



New South Wales

# Crimes (Forensic Procedures) Amendment Bill 2008

## 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* (***the Principal Act***) to:

- (a) clarify the circumstances in which it is permissible to match DNA profiles, and
- (b) permit a DNA profile on the suspects index of the DNA database to be matched with another DNA profile on that index, and
- (c) permit a DNA profile on the unknown deceased persons index of the DNA database to be matched with another DNA profile on that index, and
- (d) enable the regulations to prescribe a person or body as a responsible authority of a participating jurisdiction for the purposes of Part 12 (Interstate enforcement) of the Principal Act and to include CrimTrac as a responsible authority in relation to the Commonwealth, and
- (e) set out the circumstances in which the Attorney General may enter into arrangements with participating jurisdictions for the transfer of information from the DNA database of this State to those jurisdictions and the transfer of information to this State from those jurisdictions, and
- (f) set out the purposes for which any transferred information may be used.

## 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 the date of assent to the proposed Act.

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

**Clause 4** provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced.

## Schedule 1 Amendments

Under the Principal Act, DNA profiles are held on a number of indexes on the DNA database. Matching between any 2 DNA profiles is permitted only in the circumstances set out in section 93 of that Act.

**Schedule 1 [1]** amends section 93 of the Principal Act to clarify that a DNA profile that has been placed on the volunteers (limited purposes) index is permitted to be matched with a DNA profile in the crime scene index, offenders index, missing persons index or unknown deceased persons index but only if the matching is carried out for a purpose for which the DNA profile was placed on the volunteers (limited purposes) index. A DNA profile that has been placed on the volunteers (limited purposes) index is not permitted to be matched with a DNA profile on the suspects index, the volunteers (limited purposes) index or the volunteers (unlimited purposes) index. It also clarifies that a DNA profile on the volunteers (unlimited purposes) index is permitted to be matched with a DNA profile on the offenders index and that a DNA profile on the missing persons index is permitted to be matched with a DNA profile on the suspects index. The amendment also permits a matching of a DNA profile on the suspects index with another DNA profile on that index and a matching of a DNA profile on the unknown deceased persons index with another DNA profile on that index. Currently matching is not permitted in either case.

**Schedule 1 [2]** provides that the regulations may prescribe a person or body as a responsible authority in relation to a participating jurisdiction for the purposes of the Principal Act and provides that CrimTrac is a responsible authority in relation to the Commonwealth. The Attorney General may enter into arrangements with a responsible authority for the sharing of DNA information or for the establishment and maintenance of a register of orders for the carrying out of forensic procedures.

**Schedule 1 [3]** provides that the Attorney General may enter into arrangements with the responsible authority of any one or more participating jurisdictions under which information from the DNA database of this State may be transmitted to those jurisdictions and information from those jurisdictions may be transmitted to this State. The arrangements may be entered into only for the purposes of investigating, or conducting proceedings for, an offence against the law of this State or those jurisdictions, the identification of missing or deceased persons or, if CrimTrac is a

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party to the arrangements, CrimTrac comparing the transmitted information with information transmitted from a participating jurisdiction and then notifying this State and that jurisdiction of any matches that it finds. Information transmitted under any such arrangements may not be used except for one of these purposes. **Schedule 1 [4] and [5]** make consequential amendments.

**Schedule 1 [6]** enables the regulations to make provision for matters of a savings or transitional nature consequent on the enactment of the proposed Act.

**Schedule 1 [7]** inserts savings provisions into Schedule 2 to the Principal Act that provide for a number of existing bilateral arrangements to be taken to be made under section 97 (1) of that Act from the date the particular arrangement was entered into.



First print



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New South Wales

# Crimes (Forensic Procedures) Amendment Bill 2008

No. , 2008

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## A Bill for

An Act to amend the *Crimes (Forensic Procedures) Act 2000* with respect to the matching of DNA profiles and the sharing of DNA information with other jurisdictions; and for other purposes.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Crimes (Forensic Procedures) Amendment Act 2008</i> .	3
<b>2 Commencement</b>	4
This Act commences on the date of assent to this Act.	5
<b>3 Amendment of Crimes (Forensic Procedures) Act 2000 No 59</b>	6
The <i>Crimes (Forensic Procedures) Act 2000</i> is amended as set out in Schedule 1.	7 8
<b>4 Repeal of Act</b>	9
(1) This Act is repealed on the day following the day on which this Act commences.	10 11
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	12 13



**Schedule 1 Amendments** 1

(Section 3) 2

**[1] Section 93 Permissible matching of DNA profiles** 3

Omit section 93 (1) and (2) (including the table to section 93 (2)). 4

Insert instead: 5

- (1) A matching of a DNA profile on an index of the DNA database system specified at the top of a column of the table to this subsection with a DNA profile on an index of the system specified in column 1 of a row of the table: 6
  - (a) is not permitted by this Part if “no” is shown at the intersection of the relevant row and column, and 7  
8  
9
  - (b) is permitted by this Part if “yes” is shown at the intersection of the relevant row and column, and 10  
11
  - (c) is permitted by this Part in connection with the volunteers (limited purposes) index if “only if within purpose” is shown at the intersection of the relevant row and column, but only if the matching is for a purpose for which the relevant DNA profile was placed on that index. 12  
13  
14  
15  
16  
17  
18

Index of profile to be matched	Is matching permitted?							
	column 1	column 2	column 3	column 4	column 5	column 6	column 7	column 8
	crime scene		suspects	volunteers (limited purposes)	volunteers (unlimited purposes)	offenders	missing persons	unknown deceased persons
crime scene	yes	yes	yes	only if within purpose	yes	yes	yes	yes
suspects	yes	yes	yes	no	no	yes	yes	yes
volunteers (limited purposes)	only if within purpose	no	no	no	no	only if within purpose	only if within purpose	only if within purpose
volunteers (unlimited purposes)	yes	no	no	no	no	yes	yes	yes
offenders	yes	yes	yes	only if within purpose	yes	yes	yes	yes

Index of profile to be matched	Is matching permitted?							
	column 1	column 2	column 3	column 4	column 5	column 6	column 7	column 8
missing persons	yes	yes	only if within purpose	yes	yes	yes	yes	yes
unknown deceased persons	yes	yes	only if within purpose	yes	yes	yes	yes	yes

- [2] **Section 95 Definitions** 1
- Omit the definition of *responsible authority*. Insert in alphabetical order: 2
- CrimTrac* means the Commonwealth agency of that name. 3
- responsible authority*, in relation to a participating jurisdiction, 4
- means any one or more of the following: 5
- (a) the Minister having responsibility for a corresponding law within that jurisdiction, 6
  - (b) a public authority that administers a corresponding law within that jurisdiction, 8
  - (c) a person or body prescribed by the regulations, 10
- and includes, in relation to the Commonwealth, CrimTrac. 11
- [3] **Section 97 Database information** 12
- Omit section 97 (1) and (1A). Insert instead: 13
- (1) The Minister may enter into arrangements for any of the purposes set out in subsection (1A) with the responsible authority of one or more participating jurisdictions under which: 14
    - (a) information from the DNA database of this State may be transmitted to any jurisdiction that is a party to the arrangements, and 15
    - (b) information from any such jurisdiction may be transmitted to this State. 16
  - (1A) Information that is transmitted under this section must not be used except for the following purposes: 17
    - (a) the investigation of, or the conduct of proceedings for, an offence against the law of this State or the law of a jurisdiction that is a party to the arrangements, 18
    - (b) the identification of missing or deceased persons, 19

	(c) if arrangements are entered into with CrimTrac— CrimTrac comparing the transmitted information with information transmitted from a participating jurisdiction and then notifying this State and that jurisdiction of any matches that it finds.	1 2 3 4 5
<b>[4]</b>	<b>Section 97 (1B)</b> Omit “Such an arrangement”. Insert instead “Arrangements under this section”.	6 7 8
<b>[5]</b>	<b>Section 109 Disclosure of information</b> Omit “(1) or (1A)” from section 109 (2) (c1).	9 10
<b>[6]</b>	<b>Schedule 2 Savings, transitional and other provisions</b> Insert at the end of clause 1 (1): <i>Crimes (Forensic Procedures) Amendment Act 2008</i>	11 12 13
<b>[7]</b>	<b>Schedule 2, Part 5</b> Insert after Part 4:	14 15
	<b>Part 5 Provisions consequent on enactment of Crimes (Forensic Procedures) Amendment Act 2008</b>	16 17 18
	<b>12 Ministerial arrangements under section 97</b>	19
	Each of the following arrangements is taken to have been validly entered into under section 97 (1), as substituted by the <i>Crimes (Forensic Procedures) Amendment Act 2008</i> , on and from the date the arrangement was entered into:	20 21 22 23
	(a) the arrangement entitled “Section 97 (1) New South Wales/Commonwealth Arrangement” signed by the Attorney General and the Minister for Justice and Customs of the Commonwealth and dated 25 November 2003,	24 25 26 27
	(b) the arrangement entitled “Crimes (DNA Database) (Reciprocal Access—New South Wales and Queensland) Arrangement” signed by the Attorney General and the Minister for Police and Corrective Services of Queensland and dated 16 May 2005,	28 29 30 31 32
	(c) the arrangement entitled “Arrangement for the Transmission of DNA Database Information to and from New South Wales and the CrimTrac Agency of the	33 34 35

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Commonwealth” signed by the Attorney General and the Chief Executive Officer of CrimTrac and dated 28 February 2007,	1 2 3
(d) the arrangement entitled “New South Wales and Western Australia Ministerial Arrangement for the Transmission of DNA Database Information” signed by the Attorney General and the Minister for Police and Emergency Services of Western Australia and dated 19 July 2007,	4 5 6 7 8
(e) the arrangement entitled “New South Wales and Australian Capital Territory Ministerial Arrangement for the Transmission of DNA Database Information” signed by the Attorney General and the Attorney General of the Australian Capital Territory and dated 20 July 2007,	9 10 11 12 13
(f) the arrangement entitled “New South Wales and Victoria Ministerial Arrangement for the Transmission of DNA Database Information” signed by the Attorney General and the Attorney General of Victoria and dated 13 August 2007,	14 15 16 17 18
(g) the arrangement entitled “New South Wales and Tasmania Ministerial Arrangement for the Transmission of DNA Database Information” signed by the Attorney General and the Minister for Justice and Workplace Relations of Tasmania and dated 17 September 2007,	19 20 21 22 23
(h) the arrangement entitled “New South Wales and South Australia Ministerial Arrangement for the Transmission of DNA Database Information” signed by the Attorney General and the Attorney General of South Australia and dated 19 February 2008.	24 25 26 27 28