

## OFFENDER REGISTRATION

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The [\*Child Protection \(Offenders Registration\) Act 2000\*](#) (NSW) is applicable to sexual (and other specified offences) offences committed against a **child victim** (ie. victim under 18 years of age). The Act does not apply to offences against an adult victim. In certain circumstances the Act can have a retrospective effect.

For the purpose of this chapter, the *Child Protection (Offender Registration) Act 2000* (NSW) has been abbreviated as "CP(OR)A". The CP(OR)A provides the legislative framework for the Sex Offender Register, hereafter referred to as "the Register".

### A. IMPORTANCE OF BEING AWARE OF THE LEGISLATION

It is essential that a legal practitioner appearing for a client who has been charged with a sexual (or related) offence against a child be aware of the operation of the CP(OR)A. An awareness of the Act is significant in the following respects:-

- The advice given to the client by the legal practitioner regarding pre and post plea/sentence issues.
- In order for the legal practitioner to engage in informed negotiations with the police prosecutor or prosecuting solicitor regarding the charges/pleas.
- To enable various sentencing options to be appropriately canvassed and considered.
- In order that informed submissions are put before the court regarding the impact and operation of the legislation.

### B. OFFENCES TO WHICH THE CP(OR)A APPLIES

#### 1. Offence Classification

The CP(OR)A classifies criminal offences to which the Act applies as either a "Class One" or "Class Two" offence.

The definitions of Class One and Class Two offences are outlined in section 3(1) of the CP(OR)A. In brief, Class One offences are the more serious offence category whilst Class Two Offences are the less serious offence category.

A Class One offence includes:

- The murder of a child;
- An offence that involves sexual intercourse with a child;
- An offence under section 66EA [Crimes Act](#) (NSW), that is, persistent sexual abuse of a child;
- Attempting, conspiring or inciting any of the above offences;
- Anything done outside NSW that, if done within NSW, would constitute an above offence.

A Class Two offence includes:

- An offence that involves an act of indecency against or in respect of a child, being an offence that is punishable by imprisonment of 12 or more months;
- Detain for advantage or kidnap of a child (unless the person found guilty was, at the time the offence was committed or some earlier time the parent or carer of the child);
- An offence under sections 91D-91G *Crimes Act* (NSW), that is, promoting and benefiting from child prostitution (unless the offence was committed by a child);
- An offence under sections 578B –578C(2A) *Crimes Act* (NSW), that is, child pornography offences;
- An offence that, at the time it was committed:
  - Was a Class Two offence for the purpose of the Act;
  - In the case of an offence occurring before the commencement of the section was an offence referred to above.
- Attempting, conspiring or inciting any of the above offences.
- Anything done outside NSW that, if done within NSW, would constitute an above offence.

## 2. Operation of the Act

The operation of the CP(OR)A becomes effective:

- Upon a “finding of guilt” as defined in section 3(2) CP(OR)A; **if**
- The person is a “registrable person”, that is, a person who a court has at any time (whether before or after commencement of this section) found guilty and sentenced in respect of a Class One or Class Two offence; **or**
- If the person is an “existing controlled person” (as defined in section 3 (1) CP(OR)A) whose sentence is still current and not yet finalised.

It is important to have a detailed look at the CP(OR)A, as the Act specifically excludes offenders who are extended a particular sentencing option. For example, a person whose matter(s) are dealt with under section 10 [Crimes \(Sentencing Procedure\) Act](#) (NSW) (in the case of an adult offender) or under section 33(1) (a) [Children \(Criminal Proceeding\) Act \(NSW\)](#) (in the case of a

child offender) is not on the Register. Another example, a single Class Two offender placed on an “unsupervised” bond is not a registrable person.

### **C. ADVISING A CLIENT WHO WILL BE PLACED ON THE REGISTER**

A client who has, or is alleged to have committed a sexual (or other specified) offence to which the CP(OR)A applies should be advised of the following:-

- Whether the charge potentially places the client on the Register.
- The likely/available sentencing options and whether these attract or avoid placement on the Register.
- The nature of the reporting obligation when placed on the Register. More particularly:
  - The notification that should be received by the client: section 10 CP(OR)A.
  - When to report: section 10 CP(OR)A.
  - What to report: section 9 CP(OR)A.
  - Reporting changes in personal details and any travel/ movement plans: sections 10 and 11 CP(OR)A.
  - Who to report to: sections 12 and 13 CP(OR)A.
- The duration of the reporting obligation: section 14 CP(OR)A.
- That it is an offence punishable by a fine in the sum of \$1,100 and/ or two (2) years imprisonment to fail to comply with the reporting obligation or to knowingly furnish information that is false or misleading in any particular: section 17 and 18 CP(OR)A.
- The client has a right of appeal to the Administrative Decisions Tribunal to seek to have the reporting obligation suspended: section 16 CP(OR)A.
- The crossover between the CP(OR)A and the [Child Protection \(Prohibited Employment\) Act 1998](#) (NSW). In the later Act, a “prohibited person” includes a person on the Register and accordingly, there will be career (and presumably economic) restrictions for some registrable persons.

### **D. PRACTICAL TIPS ON THE LEGISLATION**

Following are some practical tips to consider:-

- In appropriate cases, seek to have your client's matter dealt with either under section 10 *Crimes (Sentencing Procedure) Act* or section 33(1)(a) *Children (Criminal Proceedings) Act*. A section 10 Bond, even with supervision, will avoid registrable person status.
- If the magistrate does not accede to a request to dispose of a matter under section 10 *Crimes (Sentencing Procedure) Act* or section 33(1)(a) *Children (Criminal Proceedings) Act*, consider making an application for an adjournment on a Griffith Remand type basis to enable the client to participate in some form of supervision/ program with Probation and Parole or the Department Juvenile Justice (such as the Sex Offender Program) with the hope of a more favourable result upon completion of such supervision/ program.
- Attempt to negotiate the charge(s)/ facts with the prosecution to minimise time on the Register.
- If there is more than one Class Two offence against the one victim within 24 hours this is considered a "single offence".
- When appearing for a client with charges of robbery and detain for advantage (that relate to a child victim), try negotiating a plea with the prosecution that involves the charge of detain for advantage being withdrawn. The police Facts will not necessarily need to be amended to reflect the charge of detain for advantage being withdrawn.
- When appearing for a client charged with an offence under section 17 or 18 of the CP(OR)A, that is, not complying with the reporting obligation or furnishing false information, if there is media interest in the matter, consider asking the court to direct non-publication. In addition to the ordinary power, it can be argued that:
  - Media reporting of the offence would lead to identification of a person on the Register. The spirit of the legislation is that the general public is not to have access to the identity of persons on the Register.
  - Section 11 *Children (Criminal Proceedings) Act* (NSW) makes it an offence to publish the name of any child victim. Identification of the registrable person may, in some circumstances, led to identification of the child victim.
- When appearing on sentence for a client charged with an offence to which the CP(OR)A applies, it can be *argued* that placement on the Register is a relevant factor that can be taken into account on sentence as an appropriate basis for a discount. The body of authority that favours this argument is that which considers the relevance of bail conditions to a person's sentence. It is arguable that the reporting obligation under the CP(OR)A is a restriction on the liberty of the person and that any such restriction is relevant to sentence. The reporting obligation may place a more onerous restriction on an offender whose duration of the reporting

obligation is at the highest end of the scale (for example, an offender with a lifetime reporting obligation) or an offender who for cultural, occupational or other reason ordinarily has a somewhat transient or mobile lifestyle. Bail authorities to consider include: *R v Keyte* (Unreported, NSWCCA, 26.3-86); *R v Cartwright* (1989) 17 NSWLR 243; [R v Khamas \(1999\) 108 A Crim R 499; \[1999\] NSWCCA 436](#); and *Eastway* (Unreported, Court of Criminal Appeal, NSW, 19 March 1992).

Comment [C1]: