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Sex Offender Registration Orders

The *Sex Offenders Registration Act 2004* ('the Act') came into operation on 1 October 2004. With the *Sex Offenders Registration Regulations 2014*, the Act creates a system for imposing reporting obligations on people who have been convicted of an offence and who pose a risk to the sexual safety of others. This is designed to assist the investigation and prosecution of any future offences and reduce the likelihood of re-offending, including by preventing registrable offenders from working in child-related employment.

Information about the relationship between registration and the sentencing process is available in the [Victorian Sentencing Manual](#).

Sex Offenders Register

The *Sex Offenders Registration Act 2004* establishes a Register of Sex Offenders. It requires registrable offenders to report specified personal details for inclusion in the Register, and to report as otherwise directed.

Access to the Register of Sex Offenders and any personal information contained in the Register is restricted. Unauthorised disclosure of information on the Register is an offence.¹

Registration under the Act

The Act applies to any 'registrable offender'. Subject to exceptions, a person is a 'registrable offender' if he or she:

- has at any time been sentenced for a 'registrable offence', is a 'corresponding registrable offender', or a 'New South Wales registrable offender'; and
- a court has not made a registration exemption order.²

An offence can become a 'registrable offence' in two ways:

- automatically, as the Act lists certain offences as a 'registrable offence' when committed by an adult; or
- following the exercise of judicial discretion, as an offence is a 'registrable offence' when it leads to a court making a sex offender registration order.³

¹ *Sex Offenders Registration Act 2004* ss 63, 64.

² *Sex Offenders Registration Act 2004* ss 6, 9, 10.

³ *Sex Offenders Registration Act 2004* s 7.

Automatic registration of certain adult offenders

General principles

Subject to exceptions, an adult offender automatically becomes a 'registrable offender' when he or she is 'sentenced' for a 'Class 1' or 'Class 2' offence.⁴

Class 1 offences are listed in Schedule 1 of the Act and Class 2 offences are listed in Schedule 2.

'Sentence' is defined to include:

- a sentence within the meaning of the *Criminal Procedure Act 2009* or the *Children, Youth and Families Act 2005*, including an order for the adjournment of a proceeding under section 59 of the *Criminal Procedure Act 2009*;
- a declaration under section 18(4)(a) or 23(a) of the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* that the accused is liable to supervisions under Part 5 of the Act;
- a declaration under section 38Y(4)(a) or 38ZD(1)(a) of the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* that the child is liable to supervision under Division 5 of Part 5A of that Act;
- an order that the accused be released unconditionally made under sections 18(4)(b), 23(b), 38Y(4)(b) or 38ZD(1)(b) of the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997*;
- an order made under section 93 of the *Sentencing Act 1991*; and
- any order made under the laws of a foreign jurisdiction that is equivalent to a sentence within the meaning of the *Criminal Procedure Act 2009* or the *Children, Youth and Families Act 2005*.⁵

A child offender is not automatically registrable because he or she is sentenced for a Class 1 or 2 offence. However, a child may become 'registrable' if the court makes a sex offender registration order.⁶

Mandatory registration following detention or supervision orders for serious sex offenders

Under the *Serious Offenders Act 2018*, a court can make an order requiring the ongoing supervision or detention of a serious offender. If an offender received a custodial sentence for a 'serious sex offence'⁷ and is not already subject to the *Sex Offenders Registration Act 2004*, then the court must make a sex offender registration order when the Court:

⁴ *Sex Offenders Registration Act 2004* ss 6, 7. The exceptions relate to offenders sentenced before 1 October 2004, offenders receiving foreign witness protection, and where the conviction or order is quashed or set aside.

⁵ *Sex Offenders Registration Act 2004* s 3.

⁶ *Sex Offenders Registration Act 2004* s 7.

⁷ This is defined as an offence listed under Schedule 1 of the *Serious Offenders Act 2018*.

- makes or confirms a supervision order or a detention order;
- varies a supervision order;
- adds or removes a condition of a supervision order; or
- confirms a condition of a supervision or interim supervision order on a review.⁸

Discretionary registration: Sex offender registration order

Section 11 of the *Sex Offenders Registration Act 2004* provides that the prosecution may apply to a court for a sex offender registration order. Once the power to make a sex offender registration order is enlivened, the court has discretion as to whether an order is justified in the circumstances of the case.⁹

In *Bowden v The Queen*,¹⁰ the Court of Appeal conducted a thorough analysis of the discretionary registration process. In *Sayer v The Queen*, the Court summarised the following principles from *Bowden*:

- (a) The inquiry whether to make a registration order involves a two-stage process.
- (b) The first question is whether the court is satisfied beyond reasonable doubt that the person poses a risk to sexual safety as defined.
- (c) For the court to be so satisfied, the risk must be real rather than fanciful.
- (d) The evaluation of risk is directed to the risk upon the offender's release into the community, assessed by what is presently known.
- (e) The second question, which only arises if the court is satisfied that the requisite risk exists, is whether the order should be made in all the relevant circumstances.
- (f) The second stage involves balancing the identified risk, having regard to the purpose of the Act, with the restrictions imposed on the offender's right to enjoy freedom and autonomy of action.
- (g) The balancing exercise involves considering the magnitude and nature of the risk, including the degree of likelihood of the risk eventuating and the gravity of the harm, to be balanced against the serious consequences for the offender.¹¹

If the prosecution applies for a registration order after sentence is imposed, and the offender appeals against the finding of guilt or sentence before the application is determined, then the registration application must not be determined before the appeal is determined.¹²

If the court grants the order, the offender becomes a 'registrable offender'. A person remains a registrable offender for life, unless the order is quashed or set aside,¹³ though the offender only

⁸ *Serious Offenders Act 2018* s 341; *Sex Offenders Registration Act 2004* s 11(9).

⁹ See *R v Chan* [2006] VSCA 125 [15], [23]; *Bowden v The Queen* (2013) 44 VR 229 [30].

¹⁰ *Bowden v R* (2013) 44 VR 229.

¹¹ *Sayer v R* [2018] VSCA 177 [92].

¹² *Sex Offenders Registration Act 2004* s 11(6A).

needs to comply with the reporting obligations for the period determined in accordance with *Sex Offenders Registration Act 2004* ss 34 and 35.

Threshold requirements

There are two stages to making a sex offender registration order:

- First, the court must be satisfied that the conditions for making a sex offender registration order are present – that is, the person is guilty of qualifying offences and the judge is satisfied beyond reasonable doubt that they pose the relevant risk.
- Second, the court must determine whether, in all of the relevant circumstances, it should exercise its discretion to make a registration order.¹⁴

Preliminary conditions

A sex offender registration order is only available if:

- a court has found the offender guilty of an offence committed as an adult, other than a Class 1 or Class 2 offence;
- a court has found the offender guilty of an offence committed as a child, including a Class 1, 2, 3 or 4 offence;
- a court of a foreign jurisdiction has found the offender guilty of an offence committed as an adult that is not a Class 1 or 2 offence; or
- a court of a foreign jurisdiction has found the offender guilty of an offence committed as a child, including a Class 1, 2, 3 or 4 offence.¹⁵

For orders in relation to Victorian offences, the prosecution must apply no later than 45 days after sentence is imposed.

For orders based on foreign offences, a police officer may seek a sex offender registration order at any time.

General availability of order

Courts can make a sex offender registration order in respect of **any** offence other than an offence that leads to automatic registration.

In particular, courts are not limited to making orders in response to class 3 and class 4 offences, which involve prescribed offences committed by a ‘serious sexual offender’.¹⁶

Courts have not defined the outer limits of offences that can qualify for a discretionary registration order. However, because the Act is designed to reduce the risk of sexual re-offending (and not other forms of re-offending), the offence which led to the application must be

¹³ *Sex Offenders Registration Act 2004* ss 11(1), (11).

¹⁴ *Bowden v R* (2013) 44 VR 229 [30].

¹⁵ *Sex Offenders Registration Act 2004* s 11.

¹⁶ *Sex Offenders Registration Act 2004* s 8.

one that harmed the sexual safety of one or more persons, or where re-offending in the same circumstances as the initial offence would fall within the Act's purposes.¹⁷

Risk to the sexual safety of others

A court may only make a sex offender registration order if satisfied beyond reasonable doubt that the offender poses a risk to the sexual safety of one or more persons or of the community.¹⁸

This requires a court to assess the level of risk an offender poses. There must be a 'real' risk – a fanciful, theoretical, remote or imagined risk is not enough, as the court cannot be satisfied of such a risk 'beyond reasonable doubt'. The question is whether the offender will pose a relevant risk on their release from custody, not whether they pose a risk at the time of sentence.¹⁹

For example, the offender in *R v Chan* was aged 26 at time of offending and had committed other sexual offences when he was aged 11–13. Psychiatric evidence indicated a slight chance he would re-offend. The Court of Appeal held there was only a 'remote' chance he would re-offend, which was not a sufficient level of risk to justify making a sex offender registration order.²⁰

The risk must be 'to the sexual safety of one or more persons or of the community'. It is not necessary for the court to identify a risk to particular individuals, or a particular class of people, and it does not matter whether the offender knew the victim of his or her previous offending.²¹

The risk must relate to 'sexual safety', which includes a risk of another registrable offence occurring. The court is not limited to considering physical safety, bodily integrity or contact offending. It may also consider sexual conduct that poses a risk to the psychological wellbeing of others, such as wilful and obscene exposure.²²

Appropriate in all the circumstances

After a court has decided that there is a sufficient risk to enliven its discretion to make a sex offender registration order, it must then determine whether, in all of the relevant circumstances, it is appropriate to make a sex offence registration order.

As the Court of Appeal explained in *Bowden v R*, this requires the court to balance the risk posed by an offender and the likelihood of the risk occurring, against the weight of the restrictions that would be imposed by the order.²³

¹⁷ *DPP v Cartwright* (2015) 45 VR 168 [20]; *Blyss v Magistrates' Court of Victoria* [2016] VSC 548 [36], [45].

¹⁸ *Sex Offenders Registration Act 2004* s 11(3).

¹⁹ *Bowden v R* (2013) 44 VR 229 [33]–[36].

²⁰ *R v Chan* [2006] VSCA 125.

²¹ See *Sex Offenders Registration Act 2004* s 11(4) of the Act and *R v GJ* [2008] VSCA 222 [88].

²² See *Bowden v R* (2013) 44 VR 229 [31]; *Blyss v Magistrates' Court of Victoria* [2016] VSC 548 [49], [73].

²³ *Bowden v R* (2013) 44 VR 229 [40].

The primary question is the degree of risk. Considerations include:

- The magnitude and nature of the risk;
- The gravity of the possible harm; and
- The likelihood of the risk eventuating.

These considerations must be balanced against the ‘onerous nature’ of the reporting conditions that would be imposed on the offender. The question for the sentencing judge is whether it is reasonably necessary to impose these conditions in order to give effect to the purposes of the Act.²⁴

These onerous requirements include both the reporting obligations under the Act and the prohibition on child-related work.²⁵

In undertaking the balancing exercise, the court will take into account the Act’s focus on the protection of children.²⁶

An expert report may help the court to assess the level of risk, but the absence of a report is not determinative.²⁷

Relying on a faulty expert report may lead to appealable error. For example, in *Singh v R*, an expert report on the appellant’s risk of reoffending referred to a previous charge of a similar nature. This ‘previous charge’ was actually an earlier allegation that never proceeded to trial. The Court of Appeal held that use of the report, which was affected by this discontinued charge, led the judge to take into account an irrelevant consideration when exercising the power in section 11(1).²⁸

Court responsibilities upon offender registration

A court has interwoven responsibilities under the *Sex Offenders Registration Act 2004* and the *Sex Offenders Registration Regulations 2014*. These are to:

- notify ‘registrable offenders’ of their reporting obligations and the consequences that may arise if they fail to comply with them;²⁹
- notify ‘registrable offenders’ of the length of their reporting periods, where those offenders became registrable on the basis of a sentence imposed by the court;³⁰
- notify the Chief Commissioner of Police of the details of a sentence or order which has the effect of imposing or removing reporting obligations; and³¹

²⁴ *Bowden v R* (2013) 44 VR 229 [41]–[42].

²⁵ *Sayer v R* [2018] VSCA 177 [103]–[105].

²⁶ *Sayer v R* [2018] VSCA 177 [106]–[107].

²⁷ *Bowden v R* (2013) 44 VR 229 [47].

²⁸ *Singh v R* (2013) 41 VR 230.

²⁹ *Sex Offenders Registration Act 2004* s 50

³⁰ *Sex Offenders Registration Act 2004* s 50.

³¹ *Sex Offenders Registration Act 2004* s 51.

- determine applications for registration exemption orders.³²

Notice of reporting obligations and length

When an offender becomes a 'registrable offender' due to sentences or orders imposed by a court, that court must ensure that the offender is given written notice of the length of their reporting period,³³ their reporting obligations and the consequences that may arise if they do not comply with those obligations.³⁴

As soon as practicable after a registrable offender is sentenced for a registrable offence, a court must hand the offender with a written notice (a 'section 50(1) notice') containing:

- (a) the name of the registrable offender;
- (b) a statement setting out—
 - (i) the obligations of the registrable offender to make an initial report (including the period within which the initial report must be made); and
 - (ii) the obligations of the registrable offender to make an annual report; and
 - (iii) the obligations of the registrable offender to report changes of personal details; and
 - (iv) the details the registrable offender is required to report under section 14 of the Act and under these Regulations; and
 - (v) the obligations of the registrable offender to report under sections 18, 19, 20 and 21 of the Act (including the periods within which the reports must be made); and
 - (vi) the circumstances in which the registrable offender must make a report in person; and
 - (vii) the form of identification to be presented by the person who makes a report; and
 - (viii) the documentation that the registrable offender must present to verify or support details in the report; and
- (c) a toll free telephone number on which the Registrar can be contacted; and
- (d) the consequences which may arise if a registrable offender fails to comply with their reporting obligations; and
- (e) the date of the notice; and
- (f) the name, signature and position of the person giving the notice.³⁵

While a section 50(1) notice is not required to state the reporting period,³⁶ a court is separately obliged to inform the offender of their reporting period in writing when it imposes sentence.³⁷

³² *Sex Offenders Registration Act 2004* s 11A.

³³ See Length of reporting period, below.

³⁴ *Sex Offenders Registration Act 2004* s 50.

³⁵ *Sex Offender Registration Regulations 2014* rr 17, 18

The court is not required to provide a section 50(1) notice if it has already been provided by another person or body.³⁸

A court may issue a further notice to correct an error in a previous section 50(1) notice.³⁹

Length of reporting period

Sections 34 to 38 of the Act specify the length of time that a registrable offender must comply with reporting obligations under the Act.

Section 34(1) applies different reporting periods to offenders based upon the combination of offences in respect of which the offender has 'ever been found guilty'. This means that the court must take into account both the offences currently before the court, and all previously proven offences.

For the purposes of section 34:

- multiple offences arising 'from the same incident' are counted as a single offence (and if any such offence is a Class 1 offence, the incident will be treated as a Class 1 offence);⁴⁰
- offences arise 'from the same incident' only if they are committed against the same person within a 24 hour period.⁴¹

The following table summarises the effect of sections 34(1) and 35:

Findings of guilt by offence class and number (including previous findings of guilt)			Adult Reporting Period (s.34)	Child Reporting Period (s.35(2))
One Class 2 offence			8 years Section 34(1)(a)	4 years Section 34(1)(a)
One Class 1 offence	Two Class 2 offences		15 years Section 34(1)(b)	7½ years Section 34(1)(b)
Two or more Class 1 offences or a single conviction for persistent sexual abuse of a child under 16	Three or more Class 2 offences	One Class 1 offence and one or more Class 2 offences	Life Section 34(1)(c)	7½ years Section 34(1)(c)

³⁶ *Sex Offender Registration Regulations 2014* r 19.

³⁷ *Sex Offenders Registration Act 2004* s 50(5).

³⁸ *Sex Offenders Registration Act 2004* s 50(4).

³⁹ *Sex Offenders Registration Act 2004* s 50(5A).

⁴⁰ *Sex Offenders Registration Act 2004* s 34(3).

⁴¹ *Sex Offenders Registration Act 2004* s 5(1).

Despite sections 34 and 35, if the court makes a registration order due to *Serious Offenders Act 2018* s 341, the reporting period is at least 15 years.⁴²

Class 1 and Class 2 offences

Schedule 1 defines 'Class 1 offences'. These primarily involve the sexual penetration of children.

Schedule 2 defines 'Class 2 offences'. These offences involve the sexual abuse of children, including non-penetrative child sex offences and non-child specific offences where committed upon children. Class 2 also includes offences such as burglary (with intent to sexually assault a child), child prostitution and child pornography offences. Both schedules provide for repealed offences, inchoate forms of offences, and foreign offences identified by regulation.

The significance of the distinction between 'Class 1' and 'Class 2' offences lies in the length of the reporting period that applies.

Class 3 and Class 4 offences

Offenders found guilty of Class 3 offences are deemed to have been found guilty of Class 1 offences for the purpose of determining the reporting period. Offenders found guilty of Class 4 (or 'any other') offences are deemed to have been found guilty of Class 2 offences for that purpose.⁴³

Class 3 and 4 offences are defined in section 8 of the Act by reference to the lists of offences in Schedules 3 and 4, subject to these limitations:

- the offence must have been committed against a person other than a child; and
- the offender must be a 'serious sexual offender', which is defined by section 8(3) as a person who has been sentenced for two or more offences listed in Schedules 1 to 4.⁴⁴

Course of conduct charges

A course of conduct charge is a single charge that incorporates multiple incidents of the commission of the same offence.⁴⁵ Conviction on a course of conduct charge counts as a single finding of guilt for the relevant offence for the purposes of the *Sex Offenders Registration Act 2004*.

Retrospective operation

Offences committed before the Act commenced are counted for the purpose of determining the length of the reporting period.⁴⁶

⁴² *Sex Offenders Registration Act 2004* s 11(10).

⁴³ *Sex Offenders Registration Act 2004* s 34(4). See also *R v Cheetham* (2006) 13 VR 304.

⁴⁴ *Sex Offenders Registration Act 2004* s 8.

⁴⁵ *Criminal Procedure Act 2009* Schedule 1 item 4A(2).

⁴⁶ *Sex Offenders Registration Act 2004* s 34(2).

Extended reporting period for offender on parole

Where a reporting period would end while an offender is on parole, their reporting obligations will continue until the end of their full term of imprisonment. This addresses the circumstance where the reporting period under section 35 is shorter than the period of parole supervision available under a sentence.⁴⁷

Advice to Chief Commissioner of Police

The court must ensure that the details of the sentence or order are provided to the Chief Commissioner of Police as soon as is practicable when the court:

- makes an order or imposes a sentence that has the effect of making a person a registrable offender;
- imposes any sentence on a person in relation to a registrable offence;
- determines an appeal by a registrable offender in respect of a registrable offence or against the making of a sex offender registration order; or
- makes any order that would remove a registrable offender from the scope of the Act.⁴⁸

Relevance of registration to sentencing

The *Sex Offenders Registration (Amendment) Act 2005* amended the *Sentencing Act 1991* to prevent a court from considering consequences under the *Sex Offenders Registration Act 2004* when sentencing an offender.

Section 5(2BC) of the *Sentencing Act 1991* provides:

In sentencing an offender a court must not have regard to any consequences that may arise under the *Sex Offenders Registration Act 2004* ... from the imposition of the sentence.

Before this section was in force, the consequences of registration under the *Sex Offenders Registration Act 2004* may have been relevant to sentence only in exceptional circumstances.⁴⁹

Now, any consequence of registration under the *Sex Offenders Registration Act 2004* is irrelevant to sentence.⁵⁰

Registration may be a relevant sentencing consideration for Commonwealth registrable offences when there is an inconsistency between section 5(2BC) of the *Sentencing Act 1991* and section 16A(2) of the *Crimes Act 1914* (Cth). This circumstance is likely to be rare as, under the common law, registration will only be relevant to sentencing in exceptional circumstances.⁵¹

⁴⁷ *Sex Offenders Registration Act 2004* s 36.

⁴⁸ *Sex Offenders Registration Act 2004* s 51.

⁴⁹ *DPP v Ellis* (2005) 11 VR 287.

⁵⁰ *R v Chan* [2006] VSCA 125.

⁵¹ *R v ONA* (2010) 24 VR 197 [130]–[135].

Consequences of registration

When a person is classified as a 'registrable offender' under the *Sex Offenders Registration Act 2004*, they become subject to employment restrictions and reporting requirements.

Employment restrictions

Part 5 of the *Sex Offenders Registration Act 2004* prohibits registrable offenders from engaging in child-related employment.

Section 68(1) makes it an offence for a registrable offender to apply for or engage in 'child-related employment'. The maximum penalty is two years imprisonment or a fine of 240 penalty units.

For the purposes of Part 5, 'child related employment' is defined to mean employment involving contact with a child in connection with various services or institutions listed in section 67(1).

Reporting requirements

An adult offender is generally required to report for a period of 8 years, 15 years or life. A child offender will be required to report for 4 years or 7½ years.⁵²

The reporting obligation begins on the later of the date of sentence or the date of release from government custody.⁵³ Reports are generally made in person to a police station.⁵⁴

Content of first report

An offender's first report must contain a full list of his or her personal details, including details of:

- name and aliases;
- previous names or aliases;
- date of birth;
- general residential address or sufficient details to identify any place they regularly sleep;
- telephone number;
- email address;
- internet service provider;
- online user names and identities;
- employment details;
- club and organisation affiliations (where there is child participation);
- motor vehicle details;

⁵² See Length of reporting period, above.

⁵³ *Sex Offenders Registration Act 2004* s 33.

⁵⁴ *Sex Offenders Registration Act 2004* ss 22, 23.

- permanent distinguishing marks;
- foreign relevant convictions;
- any detention since sentence in government custody for relevant offences;
- travel intentions;
- passport details.

The report must also advise the names, residential addresses, telephone numbers and ages of children with whom the offender has contact.⁵⁵

Ongoing reporting obligations

After the first report, a registrable offender must continue to report:

- his or her personal details to the Chief Commissioner of Police each year;⁵⁶
- changes to his or her personal details within seven days of the change;⁵⁷
- changes to his or her general residence or the name of each child with whom he or she has contact within one day; and⁵⁸
- information to permit the authorities to keep track of the offender when he or she leaves Victoria for two days or longer.⁵⁹

The Chief Commissioner places information from these reports into the Register of Sex Offenders. This Register also contains details of the offender's relevant offences and relevant to their reporting status. Access to the information on the register is restricted.⁶⁰

Suspending reporting obligations

A registrable offender who is required to report for the remainder of his or her life may, after 15 years of reporting, apply to the Supreme Court to have his or her reporting obligations suspended.⁶¹

At any time, the Chief Commissioner of Police may apply to a court for an order suspending a registrable offender's reporting obligations. The Commissioner makes the application to the highest court that sentenced the offender for a registrable offence.⁶²

A court must not make an order suspending reporting obligations unless it is satisfied that the registrable offender poses no risk or a low risk to the sexual safety of one or more persons or

⁵⁵ *Sex Offenders Registration Act 2004* s 14.

⁵⁶ *Sex Offenders Registration Act 2004* s 16.

⁵⁷ *Sex Offenders Registration Act 2004* s 17.

⁵⁸ *Sex Offenders Registration Act 2004* s 17.

⁵⁹ *Sex Offenders Registration Act 2004* ss 18–21A.

⁶⁰ *Sex Offenders Registration Act 2004* ss 62–66.

⁶¹ *Sex Offenders Registration Act 2004* s 39.

⁶² *Sex Offenders Registration Act 2004* s 39A.

the community, and suspending the registrable offender's reporting requirements is in the public interest. The court must take into account:

- the seriousness of the registrable offender's registrable offences;
- the period of time since those offences were committed;
- the age of the registrable offender and any victims of the registrable offences, as at the time of the offence, and the difference in their ages;
- the registrable offender's current age;
- the registrable offender's total criminal record; and
- any other matter the court considers appropriate.⁶³

If there is a material change in the circumstances in which a suspension order was made, the Chief Commissioner may apply to a court to revoke the order.⁶⁴

Additionally, the Chief Commissioner of Police may, by written notice, suspend a registrable offender's reporting obligations for a period not exceeding five years if he or she think the registrable offender poses no risk or a low risk to the sexual safety of one or more persons or the community. The Commissioner must consider the same matters a court would consider when determining whether to suspend an offender's reporting requirements, as well as the extent to which the registrable offender has complied with their reporting requirements, and their physical or cognitive capacity to comply with their obligations in the future. The Commissioner may suspend the obligations more than once, and may cancel a suspension at any time.⁶⁵

Exempting or modifying requirements for child offenders

If a court makes a sex offender registration order in respect of an offence committed as a child, the court may exempt the child from any particular reporting obligation or modify any particular reporting obligation. This exemption or modification remains in force while the offender is a child.⁶⁶

Breach of reporting obligations

Sections 46 and 47 of the *Sex Offenders Registration Act 2004* create offences for failing to comply with reporting obligations.

Non-compliance on or after 1 June 2015

On 1 June 2015, the two offences previously established by sections 46(1) and 47 of the *Sex Offenders Registration Act 2004* were repealed and replaced with six new offences. The current offences distinguish between the particular reporting obligation the offender failed to comply with, and between offenders who fail to comply with a reporting obligation and offenders who knowingly provide false or misleading information.

⁶³ *Sex Offenders Registration Act 2004* s 40.

⁶⁴ *Sex Offenders Registration Act 2004* s 44A.

⁶⁵ *Sex Offenders Registration Act 2004* ss 32, 45A.

⁶⁶ *Sex Offenders Registration Act 2004* s 11(2B). See Registration Exemption Orders, below.

Section	Offence	Maximum penalty
Indictable offences relating to breaches of section 14 reporting requirements		
46(1A)	Without reasonable excuse, a registrable offender fails to comply with any of their reporting obligations 'in respect of details' to which specified subsections in section 14 apply.	Five years
47(2)	Purporting to comply with reporting obligations, a registrable offender provides details to which specified subsections in section 14 apply, that they know to be false or misleading in a material particular.	Five years
Indictable offences relating to breaches of ongoing reporting requirements		
46(1)	A registrable offender, without reasonable excuse, fails to comply with any ongoing reporting requirement.	Five years
47(1)	Purporting to comply with reporting obligations, a registrable offender provides details that they know to be false or misleading in a material particular.	Five years
Summary offences relating to breaches of section 14 reporting requirements		
46(1B)	Without reasonable excuse, a registrable offender fails to comply with any of their reporting obligations 'in respect of details' to which specified subsections in section 14 apply.	Two years
47(3)	Purporting to comply with reporting obligations, a registrable offender provides details to which specified subsections in section 14 apply, that they know to be false or misleading in a material particular.	Two years

The section 14 details which give rise to the indictable offences are:

- his or her general residential address (or locality);
- his or her telephone number;
- his or her email address;
- his or her internet service provider;
- online user names and identities;
- the name of each child with which he or she has contact;
- in respect of each child with whom he or she has contact – the child's age, residential address and phone number (or the location where the contact takes place if these details are unknown);
- employment details;
- club and organisation affiliations (where child participation),

- foreign relevant convictions,
- detention in government custody since sentence for relevant offences;
- his or her passport details.⁶⁷

The section 14 details which give rise to the summary offences are:

- his or her name (including those currently and previously known by);
- the period during which he or she was known by another name;
- his or her birth date;
- his or her motor car details;
- his or her tattoos or permanent distinguishing marks;
- travel plans at the time of making the initial report.⁶⁸

'Reasonable excuse' and failing to comply

In determining whether a person had a reasonable excuse for failing to comply with his or her reporting obligations, a court will consider:

- the person's age;
- whether the person has a disability affecting their ability to understand or comply with their obligations;
- whether the form of the notification the person received was adequate to inform them of their obligations, having regard to their circumstances; and
- any other matter the court considers appropriate.⁶⁹

A registrable offender will not be guilty of an offence of failing to comply with reporting obligations if they had not yet received notice, and were otherwise unaware, of the obligation it is alleged they did not comply with.⁷⁰

Non-compliance before 1 June 2015

Before 1 June 2015, sections 46(1) and 47 of the *Sex Offenders Registration Act 2004* established only two offences for failing to comply with reporting obligations:

- it was an indictable offence, with a maximum penalty of five years imprisonment, if a registrable offender failed 'to comply with any of his or her reporting obligations without a reasonable excuse';⁷¹ and
- it was a summary offence, with a maximum penalty of two years imprisonment, if a registrable offender, in purported compliance with their reporting obligations under Part

⁶⁷ *Sex Offenders Registration Act 2004* ss 14, 46(1A), 47(2).

⁶⁸ *Sex Offenders Registration Act 2004* ss 14, 46(1B), 47(3).

⁶⁹ *Sex Offenders Registration Act 2004* s 46(2).

⁷⁰ *Sex Offenders Registration Act 2004* s 46(3).

⁷¹ *Sex Offenders Registration Act 2004* s 46(1), repealed 1 June 2015.

3 of the Act, furnished 'information that the person knows to be false or misleading in a material particular'.⁷²

When the *Sex Offenders Registration Amendment Act 2014* repealed and replaced these offences on 1 June 2015, there were no relevant transitional provisions. This makes it likely that conduct occurring before 1 June 2015 is exclusively dealt with under the old penalty regime, as section 114 of the *Sentencing Act 1991* does not apply.

See [Victorian Sentencing Manual 8.2.8 – Effect of alteration of penalties](#) for further information.

Registration exemption orders

The *Sex Offenders Registration Amendment (Miscellaneous) Act 2017* introduced 'registration exemption orders' to allow a court to exempt certain young offenders from the reporting obligations they would otherwise be subject to under the *Sex Offenders Registration Act 2004*.

Registration exemption orders are only available to certain young people who have been found guilty of a 'specified offence'. Section 4 of the Act provides an extended definition of 'finding of guilt' that includes accepting a guilty plea.

Specified offences

A 'specified offence' is a Class 1 or Class 2 offence listed in Schedule 5 of the Act.⁷³ This includes offences such as sexual offences against children under 16, and child abuse material offences where the material involves sexual content.⁷⁴

Who can apply for an exemption order?

A person who has been found guilty of one or more specified offences can apply for a registration exemption order if the following conditions are met:

- the person was aged 18 or 19 at any time during the commission of the offence;
- the person was not more than 19 years of age at all times during the commission of the offence;
- the person has not been found guilty of another registrable offence that is not a specified offence;
- the person has not been found guilty of another specified offence for which an application for a registration exemption order has been refused;
- the person was not a registrable offender at the time he or she committed the specified offence to which the application relates;
- the person is not a corresponding registrable offender or a New South Wales registrable offender;
- the specified offence to which the application relates did not involve more than one

⁷² *Sex Offenders Registration Act 2004* s 47, repealed 1 June 2015.

⁷³ *Sex Offenders Registration Act 2004* s 3.

⁷⁴ See *Sex Offenders Registration Act 2004* Schedule 5, clause 1.

victim, unless the specified offence relates to possession of child abuse material or child pornography;

- if the application relates to more than one specific offence, each specified offence relates to the possession of child abuse material or child pornography, or each specified offence was committed against the same victim.⁷⁵

When to apply for an exemption order

Registration exemption orders were introduced on 1 March 2018.

An offender who becomes a registrable offender after 1 March 2018 must apply for a registration exemption order within six months after they are first notified of their reporting obligations.⁷⁶

Offenders who were already registrable offenders before 1 March 2018, must apply for a registration exemption order either before 1 March 2020, or within two years of when they are first notified of their reporting obligations, whichever date is later.⁷⁷

An applicant must comply with their obligations under the Act while their exemption application is being determined.⁷⁸

Making an exemption order application

The registrable offender must apply to the court that imposed the sentence for the specified offence the application relates to. If there is more than one specified offence on the application, the offender must apply to the highest court that imposed sentence.⁷⁹

Determining an exemption order application

A court may only declare that the applicant is not a registrable offender in respect of a specified offence if satisfied, on the balance of probabilities, of three matters.⁸⁰

First, the court must be satisfied that at all times during the offending, any victim of the specified offence was of or over the age of 14 years, or that any person depicted or described in the material the offence relates to is of or over the age of 14 years.

Second, the court must be satisfied that the applicant poses no risk or a low risk to the sexual safety of any person in the community. In assessing this risk, the court has regard to:

- the seriousness of the specified offence;
- the applicant's and victims' ages at the time the specified offences were committed;
- whether any victim of the specified offence was under the care, supervision or authority

⁷⁵ *Sex Offenders Registration Act 2004* s 11A. See also Explanatory Memorandum, Sex Offenders Registration Amendment (Miscellaneous) Bill 2017, 5

⁷⁶ *Sex Offenders Registration Act 2004* s 11C.

⁷⁷ *Sex Offenders Registration Act 2004* s 73H.

⁷⁸ *Sex Offenders Registration Act 2004* s 11E.

⁷⁹ *Sex Offenders Registration Act 2004* s 11D.

⁸⁰ *Sex Offenders Registration Act 2004* s 11B.

of the applicant at the time of the offending;

- whether any victim of the specified offence had a cognitive impairment or mental illness at the time of the offending; and
- if the application relates to more than one specified offence, the number and nature of those offences, including whether they arose out of the same set of circumstances.

For the purpose of deciding if there is a risk, the court does not need to identify a risk to the sexual safety of a particular person or a particular class of person.

Third, the court must also be satisfied that the applicant would not be a registrable offender but for committing the specified offence.

In reaching its decision, the court must take into account any submissions made by the Chief Commissioner of Police.

Effect of registration exemption order

After a court makes a registration exemption order, the applicant ceases to be a registrable offender. They will no longer be subject to the obligations or restrictions the Act imposes.

A registration exemption order does not prevent a person from becoming a registrable offender if they are sentenced for another registrable offence and no exemption order is made.⁸¹

Appeals against registration

The *Sex Offenders Registration Act 2004* does not provide a right of appeal against automatic registration. Likewise, it does not provide for an appeal by the Director of Public Prosecutions (DPP) against a court's determination that an offender is not subject to mandatory registration.

An offender has a right of appeal against the making of a discretionary order under section 11 of the *Sex Offenders Registration Act 2004*. The appeal right is available under section 278 *Criminal Procedure Act 2009*, as section 3 of the *Criminal Procedure Act 2009* defines 'sentence' to include an order made under section 11 of the *Sex Offenders Registration Act 2004*.

The DPP may not have the power to appeal against a court's failure to make an order under section 11 of the *Sex Offenders Registration Act 2004*. Under section 287 of the *Criminal Procedure Act 2009*, the DPP may appeal a sentence when there is an error in the sentence that was imposed. This may not extend to failing to make a sex offender registration order, which could be characterised as a failure to impose a sentence, meaning there is no sentence for the DPP to appeal. However, this issue has not yet been determined by a court.⁸²

⁸¹ *Sex Offenders Registration Act 2004* s 11E.

⁸² See *DPP v Cartwright* (2015) 45 VR 168.