



New South Wales

Crimes (Forensic Procedures) Amendment Bill 2002

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Crimes (Forensic Procedures) Act 2000*:

- (a) to extend the class of investigating police officers who may make applications for orders for the carrying out of forensic procedures, and
- (b) to make provision with respect to the presence of interview friends and legal representatives of suspects and serious indictable offenders, and
- (c) to extend the circumstances in which a Magistrate may make a second order for the carrying out of a forensic procedure, and
- (d) to clarify the effect of a person's consent on an interim order for the carrying out of a forensic procedure on that person, and
- (e) to clarify that the conditions to be met before an interim order can be confirmed are the same as the conditions to be met before a final order can be made, and

- (f) to clarify who may apply for an interim order, and
- (g) to remove the requirement to support an application for an interim order by evidence on oath or by affidavit in the case where an application is made by telephone or facsimile or any other way other than in person, and
- (h) to require that an application for an interim order be made in person unless it is not practicable to do so, and
- (i) to simplify the recording requirements for the making of interim orders, and
- (j) to make it an offence for a person to give information that the person knows to be false or misleading in an application for an interim or final order, and
- (k) to clarify the procedure when a suspect self-administers a buccal swab, and
- (l) to clarify that a suspect may object to any form of electronic recording of the carrying out of a forensic procedure, and
- (m) to clarify that powers to authorise the carrying out of a non-intimate forensic procedure on a serious indictable offender apply only if the relevant police officer is a senior police officer, and
- (n) to exclude from the operation of the provisions of the Act dealing with volunteers the carrying out of forensic procedures on victims of offences against the person and certain property offences, being victims who volunteer to undergo those procedures, and
- (o) to exclude from the operation of the provisions of the Act dealing with volunteers the finger printing or hand printing of people who volunteer to provide a finger print or hand print for elimination purposes in relation to property offences and to provide for destruction of those prints, and
- (p) to make provision regarding the missing persons index and, in particular, to provide that evidence arising from forensic material volunteered for the purposes of the missing persons index is inadmissible in proceedings against the person who volunteered it, and
- (q) to provide that forensic material taken from a serious indictable offender is to be destroyed following the quashing of the person's conviction, and
- (r) to provide that material is not to be destroyed until after the end of proceedings, including any appeal period or any re-trial following a hung jury or appeal, and
- (s) to provide that a telephone interpreter service may be used where an interpreter is required, and
- (t) to change the period in which the Ombudsman must monitor the operation of the Act.

This Bill also amends the *Police Service Act 1990* to authorise the Commissioner of Police to require an applicant for appointment as a police officer to provide a finger print or hand print before his or her application is accepted.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Crimes (Forensic Procedures) Act 2000* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendment to the *Police Service Act 1990* set out in Schedule 2.

Schedule 1 Amendment of Crimes (Forensic Procedures) Act 2000

Applications for orders

The *Crimes (Forensic Procedures) Act 2000* provides for authorised applicants to make applications for interim, final or second orders for the carrying out of forensic procedures (see sections 33, 26 and 27, respectively). The class of people who are authorised applicants for an order for the carrying out of a forensic procedure on a suspect include the investigating police officer in relation to an offence. At present, ***investigating police officer*** is defined to mean the police officer in charge of the investigation of the commission of an offence in relation to which a forensic procedure is carried out or proposed to be carried out.

Schedule 1 [2] extends the definition of ***investigating police officer*** to include any police officer involved in the investigation of the commission of an offence in relation to which a forensic procedure is carried out or proposed to be carried out.

Schedule 1 [1], [4], [8] and [21] make consequential amendments.

Informed consent to forensic procedures

Section 13 of the Act requires police to give certain information to a suspect personally or in writing. Section 9 (2) (b) provides that a suspect gives informed consent to a forensic procedure if he or she consents after a police officer has given a written statement of the matters referred to in section 13.

Schedule 1 [5] provides that a suspect gives informed consent to a forensic procedure if the suspect consents after a police officer informs the suspect about the forensic procedure in accordance with section 13 (1), that is, either personally or in writing.

Schedule 1 [6] makes a consequential amendment.

Interview friends

The Act provides for a person to act as an interview friend of a suspect or serious indictable offender for the purposes of various provisions of the Act, including when a police officer is asking a suspect who is an Aboriginal person or a Torres Strait Islander to consent to a forensic procedure.

Schedule 1 [7] provides that an interview friend may be excluded if he or she unreasonably interferes with or obstructs the police officer or the police officer reasonably believes that the interview friend may prejudice the investigation of an offence because he or she may be a co-offender of the suspect or may be involved in some other way, with the suspect, in the commission of the offence. If an interview friend is excluded, the suspect may nominate another person to act as his or her interview friend.

Schedule 1 [24] provides that if a suspect waives his or her right to have an interview friend present, a legal representative of the suspect may still be present.

Application and order for repeated forensic procedure

Section 27 of the Act provides for the making of an application to a Magistrate for an order authorising the carrying out for a second time of a forensic procedure on a suspect on whom the same type of forensic procedure has already been carried out by order of a Magistrate. An order can be made only if the forensic material obtained as a result of the carrying out of the first forensic procedure is insufficient for analysis or has been contaminated and if the carrying out of the forensic procedure for a second time is justified in all the circumstances.

Schedule 1 [9] extends the circumstances in which a Magistrate may make a second order for the carrying out of a forensic procedure to include any situation where the forensic material has been lost or is for any other reason not available for analysis and the carrying out of the forensic procedure for a second time is justified in all the circumstances.

Interim orders

Section 32 of the Act provides for the making of an interim order authorising the carrying out of a forensic procedure on a suspect that must be carried out without delay. An interim order operates until a Magistrate, at a hearing, confirms the interim order or disallows the interim order.

Schedule 1 [10] makes it clear that the interim order will operate until either confirmed or disallowed even if the suspect consents to the carrying out of the forensic procedure after the interim order is obtained but before it is confirmed.

Schedule 1 [11] makes it clear that the matters to be considered by a Magistrate for the purpose of confirming an interim order are the same as the matters to be considered by a Magistrate before ordering forensic procedures by way of a final order.

Schedule 1 [12] puts it beyond doubt that only an authorised applicant, and no other person, may make an application for an interim order.

Schedule 1 [13] removes the requirement to support an application for an interim order by evidence on oath or by affidavit in the case where an application is made by telephone, facsimile or any other way other than in person. **Schedule 1 [15]** provides that if an application for an interim order is not made in person, the application must be supported by evidence on oath or by affidavit as soon as practicable after the making of the application and before the making of any final order.

Schedule 1 [14] provides that an application for an interim order must be made in person unless it is not practicable to make the application in person, in which case it must be made by facsimile transmission if facsimile transmission facilities are readily available or may be made by telephone, radio, telex, email or other means of communication if facsimile transmission facilities are not readily available.

Schedule 1 [16]–[20] remove some of the requirements for the keeping of records of applications for interim orders and records of interim orders in cases where the application is made in person or is reduced to writing. The amendments make special provision for the recording of applications and interim orders where the application is not made in person or reduced to writing.

False or misleading information in applications for orders

Schedule 1 [22] makes it an offence for a person to give information that the person knows to be false or misleading in a material particular in an application for an interim or final order to carry out a forensic procedure.

Self-administered buccal swabs

Section 44 (a) of the Act provides that a forensic procedure must not be carried out in the presence or view of a person who is of the opposite sex to the suspect, except as permitted by any other provision of the Act.

Schedule 1 [23] provides that a self-administered buccal swab is not subject to that requirement.

Electronic recording of forensic procedure

Section 57 (1) (a) of the Act provides that a suspect may object to the recording by electronic means of a forensic procedure being carried out. Recording is defined to include audio and video recording. However, under section 57 (2) (b), the suspect is only to be informed that he or she may object to a video recording.

Schedule 1 [25] clarifies that a suspect must be informed that he or she may object to any form of recording of the carrying out of a forensic procedure.

Schedule 1 [26] makes it clear that section 57 does not prevent any recording of a forensic procedure being made for the purpose of maintaining good order, discipline and security in a correctional centre or other place of detention.

Carrying out of non-intimate forensic procedures on serious indictable offenders

Part 7 of the Act provides for the carrying out of forensic procedures on serious indictable offenders. Section 70 (1) of the Act provides that a police officer may order the carrying out of a non-intimate forensic procedure on such an offender. Section 70 (2) of the Act provides that a senior police officer (that is, a police officer of or above the rank of sergeant) may authorise the taking of a sample of hair.

Schedule 1 [28] provides that only a senior police officer may order the carrying out of a non-intimate forensic procedure on a serious indictable offender. (Section 74 continues to provide for a court order for the carrying out of forensic procedures on serious indictable offenders.)

Schedule 1 [27], [29] and [30] make consequential amendments.

Carrying out of forensic procedures on certain volunteers

Part 8 of the Act includes provisions regarding the carrying out of a forensic procedure on a volunteer (or a child or incapable person who has been put forward as a volunteer).

Schedule 1 [31] and **[32]** exclude from the operation of Part 8 the carrying out of forensic procedures on victims of offences against the person, or victims of certain property offences, who volunteer to undergo forensic procedures or on people who volunteer to provide a finger print or hand print sample for elimination purposes in relation to property offences. **Schedule 1 [37]** provides for the destruction of the finger prints or hand prints as soon as practicable after they have been used to eliminate the person from inquiries in relation to the event.

Missing persons index

The DNA database system established under the Act includes the missing persons index, which is an index of DNA profiles derived from forensic material of persons who are missing and of volunteers who are relatives by blood of such persons. Section 93 of the Act provides that it is permissible to match a DNA profile on the missing persons index with a DNA profile on another index of the system. If, for example, a woman whose son is missing provides forensic material for the purposes of the missing persons index, her DNA profile may be matched with a DNA profile on the crime scene index, for instance from forensic material found on the body of an unrelated victim of an unsolved murder. Accordingly, the woman may be implicated in the murder because she voluntarily provided forensic material for the purpose of finding her missing son.

Schedule 1 [33] provides that a volunteer who provides a sample of forensic material for the missing persons index must be informed that material provided for the missing persons index is provided for the principal purpose of assisting in the identification of a missing person and that to achieve this the material may be matched against all indexes on the database.

Schedule 1 [34] provides that if there is a match to a DNA profile on another index on the database with a DNA profile provided for the purpose of being placed on the missing person index that information cannot be used in proceedings against the volunteer. A fresh forensic procedure would have to be carried out under the provisions of the Act dealing with suspects.

Schedule 1 [43] provides for disclosure to a volunteer who is a relative and whose DNA profile is placed on the missing persons index that the DNA profile of some other person on another index matched their own DNA profile or that of a missing blood relative on the missing persons index.

Schedule 1 [39] makes a consequential amendment.

Destruction of forensic material

Section 87 of the Act provides for the destruction of forensic material taken from a serious indictable offender in the event that the offender's conviction is quashed. However, the section applies only to offenders who were tested as a result of a court order.

Schedule 1 [35]–[37] provide for forensic material taken from a serious indictable offender to be destroyed following the quashing of the relevant conviction if the forensic procedure was ordered by a senior police officer or if the offender consented to undergo the forensic procedure for elimination purposes.

Section 89 of the Act provides that certain evidence relating to a forensic procedure found by a court to be inadmissible is to be destroyed as soon as practicable.

Schedule 1 [38] provides that material is not to be destroyed until after the end of proceedings (including any appeal period or any re-trial following a hung jury or appeal).

Telephone interpreters

Schedule 1 [43] provides for a telephone interpreter service to be used in certain circumstances where an interpreter is required.

Consequential and other amendments

Schedule 1 [3] inserts a definition of *nurse*.

Schedule 1 [40] and [41] provide for orders to be kept on more than one register and provide for the regulations to make provision regarding registration and cancellation of registration.

Schedule 1 [44] and [45] are consequential on the proposed amendment made by Schedule 2.

Schedule 1 [46] and [47] extend the period in which the Ombudsman must monitor the operation of the Act.

Schedule 1 [48] provides for the making of savings and transitional regulations consequent on the enactment of the proposed Act.

Schedule 1 [49] makes savings and transitional provisions consequent on the enactment of the proposed Act.

Schedule 2 Amendment of Police Service Act 1990

Schedule 2 authorises the Commissioner of Police to require an applicant for appointment as a police officer to provide a finger print or hand print before an application is accepted. Before a finger print or hand print is taken from an applicant, the applicant must be informed in writing that the print may be retained and may be used for the purpose of checking the applicant's criminal history. The Commissioner must destroy the prints of any person provided under the proposed section if the person is not appointed as a police officer. A person who stops being a police officer may request that his or her prints be destroyed.

Schedule 1 [44] and [45] exclude such finger printing and hand printing from the operation of the *Crimes (Forensic Procedures) Act 2000*.



New South Wales

Crimes (Forensic Procedures) Amendment Bill 2002

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New South Wales

Crimes (Forensic Procedures) Amendment Bill 2002

No , 2002

A Bill for

An Act to amend the *Crimes (Forensic Procedures) Act 2000* in relation to the making of orders for forensic procedures, the carrying out of forensic procedures and the recording of information; to amend the *Police Service Act 1990* in relation to the finger printing and hand printing of applicants for appointment as a police officer; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Crimes (Forensic Procedures) Amendment Act 2002</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5 6
3 Amendment of Crimes (Forensic Procedures) Act 2000 No 59	7
The <i>Crimes (Forensic Procedures) Act 2000</i> is amended as set out in Schedule 1.	8 9
4 Amendment of Police Service Act 1990 No 47	10
The <i>Police Service Act 1990</i> is amended as set out in Schedule 2.	11

Schedule 1	Amendment of Crimes (Forensic Procedures) Act 2000	1
		2
	(Section 3)	3
[1]	Section 3 Interpretation	4
	Omit “the” from paragraph (c) of the definition of <i>authorised applicant</i> in section 3 (1).	5
	Insert instead “an”.	6
		7
[2]	Section 3 (1), definition of “investigating police officer”	8
	Omit “the police officer in charge of”.	9
	Insert instead “any police officer involved in”.	10
[3]	Section 3 (1)	11
	Insert in alphabetical order:	12
	<i>excluded volunteer</i> is defined in section 76A.	13
	<i>missing persons index</i> is defined in section 90.	14
	<i>nurse</i> means a registered nurse or an enrolled nurse, within the meaning of the <i>Nurses Act 1991</i> .	15
		16
[4]	Section 3 (1), definition of “time out”	17
	Omit “the investigating” where firstly occurring in paragraph (a).	18
	Insert instead “an investigating”.	19
[5]	Section 9 Informed consent to forensic procedures—general	20
	Omit “gives the suspect a written statement setting out” from section 9 (2) (b).	21
	Insert instead “personally or in writing, gives the suspect”.	22
		23
[6]	Section 9 (2) (b) (ii)	24
	Insert “a description of” before “the nature”.	25

[7] Section 10 Informed consent to forensic procedures—Aboriginal persons and Torres Strait Islanders	1 2
Omit section 10 (9). Insert instead:	3
(9) An interview friend (other than a legal representative) of the suspect may be excluded from the presence of the police officer and the suspect if:	4 5 6
(a) the interview friend unreasonably interferes with or obstructs the police officer in asking the suspect to consent to the forensic procedure, or in informing the suspect as required by section 13, or	7 8 9 10
(b) the police officer forms a belief based on reasonable grounds that the presence of the interview friend could be prejudicial to the investigation of an offence because the interview friend may be a co-offender of the suspect or may be involved in some other way, with the suspect, in the commission of the offence.	11 12 13 14 15 16
(10) If an interview friend is excluded under subsection (9), a suspect may choose another person to act as his or her interview friend. If the suspect does not waive his or her right to have an interview friend present and does not choose another person as an interview friend, the police officer may arrange for any person who may act as an interview friend under section 4 to be present as an interview friend.	17 18 19 20 21 22 23
[8] Section 16 Time for carrying out forensic procedure—suspect not under arrest	24 25
Omit “the investigating police officer” from section 16 (1) (b).	26
Insert instead “an investigating police officer”.	27
[9] Section 27 Application and order for repeated forensic procedure	28
Omit “or has been contaminated” from section 27 (3) (b).	29
Insert instead “, has been contaminated, has been lost or is for any other reason not available for analysis”.	30 31

[10] Section 32 Interim order for carrying out of a forensic procedure	1
Insert “, whether or not the suspect consents to the carrying out of the forensic procedure after the interim order is made but before it is confirmed or disallowed” after “order” where thirdly occurring in section 32 (3).	2 3 4
[11] Section 32 (4)	5
Omit the subsection. Insert instead:	6
(4) Division 2 applies in relation to an order confirming the interim order in the same way it applies in relation to an order under section 24. Accordingly, a Magistrate may make an order confirming the interim order only if the Magistrate is satisfied of the matters set out in section 25. An order confirming the interim order is taken to be an order under section 24.	7 8 9 10 11 12
[12] Section 33 Application for interim order	13
Insert “(but no other person)” after “applicant” in section 33 (1).	14
[13] Section 33 (3) (a)	15
Insert “if it is made in person—” before “be”.	16
[14] Section 33 (4) and (4A)	17
Omit section 33 (4). Insert instead:	18
(4) An application for an interim order must be made:	19
(a) in person, or	20
(b) if it is not practicable to make the application in person and there are facsimile facilities readily available—by facsimile, or	21 22 23
(c) if it is not practicable to make the application in person and there are no facsimile facilities readily available—by telephone, radio, telex, email or other means of communication.	24 25 26 27
(4A) An authorised justice must not issue an interim order on an application made by facsimile, telephone, radio, telex, email or other means of written communication unless the authorised	28 29 30

	justice is satisfied that the interim order is required urgently and that it is not practicable for the application to be made in person.	1 2 3
[15] Section 33 (9)		4
	Insert after section 33 (8):	5
	(9) If an application is not made in person, the application must be supported by evidence on oath or by affidavit dealing with the matters referred to in section 32 (1) as soon as practicable after the making of the application and before any interim order made as a result of the application is confirmed or disallowed.	6 7 8 9 10
[16] Section 36 Records of application and interim order (where application made in person or reduced to writing)		11 12
	Insert before section 36 (1):	13
	(1A) This section applies when an application for an interim order is made in person, by facsimile, by email or by other electronic means of written communication.	14 15 16
[17] Section 36 (1)		17
	Omit “, or as soon as practicable after,”.	18
[18] Section 36 (1) (b)		19
	Omit “order, and”. Insert instead “order.”.	20
[19] Section 36 (1) (c)–(e) and (3) (a) and (b)		21
	Omit the paragraphs.	22
[20] Section 36A		23
	Insert after section 36:	24
36A Records of application and interim order (where application not made in person or reduced to writing)		25 26
	(1) This section applies when an application for an interim order is not made in person, by facsimile, by email or by other electronic means of written communication.	27 28 29

(2) The authorised justice must, at the time of, or as soon as practicable after, making an interim order, make a record (<i>the authorised justice's record</i>) of:	1
(a) the order made, and	2
(b) the date and time when the order was made, and	3
(c) the reasons for making it,	4
and sign the record.	5
(3) The applicant for an interim order must, as soon as practicable after an order is made, make a record (<i>the applicant's record</i>) of:	6
(a) the order made, and	7
(b) the date and time when the order was made, and	8
(c) the authorised justice's name,	9
and sign the record.	10
(4) The authorised justice must send a copy of the authorised justice's record to the applicant as soon as practicable after the record is made.	11
(5) The applicant must ensure that a copy of the authorised justice's record and a copy of the applicant's record are made available to the suspect as soon as practicable after the applicant receives the authorised justice's record.	12
(6) If the applicant's record does not, in all material respects, accord with the authorised justice's record, the order is taken to have no effect.	13
[21] Sections 40 (1), 55 (1), 58 (2), 59, 60 (1), 86 (1), 99 (1) (c), 100 (1) and 101 (1) (b)	14
Insert "concerned" after "officer" wherever occurring.	15

[22] Part 5 Forensic procedures by order of Magistrate or authorised justice	1
Insert after section 43:	2
 Division 6 False or misleading information in applications	3 4
 43A False or misleading information in applications	5
(1) A person must not, in or in connection with an application for an order under this Part, give information to a Magistrate or authorised justice that the person knows to be false or misleading in a material particular.	6 7 8 9
Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.	10 11
(2) This section applies to an application made by telephone or other means as well as to one made in person.	12 13
(3) This section applies whether or not the information given is also verified on oath or by affidavit.	14 15
[23] Section 49A	16
Insert after section 49:	17
 49A Self-administered buccal swabs	18
If a forensic procedure is carried out on a suspect by the suspect himself or herself taking a sample by buccal swab, that forensic procedure may be carried out in the presence or view of a person who is of the opposite sex to the suspect.	19 20 21 22
[24] Section 55 Presence of interview friend or legal representative—Aboriginal persons and Torres Strait Islanders	23 24
Insert at the end of section 55 (3) (before the note):	25
If a suspect so waives his or her right to have an interview friend present, a legal representative of the suspect may still be present.	26 27 28
[25] Section 57 Recording of forensic procedure	29
Omit “a video” from section 57 (2) (b). Insert instead “the”.	30

[26] Section 57 (6)	1
Insert after section 57 (5):	2
(6) Nothing in this section prevents any recording of a forensic procedure being made for the purpose of maintaining good order, discipline and security in a correctional centre or other place of detention.	3 4 5 6
[27] Section 69 Matters that offender must be informed of before giving consent	7 8
Insert “senior” before “police officer” where secondly and thirdly occurring in section 69 (2).	9 10
[28] Section 70 Circumstances in which senior police officer may order non-intimate forensic procedure	11 12
Insert “senior” before “police officer” wherever occurring in section 70 (1).	13
[29] Section 71 Matters to be taken into account by senior police officer	14
Insert “senior” before “police officer”.	15
[30] Section 73 Record of order of senior police officer	16
Insert “senior” before “police officer” wherever occurring.	17
[31] Section 76 Carrying out of forensic procedures on volunteers	18
Insert “or excluded volunteer” after “suspect” in the definition of <i>volunteer</i> in section 76 (1).	19 20
[32] Section 76A	21
Insert after section 76:	22
76A Excluded volunteers	23
In this Act:	24
<i>excluded volunteer</i> means:	25
(a) a person who volunteers to a police officer to undergo a forensic procedure in relation to an offence under	26 27

	Part 3, or Subdivision 2 of Division 1 of Part 4, of the <i>Crimes Act 1900</i> of which the person is a victim, or	1 2
(b)	a child or incapable person whose parent or guardian volunteered to a police officer that the child or incapable person undergo a forensic procedure in relation to an offence under Part 3, or Subdivision 2 of Division 1 of Part 4, of the <i>Crimes Act 1900</i> of which the child or incapable person is a victim, or	3 4 5 6 7 8
(c)	a person who volunteers to a police officer to undergo a forensic procedure for the purpose of eliminating the person's finger prints or hand prints from those found in relation to an offence under Part 4 of the <i>Crimes Act 1900</i> , being the offence in relation to which the forensic procedure is carried out, or	9 10 11 12 13 14
(d)	a child or incapable person whose parent or guardian volunteered to a police officer that the child or incapable person undergo a forensic procedure for the purpose of eliminating the child or incapable person's finger prints or hand prints from those found in relation to an offence under Part 4 of the <i>Crimes Act 1900</i> , being the offence in relation to which the forensic procedure is carried out.	15 16 17 18 19 20 21 22
[33]	Section 77 Informed consent of volunteer or parent or guardian of volunteer	23 24
	Insert after section 77 (2) (c):	25
(c1)	if the police officer intends the information to be placed on the missing persons index of that system:	26 27
(i)	that the principal purpose for which the information is to be placed on that index is to assist in the identification of a missing person, and	28 29 30 31
(ii)	that the information may be used for the purposes of a criminal investigation or any other purpose for which the DNA database system may be used under Part 11 or 12, including for the purpose of matching the material against any or all of the other indexes on the database, and	32 33 34 35 36 37

	(iii)	if the information obtained from analysis of forensic material taken from the volunteer matches information in the DNA profile of a missing blood relative on the missing persons index, that the volunteer will be informed of the fact, and	1 2 3 4 5 6
	(iv)	if the information obtained from analysis of forensic material taken from the volunteer matches information in the DNA profile of another person on another index of the database, that the volunteer will be informed of the fact, and	7 8 9 10 11 12
	(v)	that the information obtained from analysis of forensic material taken from the volunteer, or any match of that information with any information in another DNA profile, cannot be used in proceedings against the volunteer, but may be admissible if adduced by the volunteer,	13 14 15 16 17 18
[34]	Section 83A		19
	Insert after section 83:		20
	83A Inadmissibility of certain evidence from forensic procedures undertaken for purpose of missing persons index		21 22
	(1)	This section applies to a person who volunteers to have a forensic procedure carried out for the purposes of placing information obtained from the analysis of the person's forensic material on the missing persons index.	23 24 25 26
	(2)	This section applies:	27
	(a)	to evidence of forensic material, or evidence consisting of forensic material, taken from a person to whom this section applies by a forensic procedure, and	28 29 30
	(b)	to evidence of any results of the analysis of the forensic material, and	31 32
	(c)	to any other evidence made or obtained as a result of or in connection with the carrying out of the forensic procedure.	33 34 35

(3)	If this section applies, evidence described in subsection (2) is not admissible in any proceedings against the person in a court, but may be admissible if adduced in such proceedings by the person.	1 2 3 4
(4)	This section extends to a person who volunteered to undergo a forensic procedure before the commencement of this section.	5 6
[35]	Section 87 Destruction of forensic material taken from offender after conviction quashed	7 8
	Insert “70 or” after “section”.	9
[36]	Section 87 (2)	10
	Insert at the end of section 87:	11
(2)	If a forensic procedure was carried out on a serious indictable offender under Part 7 and the offender’s conviction is quashed after the making of the order, the police officer in charge of the investigation of the offence must, as soon as practicable after the conviction is quashed, ensure that any forensic material obtained as a result of the carrying out of the procedure is destroyed.	12 13 14 15 16 17 18
[37]	Section 87A	19
	Insert after section 87:	20
87A	Destruction of forensic material given voluntarily for elimination purposes	21 22
	If a person has consented, or consent has been given on the person’s behalf, to have the person’s finger print or hand print taken for the purpose of eliminating the person’s finger prints or hand prints from those found in relation to an offence under Part 4 of the <i>Crimes Act 1900</i> , the police officer in charge of the investigation of the offence must ensure that the finger prints or hand prints are destroyed or returned to the person as soon as practicable after they have been used to eliminate the person from inquiries in relation to the event.	23 24 25 26 27 28 29 30 31

[38] Section 89 Destruction of forensic material where related evidence is inadmissible	1 2
Insert “after the end of the proceedings before the court (including any re-trial and any period during which an appeal may be made)” after “practicable” in section 89 (1).	3 4 5
[39] Section 90 Definitions	6
Insert “or (c1)” after “section 77 (2) (b)” in the definition of <i>volunteers (limited purposes) index</i> .	7 8
[40] Section 96 Registration of orders	9
Omit section 96 (1) and (2). Insert instead:	10
(1) The Minister may enter into arrangements with the responsible Ministers of one or more of the participating jurisdictions for the establishment and maintenance of one or more registers of orders for the carrying out of forensic procedures made under this Act or a corresponding law of a participating jurisdiction.	11 12 13 14 15
(2) An order is registered in accordance with such an arrangement when a copy of the order (being a copy certified by the person who made it) is registered:	16 17 18
(a) on such a register and the register is maintained in accordance with the arrangement, or	19 20
(b) in accordance with the law of the State, or of the participating jurisdiction, as the case may be, in which the register is kept.	21 22 23
[41] Section 96 (4)	24
Omit section 96 (4). Insert instead:	25
(4) An application for registration of an order, or for cancellation of registration of an order, may be made in accordance with the regulations.	26 27 28

[42] Section 98 (1A)	1
Insert after section 98 (1):	2
(1A) If it is not practicable to arrange for the presence of an	3
interpreter, it is sufficient compliance with subsection (1) if the	4
police officer arranges for a telephone linking to an interpreter.	5
[43] Section 109 Disclosure of information	6
Insert after section 109 (2) (f):	7
(f1) the purposes of informing a person who volunteered to	8
undergo a forensic procedure for the purposes of placing	9
information obtained from the analysis of the person's	10
forensic material on the missing persons index:	11
(i) that the DNA profile of the person matches a	12
DNA profile on an index of the DNA database	13
system, and	14
(ii) that the DNA profile of a missing blood relative	15
of the person matches a DNA profile on an	16
index of the DNA database system,	17
[44] Section 114 Application of other laws	18
Insert after section 114 (1) (b):	19
(b1) without limiting paragraph (a), the taking of finger prints	20
or hand prints of applicants seeking employment under	21
any Act,	22
[45] Section 114 (1) (f)	23
Insert "(b1)," after "(b)".	24
[46] Section 121 Monitoring of operation of Act by Ombudsman	25
Omit "2 years after the commencement of this section" from section	26
121 (1).	27
Insert instead "18 months after the commencement of Part 8".	28
[47] Section 121 (3)	29
Omit "2-year period". Insert instead "18-month period".	30

[48] Schedule 2 Savings, transitional and other provisions	1
Insert at the end of clause 1 (1):	2
<i>Crimes (Forensic Procedures) Amendment Act 2002</i>	3
[49] Schedule 2, Part 3	4
Insert after clause 3:	5
 Part 3 Provisions consequent on enactment of Crimes (Forensic Procedures) Amendment Act 2002	 6 7 8
 4 Definition	 9
In this Part, <i>amending Act</i> means the <i>Crimes (Forensic Procedures) Amendment Act 2002</i> .	10 11
 5 Application and order for repeated forensic procedure	 12
The amendment made by Schedule 1 [9] to the amending Act extends to circumstances where forensic material is lost or became unavailable for analysis before the commencement of the amendment.	13 14 15 16
 6 Application for interim orders	 17
The amendment made by Schedule 1 [15] to the amending Act does not apply to an application made but not dealt with before the commencement of the amendment.	18 19 20
 7 Records of applications and interim orders	 21
The amendments made by Schedule 1 [16]–[20] to the amending Act extend to applications and orders made before the commencement of the amendments.	22 23 24

Schedule 2 Amendment of Police Service Act 1990	1
(Section 4)	2
 Section 96A	3
Insert after section 96:	4
96A Finger printing and hand printing of applicants—police officers	5
(1) The Commissioner may, before accepting an application for appointment as a police officer, require the applicant to consent to the taking of a finger print or hand print for use by the Commissioner in determining the applicant's suitability for employment.	6 7 8 9 10
(2) Before a finger print or hand print is taken from an applicant for appointment as a police officer the applicant must be informed in writing that the print may be retained and used for the purpose of performing a check of the applicant's criminal history.	11 12 13 14 15
(3) The Commissioner must destroy any finger print or hand print taken under this section from any person who is not appointed to a position as a police officer as soon as practicable after the decision is made not to appoint the person to the position.	16 17 18 19
(4) A person who was not appointed to a position as a police officer may request that any finger print or hand print taken from the person in connection with an application for appointment as a police officer before the commencement of this section be destroyed. The Commissioner must ensure that such a request is complied with as soon as practicable after the request is made.	20 21 22 23 24 25 26

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- (5) A person who ceases to be a police officer may request that any
finger print or hand print taken from the person under this
section be destroyed. The Commissioner must ensure that such
a request is complied with as soon as practicable after the
request is made.
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