

Passed by both Houses



New South Wales

Child Protection (Offenders Registration) Amendment Bill 2007

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2007*



New South Wales

Child Protection (Offenders Registration) Amendment Bill 2007

Act No , 2007

An Act to amend the *Child Protection (Offenders Registration) Act 2000* and certain other Acts to make further provision with respect to registration and reporting requirements for certain offenders.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:**1 Name of Act**

This Act is the *Child Protection (Offenders Registration) Amendment Act 2007*.

2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsections (2) and (3).
- (2) Schedule 4.1 [1] commences on the date of commencement of section 7 of the *Local Court Act 2007*, or the date of commencement of Schedule 1 [11], whichever is the later.
- (3) Schedule 4.1 [2] commences on the date of commencement of section 51 of the *Local Court Act 2007*, or the date of commencement of Schedule 1 [11], whichever is the later.

3 Amendment of Child Protection (Offenders Registration) Act 2000 No 42

The *Child Protection (Offenders Registration) Act 2000* is amended as set out in Schedule 1.

4 Amendment of Crimes (Forensic Procedures) Act 2000 No 59

The *Crimes (Forensic Procedures) Act 2000* is amended as set out Schedule 2.

5 Amendment of Freedom of Information Act 1989 No 5

The *Freedom of Information Act 1989* is amended as set out Schedule 3.

6 Consequential amendments

The Acts specified in Schedule 4 are amended as set out in that Schedule.

7 Repeal of Act

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendment of Child Protection (Offenders Registration) Act 2000 No 42

(Section 3)

[1] Section 3 Definitions

Omit “section 3D” from the definition of *child protection registration order* in section 3 (1).

Insert instead “Part 2A”.

[2] Section 3 (1), definition of “Class 1 offence”

Insert after paragraph (d) of the definition:

- (d1) an offence against section 80A of the *Crimes Act 1900*, where the person against whom the offence is committed is a child, or

[3] Section 3 (1), definition of “sentence”

Insert “, any action taken under section 10A of the *Crimes (Sentencing Procedure) Act 1999*” after “*Children (Criminal Proceedings) Act 1987*”.

[4] Section 3A Registrable persons

Omit section 3A (2) (b).

[5] Section 3A (2) (d)

Insert “or the offence results in the making of a child protection registration order against the person” after “existing controlled person”.

[6] Section 3B Circumstances in which person ceases to be registrable person

Insert “or otherwise ceases to have effect under this Act” after “appeal” in section 3B (c).

[7] Section 3C

Omit the section. Insert instead:

3C Corresponding registrable persons

- (1) A *corresponding registrable person* is a person who:
- (a) had at any time been in a foreign jurisdiction and at that time had been required to report to the corresponding registrar, and

- (b) would, if the person were currently in that jurisdiction, still be required to report to that corresponding registrar.
- (2) Subject to the regulations, a person is a corresponding registrable person under subsection (1) even if the offence in respect of which he or she is required to report in the foreign jurisdiction is not a registrable offence for the purposes of this Act.
- (3) A *corresponding registrable person* includes a person who:
 - (a) has been found guilty of an offence under a law of a foreign jurisdiction that is a Class 1 offence or a Class 2 offence for the purposes of this Act, and
 - (b) as a consequence of having been found guilty of that offence has been required to report in that jurisdiction information about himself or herself to a person or body exercising functions substantially similar to those of the Commissioner of Police under this Act, and to keep that information current for a particular period, and
 - (c) would, if the person were currently in that jurisdiction, still be required to report that information.
- (4) The regulations may exclude any person or class of persons from being a corresponding registrable person.

[8] Part 2A, heading

Insert before section 3D:

Part 2A Child protection registration orders

[9] Section 3D Child protection registration orders made during criminal proceedings

Omit section 3D (2)–(5). Insert instead:

- (2) A court may make an order under this section only if:
 - (a) the court is satisfied that the person poses a risk to the lives or sexual safety of one or more children, or of children generally, and
 - (b) the court imposes a sentence on the person in relation to the offence (other than an order under section 10 of the *Crimes (Sentencing Procedure) Act 1999* or section 33 (1) (a) of the *Children (Criminal Proceedings) Act 1987*), and

- (c) an application for the imposition of the order is made by the prosecution.

Note. The effect of subsection (2) (b) is to prevent a child protection registration order being made in certain circumstances if an order is made dismissing the charge or conditionally discharging the offender.

[10] Section 3D (7)

Omit the subsection.

[11] Sections 3E, 3F, 3G and 3H

Omit section 3E. Insert instead:

3E Child protection registration orders made after conclusion of criminal proceedings

- (1) A Local Court may, on application by the Commissioner of Police, order a person who has been sentenced by a court of New South Wales in respect of an offence that is not a Class 1 offence or a Class 2 offence to comply with the reporting obligations under this Act.
- (2) A Local Court may make an order under this section only if:
 - (a) the Court is satisfied that the person poses a risk to the lives or sexual safety of one or more children, or of children generally, and
 - (b) the sentence imposed on the person in respect of the offence was not an order under section 10 of the *Crimes (Sentencing Procedure) Act 1999* or under section 33 (1) (a) of the *Children (Criminal Proceedings) Act 1987*.

Note. The effect of subsection (2) (b) is to prevent a child protection registration order being made if an order is made dismissing the charge or conditionally discharging the offender.
- (3) An application for an order under this section must be made within 21 days after the person with respect to whom the order is sought is sentenced for the relevant offence.
- (4) For the purposes of Division 6 of Part 3, if a Local Court makes an order in respect of a person under this section, the person is taken to have been found guilty of, and sentenced for, a Class 2 offence on the date an order under this section is made.

3F Child protection registration orders made in relation to foreign offences and offences committed before 15 October 2001

- (1) A Local Court may, on application by the Commissioner of Police, order any of the following persons to comply with the reporting obligations of this Act:

- (a) a person who has been found guilty of an offence against the law of a foreign jurisdiction that, if the offence had been committed in New South Wales, would have been an offence under the law of New South Wales, and who is not otherwise a registrable person in respect of that offence,
 - (b) a person who has (at any time) been sentenced by a court for a Class 1 offence of which the person was found guilty before 15 October 2001, unless the person was a child at the time that the offence was committed.
- (2) A Local Court may make an order under this section only if it is satisfied that the person poses a risk to the lives or sexual safety of one or more children, or of children generally.
 - (3) For the purposes of Division 6 of Part 3, if a Local Court makes an order in respect of a person under this section, the person is taken to have been found guilty of, and sentenced for, a Class 2 offence on the date an order under this section is made.
 - (4) Section 44 of the *Local Courts Act 1982* does not apply to proceedings for an order under this section.
 - (5) The fact that an offence in respect of which a person has been found guilty is spent does not prevent the making of an order under this section.
 - (6) For the purposes of this section, an offence is spent if, under a law in any jurisdiction, the person is permitted not to disclose the fact that the person was convicted or found guilty of the offence.

3G Child protection registration orders made after grant of bail under Mental Health (Criminal Procedure) Act 1990

- (1) A court that grants bail to a person in respect of a Class 1 offence or a Class 2 offence under section 10 (3) (b), 14 (b) (ii) or 17 (2) of the *Mental Health (Criminal Procedure) Act 1990* may order that the person comply with the reporting obligations of this Act.
- (2) A court may make an order under this section only if it is satisfied that the person poses a risk to the lives or sexual safety of one or more children, or of children generally.
- (3) A court may make an order under this section only if:
 - (a) an application for the imposition of the order is made by the prosecution, and
 - (b) the order is made concurrently with the granting of the person's bail.

- (4) For the purposes of Division 6 of Part 3, if a court makes an order in respect of a person under this section the person is taken to have been found guilty of, and sentenced for, a Class 2 offence on the date the order is made.
- (5) A decision to make an order under this section is a decision in relation to bail for the purposes of Part 6 of the *Bail Act 1978*.
- (6) An order made under this section ceases to have effect if:
 - (a) proceedings against the person in respect of the Class 1 offence or Class 2 offence are withdrawn by the prosecution or dismissed by a court, or
 - (b) the person is sentenced by a court in respect of the Class 1 offence or Class 2 offence, or
 - (c) the order is quashed or set aside on a review of the decision in relation to bail under the *Bail Act 1978*.
- (7) Subsection (4) ceases to apply if the order ceases to have effect.
- (8) If an order under this section ceases to have effect as a consequence of the person having been sentenced by a court in respect of the Class 1 offence or Class 2 offence, and the person continues to be a registrable person, the period for which the person's reporting obligations continue is to be reduced by the length of time for which the person was required to comply with the reporting obligations under this Act solely as a consequence of the order.

3H Risk to sexual safety of children—meaning

- (1) For the purposes of this Part, a person poses a *risk to the lives or sexual safety of one or more children, or of children generally* if there is a risk that the person will engage in conduct that may constitute a Class 1 offence or a Class 2 offence against or in respect of a child or children.
- (2) In order for a court to be satisfied that a person poses a risk to the lives or sexual safety of one or more children, or of children generally, it is not necessary for the court to be able to identify a risk to particular children, or a particular class of children.

[12] Section 4A

Insert after section 4:

4A Notices to be given when orders made for persons to comply with reporting obligations

- (1) As soon as practicable after a court makes an order under section 3E, 3F or 3G, the court is to give written notice to the person the subject of the order of:
 - (a) the person's reporting obligations, and
 - (b) the consequences that may arise if the person fails to comply with those obligations.
- (2) As soon as practicable after such an order is made, the court is to give written notice of that fact to:
 - (a) the Commissioner of Police, and
 - (b) the supervising authority (if any) for the person.
- (3) The regulations may make provision for or with respect to the manner and form in which written notice must be given under this section.

[13] Section 9 Relevant personal information to be reported

Insert after section 9 (1) (l):

- (m) details of any carriage service (within the meaning of the *Telecommunications Act 1997* of the Commonwealth) used, or intended to be used, by the person,
- (n) details of any internet service provider or provider of a carriage service (within the meaning of the *Telecommunications Act 1997* of the Commonwealth) used, or intended to be used, by the person,
- (o) details of the type of any internet connection used, or intended to be used, by the person, including whether the connection is a wireless, broadband, ADSL or dial-up connection,
- (p) details of any email addresses, internet user names, instant messaging user names, chat room user names or any other user name or identity used, or intended to be used, by the person through the internet or other electronic communication service,
- (q) any other information prescribed by the regulations.

[14] Section 9 (2) (b) and (c)

Omit “14 days” wherever occurring. Insert instead “3 days”.

[15] Section 9A When initial report must be made

Omit “28 days” and “14 days” wherever occurring in the Table to the section.
Insert instead “7 days”.

[16] Section 11 Registrable person must report changes to relevant personal information

Omit section 11 (1). Insert instead:

- (1) A registrable person must report to the Commissioner of Police any change in the person’s relevant personal information:
 - (a) in the case of a change in the information referred to in section 9 (1) (e)—within 3 days after the change occurs, and
 - (b) in any other case—within 14 days after the change occurs.

[17] Section 11 (2)

Insert “3-day or” before “14-day”.

[18] Section 12D Additional matters to be provided

Omit section 12D (1). Insert instead:

- (1) If a report is required to be made in person, the person making the report must also present for inspection:
 - (a) 2 identification documents relating to the registrable person, and
 - (b) if the person making the report is accompanying the registrable person and making the report on the registrable person’s behalf, 2 identification documents relating to the person making the report, and
 - (c) in any case, any other form of identification specified by the regulations for the purposes of this subsection.
- (1A) If a registrable person holds a driver licence or a current passport (whether a current Australian passport or current overseas passport), the identification documents presented must include the driver licence, passport or passports (and, if the registrable person holds both a driver licence and a current passport or passports, must include all those identification documents).

(1B) If a person accompanying a registrable person and making a report on his or her behalf holds a driver licence, the identification documents presented must include the driver licence.

[19] Section 12D (2)

Omit “The documents specified in this subsection are the following original documents”.

Insert instead “Each of the following original documents is an *identification document* for the purposes of this section”.

[20] Section 12D (2) (a1)

Insert after section 12D (2) (a):

(a1) a driver licence,

[21] Section 12D (2) (b)

Omit “or document of identity issued by the Australian Passport Office”.

[22] Section 12D (7)

Insert before the definition of *driver licence*:

Australian passport includes a document of identity issued by the Australian Passport Office.

[23] Section 12H Retention of documents, fingerprints and photographs

Insert at the end of the section:

Note. Part 7B of the *Crimes (Forensic Procedures) Act 2000* provides for the carrying out of certain other forensic procedures (including carrying out of buccal swabs and taking samples of hair other than pubic hair) on persons required to comply with the reporting obligations under this Act.

[24] Section 14D

Omit the section. Insert instead:

14D Reporting period for corresponding registrable persons

Despite anything in this Part, a corresponding registrable person must continue to comply with the reporting obligations imposed by this Part until he or she ceases to be a corresponding registrable person.

[25] Section 15 Suspension and extension of reporting obligations

Insert at the end of section 15 (1) (c):

, or

- (d) the person is the subject of an interim supervision order or extended supervision order under the *Crimes (Serious Sex Offenders) Act 2006*.

[26] Section 17 Offence of failing to comply with reporting obligations

Omit the penalty provision from section 17 (1). Insert instead:

Maximum penalty: 500 penalty units or imprisonment for 5 years, or both.

[27] Section 18 Offence of furnishing false or misleading information

Omit the penalty provision. Insert instead:

Maximum penalty: 500 penalty units or imprisonment for 5 years, or both.

[28] Part 3A

Insert after Part 3:

Part 3A Change of name

19C Application of Part

This Part applies despite anything to the contrary in the *Births, Deaths and Marriages Registration Act 1995*.

19D Definitions

In this Part:

change of name application means an application by or on behalf of a registrable person for registration of a change of the person's name for which approval is required under section 19E.

interstate Registrar means an authority responsible under a law of another State or a Territory for the registration of births, deaths and marriages.

NSW Registrar means the Registrar within the meaning of the *Births, Deaths and Marriages Registration Act 1995*.

19E Applications for change of name by or on behalf of registrable person

- (1) A registrable person must not:
 - (a) apply to the NSW Registrar to register a change of his or her name under the *Births, Deaths and Marriages Registration Act 1995*, or
 - (b) apply to an interstate Registrar to register a change of his or her name under a law of another State or Territory that is the equivalent of the *Births, Deaths and Marriages Registration Act 1995*,
without having first obtained the written approval of the Commissioner of Police.
Maximum penalty: 5 penalty units.
- (2) A person must not, on behalf of a registrable person:
 - (a) apply to the NSW Registrar to register a change of the registrable person's name under the *Births, Deaths and Marriages Registration Act 1995*, or
 - (b) apply to an interstate Registrar to register a change of the registrable person's name under a law of another State or Territory that is the equivalent of the *Births, Deaths and Marriages Registration Act 1995*,
without having first obtained the written approval of the Commissioner of Police.
Maximum penalty: 5 penalty units.

19F Approval by Commissioner of Police

- (1) The Commissioner of Police may approve a change of name application only if the Commissioner is satisfied that the change of name is in all the circumstances necessary or reasonable.
- (2) The Commissioner of Police must not approve a change of name application if the Commissioner is satisfied that the change of name would, if registered, be reasonably likely:
 - (a) to be regarded as offensive by a victim of crime or an appreciable sector of the community, or
 - (b) to frustrate the administration of this Act in respect of the registrable person.
- (3) If the Commissioner of Police approves a change of name application, the Commissioner must:
 - (a) as soon as practicable, give written notice of the approval to the person who made the application, and

- (b) if the registrable person consents, give a copy of the written notice of approval to the NSW Registrar or the interstate Registrar (as the case so requires).

19G Registration of change of name

- (1) The NSW Registrar must not register a change of name under the *Births, Deaths and Marriages Registration Act 1995* if:
 - (a) the NSW Registrar knows that the change of name relates to the name of the registrable person, and
 - (b) the NSW Registrar has not received a copy of the notice of approval of the Commissioner of Police under section 19F.
- (2) If the NSW Registrar does not register a change of name because of the operation of subsection (1), the NSW Registrar must give written notice of the application to the Commissioner of Police.

19H Registrar may correct Register

Without limiting section 45 (Correction of Register) of the *Births, Deaths and Marriages Registration Act 1995*, the NSW Registrar may correct the Register under that section if:

- (a) the name of the registrable person on the Register has been changed, and
- (b) the Commissioner of Police has not approved that change under this Part.

19I Information-sharing between Commissioner of Police and NSW Registrar

Despite any law to the contrary:

- (a) the Commissioner of Police may notify the NSW Registrar of the name (including any other name by which a registrable person is or has previously been known), date of birth and residential address or addresses of the registrable person, and
- (b) if the Commissioner of Police has given notification under paragraph (a) in respect of a registrable person, the Commissioner of Police must notify the NSW Registrar as soon as practicable after the registrable person ceases to be a registrable person.

[29] Section 21

Omit the section. Insert instead:

21 Proceedings for offences

- (1) Proceedings for an offence against this Act, except an offence under section 17 or 18, are to be dealt with summarily.
- (2) Chapter 5 of the *Criminal Procedure Act 1986* (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of an offence under section 17 or 18.

[30] Section 21D

Omit “**Disclosure**” from the heading to the section.

Insert instead “**Permitted disclosure**”.

[31] Section 21E

Insert after section 21D:

21E Prohibited disclosure of information concerning registrable persons

A person must not disclose any information relating to a registrable person obtained in connection with the administration or execution of this Act, unless the disclosure:

- (a) is made in connection with the administration or execution of this Act or a corresponding Act or for law enforcement purposes, or
- (b) is made with the consent of the person to whom the information relates, or
- (c) is ordered by a court, or any other body or person exercising judicial functions, for the purposes of the hearing or determination by the court, body or person of any matter, or
- (d) is made with the consent of the Commissioner of Police given (either generally or in a particular case) for the purposes of ensuring the safety or protection of a child or of children generally, or
- (e) is made to the Minister or with the consent of the Minister (given in a particular case), or

(f) is authorised or required by or under this Act or any other law.

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

[32] Section 22 Regulations

Omit “section 4, 5 or 6 of a sentencing court” from section 22 (3).

Insert instead “section 4, 4A, 5 or 6 of a court”.

[33] Section 22 (3) (a)

Omit “sentencing”.

[34] Section 25 Monitoring of operation of Act by Ombudsman

Omit the section.

[35] Section 26 Review of Act

Omit section 26 (2). Insert instead:

(2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to the *Child Protection (Offenders Registration) Amendment Act 2007*.

[36] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Child Protection (Offenders Registration) Amendment Act 2007

[37] Schedule 2, Part 5

Insert after Part 4 of Schedule 2:

**Part 5 Provisions consequent on enactment of
Child Protection (Offenders Registration)
Amendment Act 2007**

11 Definition

In this Part, *amending Act* means the *Child Protection (Offenders Registration) Amendment Act 2007*.

12 Registrable persons

The amendments made to the definitions of *Class 1 offence* and *sentence* in section 3 (1) and to section 3A (2) (b) by the amending Act apply in respect of any sentence imposed on or

after the commencement of the amendments, including any sentence imposed as a consequence of a finding of guilt made before the commencement of the amendments.

13 Corresponding registrable persons

Section 3C, as substituted by the amending Act, applies to any person who has at any time been in a foreign jurisdiction and required to report to the corresponding registrar or to a person or body whose functions are substantially similar to those of the Commissioner of Police under this Act, whether that obligation arose before, on or after the commencement of this clause (including if it arose as a consequence of a finding of guilt made before 15 October 2001).

14 Child protection registration orders

- (1) Section 3E, as substituted by the amending Act, applies in respect of any person sentenced for an offence on or after the substitution of that section, including if the sentence is imposed for an offence committed before that substitution.
- (2) Section 3F, as inserted by the amending Act, permits a court to make an order referred to in section 3F (1) (a) in respect of any person found guilty of an offence against a law of a foreign jurisdiction at any time, including if the finding of guilt was made before the commencement of that section.
- (3) Section 3G, as inserted by the amending Act, applies to a grant of bail, on or after the commencement of that section, in respect of a Class 1 offence or Class 2 offence which is alleged to have been committed before, on or after that commencement.

15 Changes to personal information

The amendments made to section 11 by the amending Act apply to a change in a person's relevant personal information that occurs on or after the commencement of the amendments.

16 Increase in penalties—sections 17 and 18

The amendments made to this Act by the amending Act in relation to the maximum penalty for an offence under section 17 or 18, and proceedings for that offence, apply only to an offence under section 17 or 18 that is alleged to have been committed on or after the commencement of the amendments.

17 Disclosure of information

- (1) Section 21E, as inserted by the amending Act, extends to the disclosure, on or after the commencement of that section, of information obtained before that commencement.
- (2) Clause 27 of Schedule 1 to the *Freedom of Information Act 1989*, as inserted by the amending Act, extends to a report provided, or information obtained or placed on the Child Protection Register, before the commencement of that clause.

Schedule 2 Amendment of Crimes (Forensic Procedures) Act 2000 No 59

(Section 4)

[1] Section 3 Interpretation

Insert after paragraph (b1) of the definition of *informed consent* in section 3 (1):

- (b2) an untested registrable person—is defined in section 75V, and

[2] Section 3 (1), definition of “order”

Insert after paragraph (d1) of the definition:

- (d2) order of a court under section 75ZB, or

[3] Section 3 (1)

Insert in alphabetical order:

untested registrable person is defined in section 75P.

[4] Sections 47 (3), 52 (4) and 90 (paragraph (a) of the definition of “offenders index”)

Omit “7 or 7A” wherever occurring. Insert instead “7, 7A or 7B”.

[5] Part 7B

Insert after Part 7A:

Part 7B Carrying out of certain forensic procedures on registrable persons

75P Forensic procedures and persons to which Part applies

(1) Intimate forensic procedures to which Part applies

This Part applies to the carrying out of an other-administered buccal swab.

(2) Non-intimate forensic procedures to which Part applies

This Part applies to the following non-intimate forensic procedures:

- (a) the carrying out of a self-administered buccal swab,
(b) the taking of a sample of hair other than pubic hair.

-
- (3) This Part applies to any person:
- (a) who is a registrable person under the *Child Protection (Offenders Registration) Act 2000*, and
 - (b) who is required to comply with the reporting obligations under that Act,
- if it appears that the person's DNA profile is not contained in the offenders index of the DNA database system (an *untested registrable person*).

75Q Non-intimate forensic procedures authorised to be carried out on untested registrable persons

A person is authorised to carry out a non-intimate forensic procedure to which this Part applies on an untested registrable person:

- (a) with the informed consent of the registrable person, or
- (b) by order of a senior police officer under section 75Y, or
- (c) by order of a court under section 75ZB.

75R Intimate forensic procedures authorised to be carried out on untested registrable persons

A person is authorised to carry out an intimate forensic procedure to which this Part applies on an untested registrable person:

- (a) with the informed consent of the registrable person, or
- (b) by order of a court under section 75ZB.

75S Police officer to ask whether untested registrable person identifies as Aboriginal person or Torres Strait Islander

Before asking an untested registrable person to consent to a forensic procedure under this Part, a police officer must ask the registrable person whether the registrable person identifies as an Aboriginal person or Torres Strait Islander.

75T Application of Part 6

- (1) Part 6 applies to the carrying out of a forensic procedure on an untested registrable person under this Part as if the references to the suspect in Part 6 were references to an untested registrable person.
- (2) A person is authorised by section 75Q or 75R to carry out a forensic procedure in accordance with Part 6 as applied by this section and not otherwise.

75U Scope of authorisation

- (1) A person is not authorised to carry out a forensic procedure under this Part on an untested registrable person if the untested registrable person is a suspect or a volunteer.
- (2) A forensic procedure may be carried out on an untested registrable person who is a suspect only if authorised by and in accordance with Parts 2–5.
- (3) A forensic procedure may be carried out on an untested registrable person who is a volunteer only if authorised by and in accordance with Part 8.

75V Informed consent to forensic procedures

- (1) An untested registrable person gives informed consent to the carrying out of a forensic procedure under this Part if the registrable person consents to the carrying out of the procedure after a police officer:
 - (a) requests the registrable person to consent to the forensic procedure under section 75W, and
 - (b) informs the registrable person about the forensic procedure in accordance with section 75X, and
 - (c) gives the registrable person the opportunity to communicate, or attempt to communicate, with an Australian lawyer of the registrable person's choice.
- (2) The police officer must allow the registrable person to communicate, or attempt to communicate, with the Australian lawyer in private unless the police officer suspects on reasonable grounds that the registrable person might attempt to destroy or contaminate any evidence that might be obtained by carrying out the forensic procedure.

Note. Section 103 states that the burden lies on the prosecution to prove on the balance of probabilities that a police officer had a belief on reasonable grounds.

75W Police officer may request untested registrable person to consent to forensic procedure

A police officer may request an untested registrable person (other than a child or an incapable person) to consent to a forensic procedure to which this Part applies being carried out on the registrable person.

75X Matters that untested registrable person must be informed of before giving consent

- (1) The police officer must (personally or in writing) inform the untested registrable person of the following:
 - (a) the purpose for which the forensic procedure is required,
 - (b) the way in which the forensic procedure is to be carried out,
 - (c) that the forensic procedure may produce evidence against the registrable person that might be used in a court of law,
 - (d) that the forensic procedure will be carried out by a person who may carry out the procedure under Part 6 as applied by section 75T,
 - (e) that the registrable person may refuse consent to the carrying out of the forensic procedure,
 - (f) the consequences of not consenting, as specified in subsection (2) or (3) (whichever is applicable),
 - (g) the effect of section 84 (if applicable),
 - (h) that information obtained from the analysis of forensic material obtained from the carrying out of the forensic procedure may be placed on the DNA database system of this State, or become part of a national DNA matching scheme, or both, and, in particular, that the information may be compared with information from the DNA database systems of other participating jurisdictions.

- (2) **Failure to consent to non-intimate forensic procedure**

The police officer must (personally or in writing) inform an untested registrable person requested to undergo a non-intimate forensic procedure to which this Part applies that, if the registrable person does not consent, a senior police officer may order the carrying out of the forensic procedure under section 75Y.

- (3) **Failure to consent to intimate forensic procedure**

The police officer must (personally or in writing) inform an untested registrable person requested to undergo an intimate forensic procedure to which this Part applies that, if the registrable person does not consent, an application may be made to a court for an order authorising the carrying out of the forensic procedure.

75Y Circumstances in which senior police officer may order non-intimate forensic procedure

- (1) A senior police officer may order the carrying out of a non-intimate forensic procedure on an untested registrable person if:
 - (a) the registrable person has been requested under section 75W to consent to the carrying out of the forensic procedure, and
 - (b) the registrable person has not consented.
- (2) If the senior police officer needs to decide between taking a sample of the registrable person's hair or the carrying out of a self-administered buccal swab, an order for the taking of a sample of hair may not be made unless, following inquiry by the police officer:
 - (a) the registrable person has indicated that he or she prefers the taking of a sample of hair, or
 - (b) the registrable person has failed to indicate that he or she will carry out a self-administered buccal swab.

75Z Form of consent

The consent of an untested registrable person to the carrying out of a forensic procedure under this Part is not effective unless:

- (a) the consent is in writing and in a form containing the particulars prescribed by the regulations, and
- (b) the consent is signed by the registrable person, and
- (c) the signature is witnessed by a person other than a police officer, and
- (d) the registrable person is given a copy of the consent as soon as practicable after it is signed and witnessed.

75ZA Record of order of senior police officer

- (1) At the time of, or as soon as practicable after, making an order under section 75Y, a senior police officer must make a record of:
 - (a) the order, and
 - (b) the date and time when the order was made, and
 - (c) the reasons for making it,and must sign the record.

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- (2) The senior police officer must ensure that a copy of the record is made available to the untested registrable person as soon as practicable after the record is made.

75ZB Court order for carrying out forensic procedure on untested registrable person

- (1) A police officer may apply to any court for an order for the carrying out of a forensic procedure to which this Part applies on an untested registrable person.
- (2) A court may order the carrying out of a forensic procedure under this section if satisfied that the carrying out of the forensic procedure is justified in all the circumstances.

75ZC Making of order

- (1) If a court makes an order for the carrying out of a forensic procedure on an untested registrable person, the court must:
- (a) specify the forensic procedure authorised to be carried out, and
 - (b) give reasons for making the order, and
 - (c) ensure that a written record of the order is kept, and
 - (d) order the registrable person (if present) to attend for the carrying out of the forensic procedure, and
 - (e) inform the registrable person (if present) that reasonable force may be used to ensure that he or she complies with the order for the carrying out of the forensic procedure.
- (2) The court may give directions as to the time and place at which the procedure is to be carried out.

75ZD Refusal or failure to permit forensic procedure

An untested registrable person in respect of whom a forensic procedure is ordered to be carried out under section 75ZB must not, without reasonable excuse, refuse or fail to permit the forensic procedure to be carried out.

Maximum penalty: 50 penalty units or 12 months imprisonment, or both.

[6] Section 87 Destruction of forensic material taken from offender after conviction quashed

Insert at the end of section 87 (1) (b):

, or

- (c) an untested registrable person under Part 7B,

[7] Section 91 Supply of forensic material for DNA database system purposes

Omit paragraph (c) of the definition of *permitted forensic material* in section 91 (3).

Insert instead:

- (c) taken from an offender, untested former offender, untested registrable person or a volunteer in accordance with Part 7, 7A, 7B or 8 or under a corresponding law of a participating jurisdiction, or

[8] Section 98 Interpreters

Omit section 98 (2). Insert instead:

- (2) The actions are as follows:
 - (a) asking a suspect, offender, untested former offender or untested registrable person to consent to a forensic procedure (Part 3, 7, 7A or 7B),
 - (b) ordering the carrying out of a non-intimate forensic procedure on, or taking of a sample by buccal swab from, a suspect, offender, untested former offender or untested registrable person (Part 4, 7, 7A or 7B),
 - (c) applying to a Magistrate or other authorised officer for an order for the carrying out of a forensic procedure on a suspect, offender, untested former offender or untested registrable person (Part 5, 7, 7A or 7B),
 - (d) cautioning a suspect, offender, untested former offender or untested registrable person (Part 6, 7, 7A or 7B),
 - (e) carrying out, or arranging for the carrying out of, a forensic procedure on a suspect, offender, untested former offender or untested registrable person (Part 6, 7, 7A or 7B),
 - (f) giving a suspect or offender an opportunity to view a video recording made under this Act (section 100).

Schedule 3 Amendment of Freedom of Information Act 1989 No 5

(Section 5)

Schedule 1 Exempt documents

Insert after clause 26:

27 Documents relating to offenders under the Child Protection (Offenders Registration) Act 2000

- (1) A document is an exempt document if:
 - (a) it is a report provided to the Commissioner of Police by a registrable person under the *Child Protection (Offenders Registration) Act 2000* for the purpose of complying with the reporting obligations under that Act, or
 - (b) it contains matter that would disclose information obtained by the Commissioner of Police as a result of the making of such a report, or
 - (c) it contains matter that would disclose information contained on the Child Protection Register kept under section 19 of that Act.
- (2) A document is not an exempt document by virtue of subclause (1) merely because it contains information concerning the person by or on whose behalf an application for access to the document is being made.

Schedule 4 Consequential amendments

(Section 6)

4.1 Child Protection (Offenders Registration) Act 2000 No 42 (as amended by the Child Protection (Offenders Registration) Amendment Act 2007)

[1] Sections 3E and 3F

Omit “A Local Court” and “a Local Court” wherever occurring.

Insert instead “The Local Court” and “the Local Court”, respectively.

[2] Section 3F Child protection registration orders made in relation to foreign offences and offences committed before 15 October 2001

Omit “Section 44 of the *Local Courts Act 1982*” from section 3F (4).

Insert instead “Section 51 of the *Local Court Act 2007*”.

4.2 Criminal Procedure Act 1986 No 209

[1] Section 268 Maximum penalties for Table 2 offences

Insert as section 268 (2) (m):

- (m) for an offence under section 17 or 18 of the *Child Protection (Offenders Registration) Act 2000*—imprisonment for 2 years, or a fine of 100 penalty units, or both.

[2] Schedule 1 Indictable offences triable summarily

Insert at the end of Table 2 with appropriate Part and clause numbers:

Part Offences under Child Protection (Offenders Registration) Act 2000

Reporting obligations

An offence under section 17 or 18 of the *Child Protection (Offenders Registration) Act 2000*.

4.3 Local Courts Act 1982 No 164

Section 36 Proceedings to which Part does not apply

Insert after section 36 (2) (d):

- (e) applications for an order under section 3E or 3F of the *Child Protection (Offenders Registration) Act 2000*.

4.4 Local Court Act 2007

Section 3 Definitions

Insert after paragraph (g) of the definition of *criminal proceedings* in section 3 (1):

- (h) applications for an order under section 3E or 3F of the *Child Protection (Offenders Registration) Act 2000*.