

Reportable Offenders, Protection Orders and High Risk Serious Offender Orders

This sheet is to give information about Reportable Offenders, Protection Orders and High Risk Serious Offenders Orders.

Introduction

Offenders who commit sexual or certain other serious offences are required to keep the police informed of their whereabouts and personal details to reduce community risk. These offenders are labelled reportable offenders.

Reportable offenders may be the subject of protection orders which require the offender to do or not do something.

High risk serious offenders may be the subject of high risk serious offender orders requiring that they be supervised in the community or be detained in prison.

This information sheet is a general guide only and you should seek legal advice about your specific circumstances.

Reportable Offenders

A reportable offender is a person who has been sentenced for a reportable offence.

The following are reportable offences:

1. Class One Offences – sexual offences and/or murder where the victim is a child, including attempting, planning or encouraging offences.
2. Class Two Offences – child exploitation and similar offences, such as possession, production or distribution of child pornography, showing offensive material to children, indecently assaulting a child and

kidnapping, including attempting, planning or encouraging these offences.

3. Any other offence for which the court has given an offender reporting order.

The court may make an offender reporting order if a person poses a risk to the lives or the sexual safety of others.

When deciding whether to make an order the court can consider:

1. Evidence given during proceedings for the offence;
2. Documents or records served on the offender by the prosecution;
3. Statements, depositions or exhibits provided at proceedings relating to the offence;
4. Evidence given by a victim or the offender relating to the making of the order;
5. Pre-sentence reports;
6. Victim impact statements;
7. Mediation reports; and
8. Any other matter the court considers relevant.

A person will stop being a reportable offender if the finding of guilt relating to the offence that made them a reportable offender is quashed or set aside by a court, or, if they are a reportable offender only because they are subject to an offender reporting order, this order is quashed on appeal.

Initial report to police

A reportable offender must report to police to provide their personal details within 7 days of leaving prison, being sentenced or the making of an offender reporting order.

If a reportable offender has been convicted outside of Western Australia and intends to stay for 14 days or more, the offender needs to report to police within 14 days.

The report is to be made to the local police station or such other place as directed by the Police Commissioner.

The personal details that need to be provided to the police are:

1. Name, including other given names past or present;
2. Date of birth;
3. Sex or gender;
4. Foreign citizenship details;
5. Passport details;
6. Addresses of premises that they generally reside at and which they own, rent, control or manage;
7. Telephone numbers;
8. Email addresses;
9. Name of their internet service provider;
10. Names used on the internet;
11. Names that they use or by which they are known on the internet, email, text messages or any software, app or electronic device that could be used to communicate with other people;
12. User names, codes and passwords that they use to access the internet (not including online banking), their email addresses or any software, apps or electronic device that could be used to communicate with other people;
13. If employed, the nature, name and address of employment;
14. Details of any affiliation with each club or organisation that has members who are children or that conduct activities in which children participate;
15. Make, model, colour and registration of each motor vehicle owned/used by the person;
16. Details about tattoos or permanent distinguishing marks that the person has, including removed tattoos or marks;
17. Whether the person has been found guilty in any other foreign jurisdiction of a reportable offence or an offence that has required them to report to a registrar – and if so, where;
18. If the person has been in custody since they were sentenced or released from custody in respect to a reportable offence, details of where and when that custody occurred;
19. If the person intends to leave or leaves Western Australia to travel elsewhere in Australia on an average of once a month, details of the reason for travelling and the frequency and destinations of travel; and
20. The name of each bank with which the offender has an account or dealings.
21. The offender must also report when they have, or are likely to have, the following types of contact with a child in the 12 months after making the report:
 - When they supervise or care for a child
 - When they visit or stay at a household where a child is present
 - When they give their contact details to a child or receives the child's contact details
 - When they befriend or try to befriend a child.

Contact with a child includes physical contact, being in close proximity to the child, and communicating with the child (in person, in writing, by email, phone, internet, text message, chat room, social networks etc).

The offender has to report:

- The name, age, address and any other contact details of each child;
- The name, address and other contact details of the child's parent(s) or guardian(s);

- The type of contact – e.g. whether the contact is physical, or involves being in close proximity to the child, or communication;
- Whether the contact occurs/is likely to occur when the offender supervises or cares for the child; visits or stays at a place where the child is present; gives their contact details to the child or receives the child's contact details; or befriends or tries to befriend the child; and
- How often the contact takes place.

The offender must also present any passport they hold for inspection and provide a photograph of their head and face of a type suitable for use in an Australian passport.

If the reportable offender does not own a passport, they must present the following identification documents for inspection: either a driver's licence, Australian citizenship document, birth certificate, or Western Australian Photo Card, along with either a signed credit/debit card, current Medicare card, recent utilities bill, concession card, a lease/rental agreement or student ID etc.

Ongoing reporting

A reportable offender must report their details to police annually or as frequently as required by the Police Commissioner.

This report must be made in person at any police station in the locality where the reportable offender is residing or another place approved by the Police Commissioner.

Change in personal details

A reportable offender must report any change in their personal details. A change in most of the offender's personal details requires them to report the change within 7 days.

However, if the change relates to where the offender generally resides, or any other place they own, rent, control or manage, then they must report this change within 24 hours.

If the change relates to the offender's employment, or any vehicles owned or generally driven by the offender, they must report this within 3 days.

Contact with children

If the offender has ongoing contact with a child, within 24 hours after each contact (note: this applies to the same type of contacts as for the initial report to police), they must report the same details as for their initial report to police in relation to the contact. They must also report the same details in relation to any likely contact with the child in the next 12 months. The Commissioner can exempt the offender from these reporting requirements, taking into account whether the offender normally lives with the child; how often the contact occurs or is likely to occur; the kind of contact; and anything else the Commissioner thinks is relevant. These exemptions end when:

- the Commissioner decides to revoke the order;
- the offender is placed under a reporting order or protection order;
- the offender is found guilty of a reportable offence; or
- the offender's contact details have changed or are not accurate.

Community Protection Offender Registration

The Police Commissioner has a duty to keep a Community Protection Offender Register containing information about reportable offenders.

The Register includes the following information about each reportable offender:

1. Name, address and date of birth;
2. Details of each reportable offence;
3. Details of each offence which resulted in the making of the offender reporting order;
4. Details of any protection or supervision order;
5. Date of sentence in respect of the reportable offence;
6. Dates of entry into and release from custody;
7. Any information reported about the reportable offender pursuant to their reporting obligations; and

8. Any other information the Police Commissioner considers appropriate.

Once a reportable offender's information has been entered on the Register, it remains there even after their reporting obligations have ended.

When do reporting obligations end?

The period of reporting obligations depends on what offences the reporting offender has committed, as set out below.

The below periods are halved if the reportable offender was a child at the time they committed each relevant offence. In the case of a reporting period for life, the period will be reduced to 7.5 years.

The below periods do not apply to NSW reportable offenders who were sentenced on or after 1 February 2005.

Circumstances / Offences / Period

Found guilty of a single Class 2 offence - 8 years.

Found guilty of two Class 2 offences – 15 years.

Found guilty of a single Class 1 offence - 15 years.

Found guilty of more than one reportable offence but not covered by the situations below – 15 years.

Offender is a reportable offender in respect of a Class 1 offence and then commits and is found guilty of either another Class 1 offence or a Class 2 offence – Remainder of the reportable offender's life.

Offender is a reportable offender in respect of a Class 2 offence and then commits and is found guilty of a Class 1 offence – Remainder of the reportable offender's life.

Offender is a reportable offender in respect of a Class 2 offence and then commits and is found guilty of another Class 2 offence, and has been found guilty in the past of three or more Class 2 offences – Remainder of the reportable offenders life.

What happens when an offender wants to go on a trip or a holiday?

A reportable offender must report their intention to leave their usual place of residence to the Police Commissioner.

Staying within WA – If the reportable offender is leaving for 7 or more days and is staying within Western Australia, they must report at least 7 days before they leave. They must also provide details as to the dates/approximate dates of their absence, an address for each location within Western Australia where they intend to stay and the dates when they intend to stay there.

Leaving Western Australia – If the reportable offender intends to travel out of Western Australia, they must report at least 7 days before they leave to the Police Commissioner. They must also provide details as to the dates/approximate dates of their absence and an address for each location.

If travel plans change during the trip, the reportable offender must report these changes as soon as practically possible to the Police Commissioner.

Once the reportable offender returns, they must report their return to the Police Commissioner within 7 days of their return. Further, if they left Western Australia to travel out of Australia, they must also present their passport and any other document that can indicate where they travelled outside of Australia.

Leaving Western Australia permanently – if the reportable offender intends to permanently leave Western Australia, they must report at least 7 days before they leave to the Police Commissioner. They must also provide details as to the dates/approximate dates of their absence and an address for each location, along with a statement stating their intention not to return.

Urgent trips – If circumstances make it impractical for a reportable offender to report 7 days before their departure, then reporting 24 hours after leaving will be sufficient.

Are there exemptions from reporting obligations?

A reportable offender who is required to comply with reporting obligations for the rest of their life may apply to the District Court for an order suspending their reporting obligations if:

1. 15-years, not including custody time, has passed since they were last sentenced in respect of a reportable offence;
2. They did not receive a lifelong reporting period in a foreign jurisdiction prior to the period in Western Australia; and
3. They are not on parole in respect of a reportable offence.

The court will only grant the above order if they are satisfied that the reportable offender does not pose a risk to the lives or sexual safety of persons.

The court must consider the following when assessing whether to grant an order:

1. The seriousness of the reportable offender's reportable offences;
2. The period since those offences were committed;
3. The age of the reportable offender and the age of the victims at the time of the offence;
4. The difference in age between the reportable offender and the victims of the offence;
5. The reportable offender's present age;
6. The seriousness of the reportable offender's total criminal record; and
7. Any other matter the court considers relevant.

Exemptions do not apply to reportable offenders who must comply with reporting obligations for the remainder of their life as a result of being found guilty of murder.

What are the consequences of failing to comply?

Failing to comply with reporting obligations without reasonable excuse is an offence that carries a maximum of 5 years imprisonment if dealt with on indictment in the District Court, or a maximum of 2 years imprisonment and a \$24,000 fine if dealt with summarily in the Magistrates Court.

It is a defence to proceedings for an offence of failing to comply with a reporting obligation if it is established that the reportable offender had not received notice and was otherwise unaware of the obligation.

Providing false or misleading information is an offence that carries a maximum of 5 years imprisonment if dealt with on indictment in the District Court, or a maximum of 2 years imprisonment and a \$24,000 fine if dealt with summarily in the Magistrates Court.

Community protection website

The community protection website contains limited details about offenders on the Community Protection Offender Register in Western Australia.

There are three tiers of information.

Tier 1 – Missing Offenders (Non-Compliant Reportable Offenders)

This tier provides photographs and personal details of reportable offenders who have either failed to report or have provided false or misleading information to police and whose whereabouts are not known. The details are removed when the offender is located or reports to the police.

Tier 2 – Local Search for Serious and High-Risk Offenders

This tier allows members of the community to access some details including photographs of certain serious and high-risk offenders who live in or close by the same area.

Tier 3 – Community Protection Disclosure Scheme

This tier allows a parent or guardian to inquire as to whether a specific person is a reportable offender if that person has regular unsupervised contact with their child or children.

The applicant must provide their full details and those of the child or children, the identity of the other person, and information regarding the level of contact that person has with the child or children.

Police will assess the request and decide whether to disclose the person's status as a reportable offender.

Other consequences of being a reportable offender: cancellation of passport

A reportable offender whose name is entered on a child protection offender register of a State or Territory and who has reporting obligations in connection with that entry on the register may have their passport cancelled or application for a passport refused. Such a decision is non-reviewable.

It is an offence to use a cancelled passport in connection with travel or identification.

Protection Orders

A protection order is an order that prohibits a reportable offender from doing something or requires them to do something.

Examples of conduct that can be prohibited include: associating with specified persons, being in a specified location, residing at a specific place, consuming/using alcohol or drugs, engaging in specified behaviour and being in specified employment.

Protection orders may require a reportable offender to undergo assessments and treatments performed by: medical practitioners, psychiatrists, psychologists and social workers.

Reportable offenders may be required to give samples such as blood or urine, in cases where the order prohibits certain substances, for example drugs.

Further, orders that prohibit certain conduct on the internet may allow police to enter the reportable offender's premises, without a warrant, and search and/or seize their computer.

A court can make a child protection order where the reportable offender poses a risk to the lives or sexual safety of children and the making of the order will reduce that risk.

To determine whether a child protection order is necessary, the court must consider the following:

1. The seriousness of the reportable offender's reportable offences;
2. The period since those offences were committed;

3. The age of the reportable offender and the age of the victims at the time of the offence;
4. The difference in age between the reportable offender and the victims;
5. The reportable offender's present age;
6. The seriousness of the reportable offender's total criminal record;
7. Any document or record served on the reportable offender by the Commissioner;
8. The effect of the order sought on the reportable offender in comparison with the level of the risk that a further reportable offence may be committed;
9. The circumstances of the reportable offender, including their accommodation, employment needs and integration into the community, to the extent that they relate to the conduct sought to be prohibited;
10. In the case of a young reportable offender, the educational needs of the young reportable offender; and
11. Any other matter the court considers relevant.

High Risk Serious Offender (HRSO) Orders

The Supreme Court must order that certain offenders be subject to community supervision (with conditions such as electronic monitoring or a curfew) or ongoing detention in prison if satisfied that it is necessary to make such an order to ensure adequate protection of the community against an unacceptable risk that the person will commit a serious offence. These offenders are called 'high risk serious offenders'.

The Attorney General, the DPP and the State Solicitor can apply for such an order. If the offender is in custody, an application cannot be filed unless there is a possibility that the offender might be released from custody within the period of one year after the application is made. After the application is filed, there is a preliminary hearing to determine whether the court might reasonably find that the offender is a high risk serious offender. If so, the court will set the application down for a final hearing and order that the person undergo

examinations by a psychiatrist and a qualified psychologist.


To make an order, the court must be satisfied of the risk referred to above by acceptable and cogent evidence, and to a high degree of probability.


A person who contravenes a supervision order without reasonable excuse commits an offence. Where the person is over 18 and they remove or

interfere with an electronic monitoring device so as to prevent or make it harder to monitor the person's location, they must be sentenced to immediate imprisonment of at least 12 months, unless this would be clearly unjust.

A continuing detention order is reviewed initially by the court after one year and then after that, every two years.

LEGAL AID WA CONTACTS

 **Infoline:** 1300 650 579

 **Legal Yarn:** 1800 319 803 (for First Nations callers)

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