

Serious errors affecting persons on the Child Protection Register

FACTSHEET

Overview

In 2019 the Law Enforcement Conduct Commission (LECC) released a report highlighting systemic errors that have been made by NSW Police applying the Child Protection (Offenders Registration) Act 2000 (CPOR Act). A summary of the Report and its findings are [here](#).

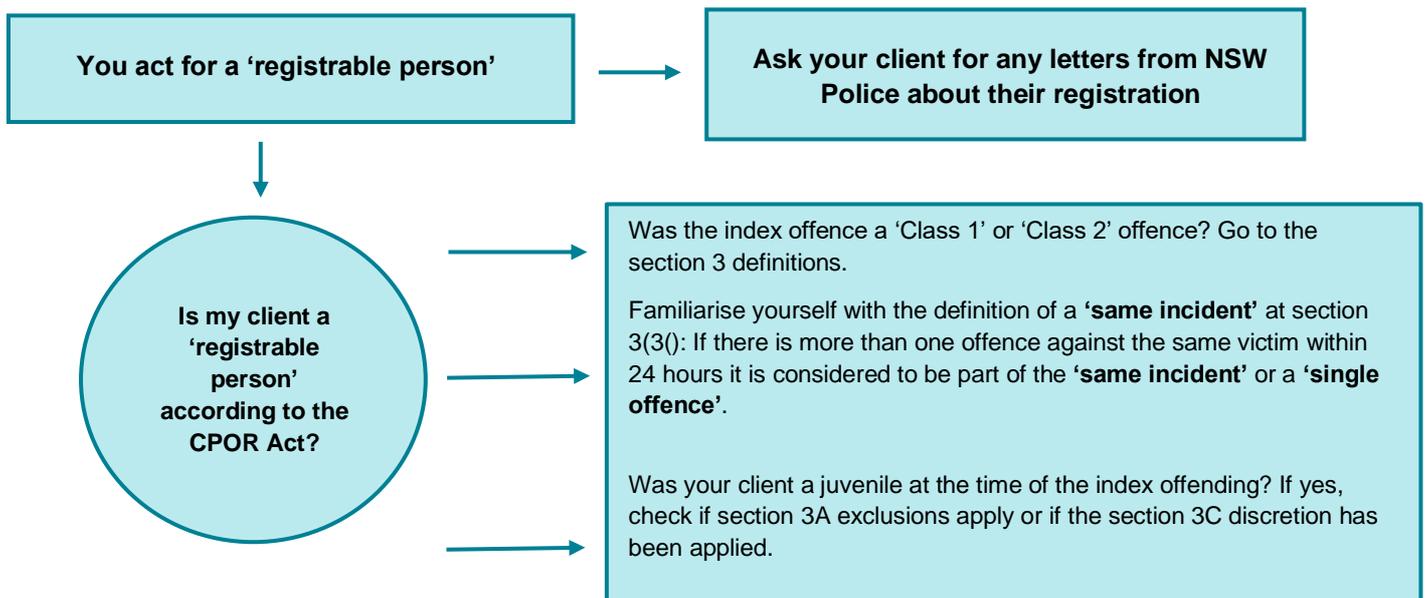
These errors include adding people to the Child Protection Register unlawfully and incorrectly calculating reporting periods. Other mistakes have been made which have excluded people who should have been registered and have subsequently re-offended. The extent of the errors is uncertain and exceeds those accounted for to date as new errors are coming to light in the wake of the LECC Report. What is certain is that NSW Police have been unlawfully requiring some people to report their personal information, others have been subjected to unlawful searches (potentially trespass) pursuant to section 16C of the CPOR Act and others have been unlawfully arrested and imprisoned.

Some convictions for failing to report or reporting false information pursuant to the register that are tainted by these errors have been annulled already on request by NSW Police. We understand NSW Police are also sending letters to people who may be aggrieved by these errors. However, many errors remain undetected and those who are notified of the errors may not appreciate the availability of legal recourse.

Do you have a client who has been affected by error in the CPOR Act administration?

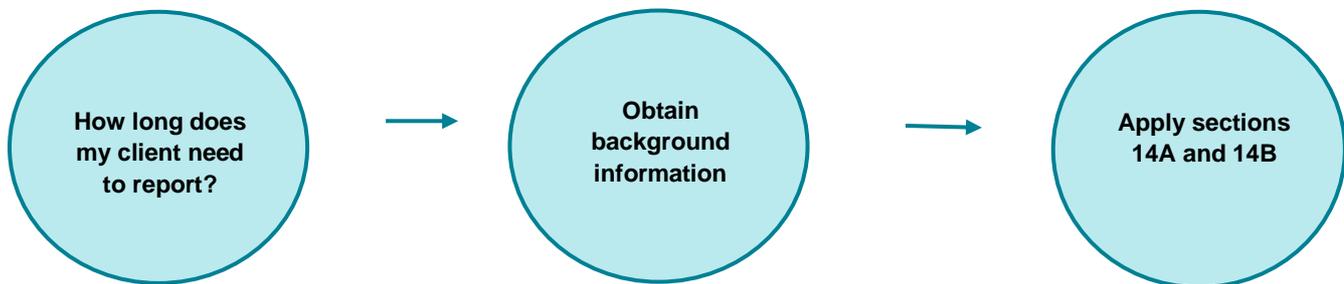
It is critical that practitioners who encounter someone who is a 'registrable person' take the opportunity to question the basis of the registration and the reporting period. **Start by asking your client whether they have received a letter from police about their registration status.**

The CPOR Act has been described in the LECC Report as a 'minefield' and navigating the CPOR Act is not straightforward nor does it make for fast work but it is nevertheless very important work. Notwithstanding these challenges, following these steps is a good starting point:



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In many cases, a criminal history alone will not provide enough background information, especially if there are multiple offences, and it is necessary to request a copy of the court file for the index offence including CANs, indictment and facts.

Reporting periods

For adults, you can use the quick guide in the table below but remember **for children** who are lawfully registered, the reporting periods below are halved.

Offence	Reporting Period
Class 1 offence/s	15 years
Single Class 2 (includes same incident)	8 years
Multiple Class 2 offences	15 years
A Class 1 registrable person committing a subsequent registrable offence	Life
A Class 2 registrable person committing a subsequent Class 1 offence	Life
A Class 2 registrable person committing a subsequent Class 2 offence who has ever been sentenced for 3 or more Class 2 offences	Life
A person sentenced for more than a single registrable offence not covered above	15 years
By application proceedings for a non-Class 1 or Class 2 offence	8 years

What if I think an error has been made?

The ramifications of these systemic errors made by NSW Police are significant. If an error has been made by NSWPF this may significantly shift the course of criminal proceedings and trigger administrative review or civil action. Some of these possibilities are outlined below:

- Annulment of convictions.
- A permanent stay of criminal proceedings arising from the CPOR Act (e.g. failure to report).
- A permanent stay of a Child Protection Offender Prohibition Order (CPPO) application.
- An application to revoke a CPPO.

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- Internal review and other avenues of administrative appeal.
- Civil action, especially if the individual has been unlawfully searched, arrested or imprisoned arising from the CPOR Act.

Eligibility for Legal Aid

Importantly, Legal Aid is available for people who have been affected by a post-conviction order, such as an error resulting in a person becoming unlawfully registered and requiring assistance with administrative review or civil action. Legal aid is also available in response to application proceedings under the CPOR Act and *Child Protection (Offenders Prohibition Orders) Act 2004* (NSW).

- Legal Aid Civil Policy 4.18.8 provides that Legal Aid is available to oppose applications for post-conviction orders in the Local Court where such orders unreasonably restrict the applicant's personal freedom; and there are reasonable prospects either of successfully opposing the application or of the application being granted on amended terms that place less restriction on the liberty of the applicant.
- Legal Aid Civil Policy 6.6.1 provides that Legal Aid is available for matters where there has been a breach of the Legal Aid applicant's civil liberties by a person in a special position of authority, which includes a police officer. (For more detail, see Guideline 3.20.)
- Legal Aid Civil Policy 6.14 provides that legal aid is available for public interest human rights matters where the matter is of significant wider public interest and raises significant human rights issues.

Further resources

Further information about the operation of the CPOR Act is available in a podcast presented by lawyers Timothy Khoo and Diane Elston:

<https://podcasts.google.com/feed/aHR0cHM6Ly9mZWVklN3L2ZIZWQueG1s/episode/bGVnYWxhaWRuc3cucG9kYmVhbi5jb20vM2Q2N2JlMzEtY2JiNi0zZTJhLWl3MGQtYjEzZmNmMzhhZTM0?hl=en-AU&ved=2ahUKEwi9kt6clYPsAhVW7HMBHbCADMQieUEegQIDRAI&ep=6>

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