- When the Commissioner applies for a prohibition order, this clause places an obligation on the Registrar of the Court to fix a hearing date, summons the reportable offender and notify the Commissioner of the hearing.

In the case of an ‘interim prohibition order’ (issued in accordance with clause 72) where the reportable offender is not present, the registrar need only fix the hearing date and notify the Commissioner.

Clause 89. How application to be disposed of:- This clause limits the Courts ability to deal with the prohibition order application to:

- Making the order
- Dismissing the application; or
- Discontinuing the application at the request of the applicant.

Clause 90. Court may make child protection prohibition order:- This clause empowers a Court to make a child protection prohibition order prohibiting a reportable offender from engaging in specified conduct. The Court may make the order if, on the balance of probabilities, the Court is satisfied that the reportable offender poses a risk to the lives and/or sexual safety of a child or children generally and in the view of the Court the granting of the order will reduce that risk.

It is not necessary that the Court be able to identify a specific child or children at risk in order to make an order under this clause, it is sufficient to prove that the conduct of the reportable offender is such that he or she poses a risk to children generally.

This clause also specifies the matters that the Court must take into consideration when determining an application for a prohibition order.

Clause 91. Term of child protection prohibition orders:- This clause specifies that the Court must specify the term of a prohibition order, however the term must not exceed 5 years and in the case of a reportable offender who is 18 years or less, then the maximum period is 2 years.

Clause 92. Interim child protection orders:- This clause empowers the Court to make 'interim child protection orders' in order to prevent an immediate risk to a child or children generally. There is no requirement that the reportable offender be present or even notified of the interim prohibition order hearing, however, upon granting the order the Registrar must then summons the reportable offender to a further hearing of the application.

The interim prohibition order remains in force until the further hearing unless at the request of the applicant it is discontinued earlier.

Clause 93. Conduct that may be subject of orders:- This clause sets out the kind of conduct that may be prohibited or restricted under a prohibition order. This includes, but is not limited to, prohibiting or restricting reportable offenders access to specified persons or types of persons, specified locations or types of locations or limiting their behaviour or specified or types of employment.

Clause 94. Explanation of orders:- This clause places an obligation upon the Court to clearly explain to the reportable offender his or her obligations under the prohibition order and the consequences for failing to comply.

Clause 95. Consent Orders:- This clause enables the applicant (the Commissioner of Police) and the reportable offender to make a child protection or interim prohibition order without following the procedures, or having a hearing in accordance with clauses 90 or 92. However, a Court may conduct a hearing into a consent order if it considers it to be in the interests of Justice. This could occur where the reportable offender suffers from some an intellectual disability and in the Courts view has not entered into the consent order with a full understanding of its consequences.

Division 3 – Variation or revocation of child protection prohibition orders

This Division sets out how child protection orders may be varied or revoked.

Clause 96. Variation or revocation of child protection prohibition orders:- This clause enables the Commissioner, and in certain circumstances the reportable offender, to make application to a Court to vary or cancel a child protection prohibition order.

Clause 97. Fixing a hearing:- This clause sets out the Registrars responsibilities in respect to fixing hearings, summoning the respondent and notifying the applicant.

In the case of an application made by the reportable offender the Registrar first needs to set a hearing to consider whether to grant leave to allow the application to progress. These hearings must be held in the absence of the Commissioner.

Clause 98. How application to be disposed of:- This clause details how the Court must deal with the application for variation or revocation.

The Court can only:

- Vary or revoke the order;
- Dismiss the application; or
- Discontinue the proceedings at the request of the applicant.

Division 4 – Attendance at hearings

This Division sets out what is to occur where a party to an application (relating to a prohibition order) does not attend a hearing.

Clause 99. Attendance at hearings:- This clause provides what the Court must do in the event the applicant or respondent does not attend a hearing set for a prohibition order or a hearing for the variation or revocation of a prohibition order.

In the case where the applicant is absent and the Court is satisfied the applicant was notified, the Court must dismiss the application. In any other case the Court must adjourn the hearing.

In the case where the respondent is absent and the Court is satisfied the respondent was served with a summons – the Court must hear in the application in the absence of the respondent. In any other case the Court must adjourn the hearing.

Clause 100. Notification of orders made in absence of respondent:- This clause places an obligation on the registrar to notify the respondent of any orders made in their absence.

Division 5 – Offence

This Division provides for an offence relating to failing to comply with prohibition orders.

Clause 101. Offence of failing to comply with orders:- This clause provides an offence of failing to comply with a prohibition order without lawful excuse.

The penalty for this offence is \$12,000 or 2 years jail or both.

Division 6 – Appeals

This Division provides an avenue of appeal against decisions relating to prohibition orders.

Clause 102. Appeals:- This clause provides an avenue of appeal for any person who is aggrieved by a decision of the Court made in respect to a prohibition order under clauses 89 or 98.

Clause 103. Appeal does not stay order:- This clause provides that any appeal made under clause 102 does not affect the prohibition order unless it is at the direction of the appeal Court.

Division 7 – Miscellaneous

This Division provides other matters relating to prohibition orders.

Clause 104. Applications not to be heard in public:- This clause provides that any hearings relating to prohibition orders shall be heard in the absence of the public, except if the Court specifically allows certain persons to be present.

Clause 105. Commissioner to be given information relating to reportable offenders:- This clause empowers the Commissioner to source information from public bodies in order to determine whether to make an application, or making applications relating to prohibition orders. The clause further permits any public body to release such information as requested by the Commissioner, notwithstanding any information that may be subject to legal professional privilege.

Clause 106. Restriction on publication of identity of reportable offenders and victims:- This clause makes it an offence to publish specified information disclosing the identities: of the person to which a prohibition order is sought against; the victim; or, any other person who may be at risk because of the conduct proposed to be prohibited.

The clause provides that information may be published to certain persons including the reportable offender and a police officer. The Court may also give authority for certain matters to be published.

Clause 107. Prohibition orders have no effect to extent of inconsistency with certain other orders:- This clause provides that a prohibition order has no effect, where it is inconsistent with a restraining order or a family order, but only to the extent of its inconsistency.

Clause 108. Recognition of prohibition orders made in other jurisdictions:- This clause provides that prohibition orders made by Courts in other jurisdictions may be prescribed in

regulations to be corresponding prohibition orders and consequently legally recognisable in Western Australia. The regulations may also modify or limit the effect of a corresponding prohibition order and may enable a Western Australia Court to deal with corresponding prohibition orders.

PART 6 – OTHER MATTERS

This Part contains miscellaneous provision and consequential amendments relating to the Act.

Clause 109. Protection from liability:- This clause provides protection to the State of Western Australia, or any person, from being sued as a result of anything a person has done or omitted from doing (in accordance with this Act) in good faith.

Clause 110. Delegation by Commissioner:- This clause provides a power of delegation to the Commissioner in respect to all powers or duties bestowed upon him by this Act.

Clause 111. Effect of spent convictions:- This clause sets out, the fact that a reportable offender has had a conviction for a reportable offence spent does not affect the reportable offenders obligation under this Act or the status of the reportable offence under this Act, etc.

Clause 112. Civil standard of proof:- This clause provides that the Civil Standard of proof (Balance of Probabilities) applies Courts making orders under clauses 13, 19, 53 or 90 of this Act.

Clause 113. Certificate concerning evidence:- This clause empowers the Commissioner to issue a certificate of evidence that, in absence of proof to the contrary, proves that:

- At a particular date the register contained specified information; or
- A particular person failed to notify the Commissioner, as required by this Act.

This clause also makes provision for certificates issued under corresponding Acts to be used as evidence in Western Australia only when they are issued for the purposes of proving a person was required to report to a corresponding registrar for a specified period.

Clause 114. Regulations:- This clause empowers the Governor to make regulations relating to all matters required or authorized by this Act.

Clause 115. Minister to review and report on Act:- This clause requires that the Minister conduct a review of the proposed Act after five years and cause the subsequent report to be laid before each house of the Parliament.

Clause 116. Consequential amendments to *Sentencing Act 1995*:- This clause amends section 21 of the Sentencing Act 1995b and also inserts a section 124A in the *Sentencing Act 1995*.

Section 21 of the Sentencing Act 1995 deals with the content of pre-sentence reports ordered by courts. It is proposed to enable a court to instruct that a pre-sentence report contains information relevant to the making of an offender reporting order.

Section 124A will, in similar terms to what occurs with restraining orders, prohibit the making of an ‘offender reporting order’ (Clause 13) to be considered by a Court as a reason for reducing the sentence imposed for an offence. This amendment also activates section 123(4) of the *Sentencing Act 1995* so that ‘offender reporting orders’ are appealable as if they were part of the sentence imposed on the offender.

Schedule 1. Class 1 offences:- This details offences that will be deemed to be Class 1 offences for the purpose of the Act.

Schedule 2. Class 2 Offences:- This details offences that will be deemed to be Class 2 offences for the purpose of the Act.

Schedule 3. Class 3 Offences:- This details offences that will be deemed to be Class 3 offences for the purpose of the Act.