



New South Wales

# Crimes (Forensic Procedures) Bill 2000

## Explanatory note

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

### Overview of Bill

The objects of this Bill are:

- (a) to lay down a regime for carrying out forensic procedures on persons suspected of having committed certain offences, persons convicted of serious indictable offences and persons who volunteer to undergo forensic procedures, and
- (b) to provide for the storage, use and destruction of material derived from those procedures, and
- (c) to make provision with respect to a national DNA database system containing information derived from the carrying out of such forensic procedures.

Parts 2–5 of the proposed Act provide for forensic procedures to be carried out on people who are suspects in relation to offences.

In different circumstances, forensic procedures (categorised as intimate forensic procedures, non-intimate forensic procedures and the taking of samples by buccal swab) may be carried out on suspects:

- (a) with the informed consent of the suspects, or
- (b) by order of a senior police officer, or
- (c) by order of a Magistrate.

While intimate samples and buccal swabs will be able to be taken only from persons suspected of indictable and summary offences prescribed by the regulations, non-intimate procedures will in general be able to be carried out on persons suspected of either indictable or summary offences.

If the carrying out of a forensic procedure is authorised under the proposed Act, it must be carried out in accordance with the rules and procedures set out in Part 6.

If a forensic procedure covered by the proposed Act is carried out without proper authority under the Act, evidence obtained through the procedure may be inadmissible in proceedings against the suspect (Part 9).

If a forensic procedure authorised by the proposed Act is not carried out as required by the Act (in particular Part 6), evidence obtained through the procedure may be inadmissible in proceedings against the suspect (Part 9).

The proposed Act also provides for the taking of blood and hair (other than pubic hair) samples, samples by buccal swabs and finger prints from people convicted of serious indictable offences who are serving sentences of imprisonment in correctional centres and other places of detention (Part 7) and for carrying out forensic procedures on volunteers and certain other persons (Part 8).

The proposed Act contains detailed provision in relation to a DNA database system containing information derived from the carrying out of forensic procedures (Part 11). It also provides for the reciprocal enforcement of orders for the carrying out of forensic procedures made in other jurisdictions and for exchange of information on the databases of other jurisdictions (Part 12).

The proposed Act contains a number of provisions that balance the rights of the suspect against the public interest in gathering evidence of offences. It includes safeguards to protect the rights and interests of suspects and other persons on whom forensic procedures are carried out, including safeguards to protect children, persons who are incapable and Aboriginal persons and Torres Strait Islanders.

## Outline of provisions

### Part 1 Preliminary

Proposed Part 1 defines or explains key terms used in the proposed Act and provides for the citation and commencement of the Act.

**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** defines words and expressions used in the proposed Act. ***Forensic procedure*** is defined to mean an intimate forensic procedure, a non-intimate forensic procedure or the taking of a sample by buccal swab. The definition makes it clear that the proposed Act will not authorise intrusions into any body cavity except the mouth or the taking of a sample solely to establish the identity of the person from whom it is taken. The definition of ***intimate forensic procedure*** lists those procedures which are considered to be more intrusive than non-intimate forensic procedures and that, under the proposed Act, can only be carried out with informed consent or by order of a Magistrate or court. The definition of ***non-intimate forensic procedure*** lists those procedures which are considered to be less intrusive. The taking of a ***sample by buccal swab*** (that is, a swab taken from the cheek) is treated as a separate category as specific provision is made for this forensic procedure. Under the proposed Act, these procedures may only be carried out on an adult who is a suspect and who is not under arrest with informed consent or by order of a Magistrate and may only be carried out on a child or an incapable person by order of a Magistrate. However, a senior police officer may order a non-intimate forensic procedure to be carried out on an adult under arrest if satisfied of certain matters specified in clause 20. The taking of prints from arrested persons for identification purposes will continue to be governed by sections 353A and 353AA of the *Crimes Act 1900* and from convicted persons for identification purposes by section 63 of the *Crimes (Sentencing Procedure) Act 1999*.

Clause 3 (4) provides that a person only ***informs*** another of a matter required by the proposed Act if they inform the person, through an interpreter if necessary, in a language (including sign language or braille) in which the other person is able to communicate with reasonable fluency.

**Clause 4** sets out a list of persons who can act as *interview friends* of suspects and serious indictable offenders who are children, incapable persons or Aboriginal persons or Torres Strait Islanders. Various provisions of the proposed Act give suspects, offenders and volunteers from these groups a right to have an interview friend present.

## **Part 2 Authority and time limits for forensic procedures on suspects: summary of rules**

Proposed Part 2 sets out in general terms the circumstances in which forensic procedures may be carried out on different classes of suspect and the time limits which apply to the conduct of a forensic procedure in different circumstances.

**Clause 5** contains a table that gives a guide to the various circumstances in which forensic procedures may be carried out on a suspect under the proposed Act.

**Clause 6** contains a table that gives a general guide to the time limits which apply to the conduct of forensic procedures in different circumstances. All forensic procedures conducted under the proposed Act must be completed within a reasonable period but within the following upper limits:

- (a) consensual procedure on a suspect not under arrest—2 hours (excluding “time out” as defined in clause 3), and
- (b) procedure by consent or ordered by a senior police officer on a suspect under arrest—not later than 2 hours after the end of the existing “investigation period” time limit (a reasonable period of up to 4 hours (with provision for the extension of the period for up to an additional 8 hours in certain circumstances)) under section 356D of the *Crimes Act 1900* (excluding “time out”), and
- (c) procedure ordered by a Magistrate—4 hours (excluding “time out”) or 2 hours in the case of a child, an incapable person, an Aboriginal person or a Torres Strait Islander (excluding “time out”).

## **Part 3 Forensic procedures on suspect by consent**

Proposed Part 3 gives authority to carry out forensic procedures with consent and sets out the requirements that must be met before a suspect is viewed as having given consent to a forensic procedure. It also prescribes the time limit that applies to the conduct of a procedure by consent on a suspect not under arrest.

**Clause 7** authorises a person to carry out a forensic procedure on a suspect with the informed consent of the suspect provided the procedure is carried out in accordance with proposed Part 6 (which sets out the rules that must be followed in conducting a forensic procedure and for providing material arising from a procedure to a suspect). Clause 7 also makes it clear that any such forensic procedure must be carried out not later than 2 hours after the expiration of the investigation period provided for by section 356D of the *Crimes Act 1900* (excluding “time out”).

**Clause 8** makes it clear that a child or incapable person (whether or not under arrest) cannot consent to a forensic procedure.

**Clause 9** sets out the requirements for informed consent to be given by a suspect a police officer does not have reasonable grounds to believe is an Aboriginal person or a Torres Strait Islander. The suspect can only give consent after a police officer informs the suspect about the forensic procedure in accordance with clause 13 and gives the suspect a written statement setting out the information or nature of the information that the suspect must be given under that clause. It provides that a suspect must have an opportunity to consult with a legal practitioner of the suspect’s choice before consenting to undergo the procedure.

**Clause 10** sets out the requirements for informed consent to be given by a suspect a police officer has reasonable grounds to believe is an Aboriginal person or a Torres Strait Islander. Like clause 9, such a suspect gives informed consent if a police officer asks the suspect to consent and informs the suspect about the procedure in accordance with clause 13. Clause 10 lists a number of additional procedures which must be followed to provide safeguards for such persons.

**Clause 11** authorises a police officer to request a suspect to undergo a forensic procedure if the police officer has complied with clauses 9 and 10 and is satisfied of the matters specified in clause 12.

**Clause 12** requires a police officer to be satisfied as to specified things before requesting a suspect’s consent to undergo a forensic procedure. This is intended to prevent a police officer from requesting consent to unnecessary forensic procedures, procedures which may only marginally be related to the offence in question or to procedures designed as “fishing expeditions”. The police officer must be satisfied (among other things) that the request is justified in all the circumstances.

**Clause 13** sets out the matters that a police officer must inform a suspect about before consent is given. These include the purpose for which the forensic procedure is required, the offence in question and the way in which the procedure is to be carried out. The suspect must also be told that the procedure may produce evidence that might be used in a court of law, that the forensic procedure will be carried out only by an appropriately qualified police officer or person, that the suspect has a right to have a medical practitioner or dentist present for some procedures, that the suspect may refuse consent, and the consequences of refusal.

For example, the police officer must inform a suspect who is under arrest or charged with an indictable or summary offence prescribed by the regulations who refuses consent to the taking of a sample by buccal swab that the consequences of that refusal are that a senior police officer may order a sample of hair other than pubic hair to be taken or a court order may be sought for the taking of such a sample or for some other forensic procedure to be carried out on the suspect.

**Clause 14** describes the effect of a withdrawal of consent, whether express or implied.

**Clause 15** requires the giving of information to a suspect and the giving of consent to be recorded in writing or electronically. Clauses 100 and 101 require provision of copies of such information or opportunities to view or hear such recordings to be provided to the suspect, his or her lawyer and, if applicable, his or her interview friend.

**Clause 16** imposes a time limit on the conduct of a forensic procedure on a suspect who is not under arrest. The procedure must be carried out as quickly as reasonably possible but in any case within 2 hours after the suspect presents himself or herself to the investigating police officer concerned. In working out this period of time, time outs can be disregarded (for example, the time during which the carrying out of the procedure is delayed to allow the suspect to communicate with a lawyer, friend, relative or medical practitioner and the time to convey the suspect to premises where the procedure can be carried out).

#### **Part 4 Non-intimate forensic procedures on suspects by order of senior police officer**

Proposed Part 4 gives authority to carry out a non-intimate forensic procedure without the consent of a suspect who has been requested to consent to the procedure if the carrying out of the procedure is ordered by a senior police officer.

**Clause 17** authorises a person to carry out a non-intimate forensic procedure on a suspect who has not consented to the carrying out of the procedure by order of a senior police officer provided the procedure is carried out in accordance with proposed Part 6. Clause 17 also makes it clear that any such forensic procedure must be carried out not later than 2 hours after the expiration of the investigation period provided for by section 356D of the *Crimes Act 1900* (excluding “time out”).

**Clause 18** sets out the circumstances in which a senior police officer may order the carrying out of a non-intimate forensic procedure on a suspect under the proposed Part.

**Clause 19** sets out the circumstances in which a senior police officer may order the taking of a sample of hair other than pubic hair from a suspect who has refused consent to the taking of a sample by buccal swab.

**Clause 20** requires a senior police officer to be satisfied as to various matters before ordering the carrying out of a non-intimate forensic procedure under proposed Part 4. The police officer must be satisfied (among other things) that there are reasonable grounds for believing that the person on whom it is proposed to carry out the procedure is a suspect who has committed an offence and that the carrying out of the procedure without consent is justified in all the circumstances.

**Clause 21** requires a senior police officer who makes an order under the proposed Part to make a signed record of the order and the reasons for making it. A copy of the record is to be made available to the suspect as soon as practicable after it is made. It makes it clear that an order may be made in person or by telephone, radio, telex, facsimile or other means of transmission.

## **Part 5 Forensic procedures by order of Magistrate**

Proposed Part 5 gives authority to carry out a forensic procedure on a suspect who has not consented to the carrying out of the procedure or cannot consent to it if the carrying out of the procedure is ordered by a Magistrate. It also provides for the making of orders in certain circumstances to repeat the carrying out of a forensic procedure.

## **Division 1      General**

**Clause 22** authorises a person to carry out a forensic procedure on a suspect by order of a Magistrate where a suspect (whether or not under arrest) has not consented to the forensic procedure or cannot consent to the forensic procedure provided the procedure is carried out in accordance with proposed Part 6.

**Clause 23** sets out the circumstances in which a Magistrate may order the carrying out of a forensic procedure on a suspect under the proposed Part.

## **Division 2      Final orders**

**Clause 24** provides for a Magistrate to order that a forensic procedure be carried out under the proposed Part if the circumstances set out in clause 23 exist and the Magistrate is satisfied as required by clause 25.

**Clause 25** requires a Magistrate to be satisfied of various matters before ordering the carrying out of a forensic procedure on a suspect. The Magistrate must be satisfied (among other things) that the person on whom it is proposed to carry out the procedure is a suspect, that there are reasonable grounds to believe that the suspect has committed a relevant offence and that the carrying out of the procedure is justified in all the circumstances.

**Clause 26** provides that only a police officer in charge of a police station, a custody manager within the meaning of section 355 of the *Crimes Act 1900*, the investigating police officer in relation to an offence or the Director of Public Prosecutions may apply for an order under the proposed Part. It also sets out the requirements for the making of an application, including the requirement that (subject to any order of the Magistrate to the contrary) the application be made in the presence of the suspect concerned.

**Clause 27** provides for the making of orders in limited circumstances to authorise forensic procedures to be carried out for a second time (for example, if a sample obtained by the first procedure carried out is contaminated).

**Clause 28** provides for the issue of warrants to secure the attendance of a suspect who is under arrest at the hearing of an application for an order under the proposed Part.



**Clause 29** provides for the issue of summonses and warrants to secure the attendance of a suspect who is not under arrest at the hearing of an application for an order under the proposed Part. A summons may be issued only if a Magistrate is satisfied that the issue is necessary to ensure the attendance of the suspect or is otherwise justified. A warrant may be issued only if the Magistrate is satisfied that the issue is necessary to ensure the attendance of the suspect and that a summons would not ensure the appearance, that the suspect might destroy evidence that might be obtained from the carrying out of the procedure or that the issue is otherwise justified (for example, where it is feared the suspect may abscond).

**Clause 30** sets out the procedure to be followed in hearing an application for an order under the proposed Part. It ensures that (subject to any contrary order of a Magistrate) an application may be heard only in the presence of the suspect concerned. It provides for any suspect to be represented by a lawyer at the hearing and requires children and incapable persons to be represented by an interview friend. It also requires Aboriginal persons and Torres Strait Islanders to be represented by an interview friend unless this requirement is waived by the suspect concerned.

**Clause 31** sets out various actions a Magistrate who makes an order under the proposed Part must take, including giving reasons for an order and keeping a written record of the order.

### **Division 3      Interim orders**

**Clause 32** sets out the circumstances in which a Magistrate may make an urgent interim order authorising a forensic procedure which must be carried out without delay. An interim order operates as provided by the proposed Division until a final hearing is held under proposed Division 2 at which time the interim order is confirmed or disallowed.

**Clause 33** sets out the procedure for making an application for an interim order. An application may be made in person or, if that is not practicable, by telephone, radio, telex, facsimile or other means of transmission.

**Clause 34** sets out the procedure to be followed at the hearing of an application for an interim order. Provision is made to ensure that the suspect and the suspect's lawyer or interview friend (if any) are given the opportunity to oppose the application, either orally or by written communication.

**Clause 35** sets out various actions a Magistrate who makes an interim order must take, including informing the applicant of the terms of the order and the time at which a further hearing on the application will take place and the application finally determined and the interim order confirmed or disallowed.

**Clause 36** requires the applicant for an interim order, and the Magistrate to whom an application is made, to keep certain records relating to the grounds on which the order was sought and the terms of any order made. The applicant must ensure that copies of those records are made available to the suspect concerned.

**Clause 37** permits a police officer, while an application for an interim order is being determined, to use reasonable force to prevent a suspect from destroying or contaminating any evidence that might be obtained by carrying out a forensic procedure if the order is made.

**Clause 38** prohibits analysis of a sample taken under an interim order unless a final order is made or the sample is likely to perish before a final order is made. It also makes it an offence for a person who conducts an analysis to disclose the results to any person other than the suspect before a final order is made or if the interim order is disallowed.

#### **Division 4            Time limits for forensic procedures ordered by Magistrate**

The proposed Division imposes time limits on the carrying out of forensic procedures that have been ordered by a Magistrate.

**Clause 39** provides for the proposed Division to apply to forensic procedures on suspects ordered by Magistrates.

**Clause 40** applies the same time limits for carrying out a forensic procedure on a suspect who is not under arrest by order of a Magistrate as apply to a procedure carried out on a suspect not in custody with informed consent under clause 16.

**Clause 41** provides for the issue of warrants for the arrest of suspects who are not under arrest for the purpose of carrying out a forensic procedure. A warrant may be issued only if a Magistrate is satisfied that the arrest is necessary to ensure the procedure can be carried out or is otherwise justified.

**Clause 42** sets out the time limits within which a forensic procedure is to be carried out on a suspect who is under arrest by order of a Magistrate. The suspect may be detained for as long as is reasonably necessary to allow the forensic procedure to be carried out but the forensic procedure must be carried out not later than 2 hours after the end of the investigation period permitted by section 356D of the *Crimes Act 1900* (excluding “time out”).

## **Division 5      Reports of proceedings under Act**

**Clause 43** creates an offence of intentionally or recklessly publishing the name of a suspect or any information likely to enable the identification of the suspect in a report of a proceeding under the proposed Act unless the suspect has been charged or a Magistrate has by order authorised the publication.

## **Part 6 Carrying out forensic procedures on suspects**

Proposed Part 6 sets out the rules that must be followed in conducting a forensic procedure on a suspect and in providing material arising from a procedure to a suspect. The rules are applied to the conduct of forensic procedures on serious indictable offenders and volunteers by clauses 65 and 76 (4).

### **Division 1      General**

**Clause 44** lays down a series of general principles in relation to the way a forensic procedure is to be carried out. It provides for the procedure to be carried out in circumstances affording reasonable privacy to the suspect, out of the presence or view of unnecessary persons (including persons of the opposite sex who could be replaced by persons of the suspect’s sex) and with minimal removal of clothing and visual inspection of the suspect.

**Clause 45** requires questioning of a suspect to be suspended while a forensic procedure is being carried out.

**Clause 46** requires a police officer to caution a suspect before a forensic procedure is carried out. Failure to comply with this provision may render any admissions made by the suspect inadmissible as evidence.

**Clause 47** authorises police officers and other persons authorised to carry out forensic procedures to use reasonable force to enable a forensic procedure to be carried out or to prevent the loss, destruction or contamination of any sample. However, the procedure must be carried out in a manner consistent with appropriate medical or other relevant professional standards.

**Clause 48** makes it clear that nothing in the proposed Act authorises the carrying out of a forensic procedure in a cruel, inhuman or degrading manner.

**Clause 49** regulates the taking of a sample of hair.

## **Division 2      Persons involved in forensic procedures**

**Clause 50** contains a table which lists the persons who are authorised under the proposed Act to carry out each forensic procedure. The table also indicates whether a suspect is entitled to request that a medical practitioner or dentist of his or her choice be present while the forensic procedure is carried out.

## **Division 3      Further provisions about who may carry out forensic procedures**

**Clause 51** requires certain forensic procedures to be carried out, if practicable, by a person of the same sex as the suspect and for any person assisting in the carrying out of the procedure to also, if practicable, be of the same sex as the suspect.

**Clause 52** provides authority for persons to assist persons authorised to carry out forensic procedures under the proposed Part to carry out the procedures.

## **Division 4      Presence of other people while forensic procedure is carried out**

**Clause 53** entitles a suspect to request the presence of a medical practitioner or dentist of his or her choice while certain forensic procedures are carried out. The chosen person is to be present unless he or she is unable or does not wish to attend or cannot be contacted within the time specified in the clause.

**Clause 54** requires either the suspect's interview friend or lawyer to be present when a forensic procedure is carried out on a suspect who is a child or incapable person. The interview friend may be excluded if he or she unreasonably interferes with or obstructs the carrying out of the procedure.

**Clause 55** requires either the suspect's interview friend or lawyer to be present when a forensic procedure is carried out on a suspect who the investigating police officer has reason to suspect is an Aboriginal person or Torres Strait Islander except in the circumstances specified in the clause. The interview friend may be excluded if he or she unreasonably interferes with or obstructs the carrying out of the procedure.

**Clause 56** limits the number of police officers who may be present while a forensic procedure is carried out on a suspect to those reasonably necessary to ensure that the procedure is carried out effectively and in accordance with the proposed Act. It also requires any such police officer to be of the same sex as the suspect, if this is practicable.

## **Division 5      Recording of forensic procedure**

**Clause 57** requires the carrying out of a forensic procedure (other than the taking of a hand print, finger print, foot print or toe print) on a suspect to be electronically recorded where practicable and unless the suspect objects. The suspect may choose to have the procedure instead conducted in the presence of an independent person (other than a police officer).

## **Division 6      Procedure after forensic procedure is carried out**

**Clause 58** requires a suspect to be given a part of a sample taken from the suspect that is sufficient for analysis if there is sufficient material to be analysed both in the investigation of the offence and on behalf of the suspect. The provision is limited in this way because in many cases insufficient material may be available, for example, where a flake of paint has been removed from under a suspect's fingernail or where a small blood stain is all that is found and these samples are entirely used in the process of analysis.

**Clause 59** requires a copy of any photograph taken of a part of a suspect's body during a forensic procedure to be made available to the suspect.

**Clause 60** requires a copy of the results of any analysis of material taken from a sample from a suspect to be given to the suspect.

## **Part 7 Carrying out of certain forensic procedures after conviction of serious indictable offenders**

Proposed Part 7 provides for the taking of samples of blood, samples of hair other than pubic hair, samples by buccal swabs and finger prints from persons who are serving sentences of imprisonment for serious indictable offences in correctional centres or other places of detention.

**Clause 61** sets out the forensic procedures to which the proposed Part applies.

**Clause 62** authorises the taking of samples of hair (other than pubic hair) and finger prints from serious indictable offenders with the informed consent of the offenders or by order of a police officer.

**Clause 63** authorises the taking of a sample of blood from a serious indictable offender with the informed consent of the offender or by court order.

**Clause 64** authorises the taking of samples by buccal swab from serious indictable offenders. If an offender refuses consent to the taking of a sample by buccal swab, a senior police officer may order a sample of hair other than pubic hair to be taken instead (see clause 70) or a court order may be sought for the taking of the sample by buccal swab or the carrying out of some other forensic procedure.

**Clause 65** applies the rules set out in proposed Part 6 that must be followed in conducting a forensic procedure and in providing material arising from a procedure on a suspect to the conduct of forensic procedures on serious indictable offenders and provision of material under proposed Part 7.

**Clause 66** describes the scope of the proposed Part. It makes it clear, for example, that the proposed Part does not authorise the carrying out of a forensic procedure on a serious indictable offender who is a suspect otherwise than in accordance with proposed Parts 2–5.

**Clause 67** sets out the requirements for informed consent to be given by an offender.

**Clause 68** authorises a police officer to request a serious indictable offender (other than a child or an incapable person) to undergo a forensic procedure.

**Clause 69** sets out the matters that a police officer must inform a serious indictable offender about before consent is given.

**Clause 70** sets out the circumstances in which a police officer may order the taking of a sample of hair other than pubic hair or the taking of finger prints of a serious indictable offender without the consent of the offender.

**Clause 71** requires the police officer to take into account whether the proposed Act would authorise the forensic procedure to be carried out in the absence of the order.

**Clause 72** provides for the signing and witnessing of forms of consent.

**Clause 73** requires a police officer who makes an order under the proposed Part to make a signed record of the order and the reasons for making it. A copy of the order is to be made available to the offender as soon as practicable after it is made.

**Clause 74** authorises a police officer to apply to a court for an order for the taking of a blood sample or a buccal swab from a serious indictable offender.

**Clause 75** provides for the carrying out of forensic procedures by court order at a correctional centre or other place of detention.

## **Part 8 Carrying out of forensic procedures on volunteers and certain other persons**

Proposed Part 8 gives authority to carry out forensic procedures on persons who have volunteered to undergo a forensic procedure.

**Clause 76** authorises a person to carry out a forensic procedure on a volunteer (other than a child or an incapable person) with the informed consent of the volunteer and on a child or an incapable person with the informed consent of the parent or guardian of the volunteer or by order of a Magistrate.

**Clause 77** sets out the requirements for informed consent to be given by a volunteer or the parent or guardian of a volunteer.

**Clause 78** provides for the signing and witnessing of forms of consent under the proposed Part.

**Clause 79** describes the effect of a withdrawal of consent, whether express or implied.

**Clause 80** sets out the circumstance in which a Magistrate may order the carrying out of a forensic procedure on a child or an incapable person under the proposed Part.

**Clause 81** sets out the circumstance in which a Magistrate may order that forensic material obtained from carrying out a forensic procedure on a volunteer who withdraws consent to the carrying out of the procedure may be retained.

## **Part 9 Admissibility of evidence**

Proposed Part 9 makes evidence obtained from carrying out forensic procedures inadmissible in certain circumstances.

### **Division 1 Forensic evidence**

**Clause 82** provides for evidence to be inadmissible if it is obtained in breach of, or if there has been a failure to comply with, the provisions of the proposed Act unless the person does not object to its admission or the court, after considering a number of listed matters (including a mistaken but reasonable belief about the age of a child), rules that admission is justified despite the breach or failure. If a court admits such evidence, the judge is required to inform the jury of the breach or failure to comply and to give appropriate warnings about the evidence.

**Clause 83** provides for evidence related to forensic material taken from a person that should have been destroyed under the proposed Act to be inadmissible unless adduced by the person.

### **Division 2 Other evidence**

**Clause 84** makes evidence of a person's refusal to consent to the carrying out of a forensic procedure, or withdrawal of consent, inadmissible in proceedings against the person except to establish or rebut an allegation that a police officer or other person investigating the commission of the offence concerned acted contrary to law in carrying out the investigation.

**Clause 85** allows evidence of how a forensic procedure was carried out to be admitted against a suspect in a court of law for certain purposes (for example, to establish or rebut an allegation of unreasonable force used during the procedure) even if it was obtained in breach of, or where there was a failure to comply with, proposed Part 6.



## Part 10 Destruction of forensic material

Proposed Part 10 requires forensic material to be destroyed in certain circumstances.

**Clause 86** requires any forensic material obtained from a forensic procedure carried out under an interim order that is disallowed to be destroyed and for a copy of the results of any analysis of the material to be made available to the suspect.

**Clause 87** provides for the destruction of forensic material obtained from an offender whose conviction is quashed.

**Clause 88** provides for the destruction of forensic material taken from a suspect by a forensic procedure carried out under the proposed Act in specified circumstances. It ensures that in general material is not retained where a suspect is not found guilty of an offence or where proceedings are not instituted against the suspect within 12 months.

**Clause 89** requires the Commissioner of Police to ensure certain forensic material is destroyed.

## Part 11 DNA database system

Proposed Part 11 regulates the recording, retention and use of information obtained from the carrying out of forensic procedures on a DNA database system.

**Clause 90** defines words and expressions used in the proposed Act, including a definition of the *DNA database system* and definitions of the various indexes of DNA profiles that may be contained in the system.

**Clause 91** creates offences relating to the intentional or reckless supply of forensic material for analysis for the purpose of deriving a DNA profile for inclusion on an index of the DNA database system when the forensic material is required by law to be destroyed and the supply of certain forensic material for analysis.

**Clause 92** creates an offence of accessing information stored on the DNA database system otherwise than in accordance with the clause.

**Clause 93** creates an offence of matching certain profiles on the DNA database system for impermissible purposes. For example, if a volunteer has agreed to the placing of a DNA profile of the volunteer on the system only for certain purposes, it will be an offence to match the profile with another DNA profile on the system for some other purpose.

**Clause 94** creates offences relating to the recording or retention of identifying information about a person on the DNA database system.

## **Part 12 Interstate enforcement**

Proposed Part 12 provides for the reciprocal enforcement of orders for the carrying out of forensic procedures made in other jurisdictions and for the exchange of information on the DNA databases of other jurisdictions.

**Clause 95** defines words and expressions for the purposes of the proposed Part.

**Clause 96** enables the Minister to enter into arrangements within other jurisdictions for the establishment and maintenance of a register of orders for the carrying out of forensic procedures and for the reciprocal enforcement of the orders.

**Clause 97** enables the Minister to enter into arrangements within other jurisdictions for the exchange of information on the DNA database system for the purposes of the investigation of, and proceedings in respect of, offences.

## **Part 13 General provisions relating to operation of this Act**

Proposed Part 13 contains various provisions relating to the manner of complying with requirements of the proposed Act, the burden of proof of various matters, the duties and liabilities of persons carrying out, or assisting in the carrying out of, forensic procedures authorised by the proposed Act and the use and disclosure of information obtained from forensic material taken under the proposed Act.

**Clause 98** requires a police officer to arrange for the presence of an interpreter before taking specified action in respect of a suspect or offender if he or she has reasonable grounds to believe the suspect or offender is unable to communicate with reasonable fluency in the English language.

**Clause 99** enables a lawyer or interview friend of a suspect or offender to make any request or objection that may be made by the suspect or offender under the proposed Act on behalf of the suspect or offender. It also requires a suspect's or offender's lawyer or interview friend who is present when information that is required to be given to a suspect or offender is given to the suspect or offender to also be given the information.

**Clause 100** ensures that a suspect, offender or volunteer is given copies or transcripts of, or the opportunity to view, any audio or video recordings concerning the suspect, offender or volunteer that are made as required by the proposed Act. It ensures that the opportunity to view is also given to the suspect's, offender's or volunteer's lawyer and interview friend (if any).

**Clause 101** sets out the ways of making material available to a suspect, offender or volunteer.

**Clause 102** ensures that a suspect is not charged for materials received or for being given an opportunity to view a video in accordance with the requirements of the proposed Act.

**Clause 103** places the burden of proof on the prosecution of proving, on the balance of probabilities, that a police officer had a belief on reasonable grounds, or suspected on reasonable grounds, as to a matter referred to in the proposed Act.

**Clause 104** places the burden of proof on the prosecution of proving, on the balance of probabilities, that it was not practicable to do something required by the proposed Act to be done if practicable.

**Clause 105** places the burden of proof on the prosecution, on the balance of probabilities, of showing that any time said to be disregarded under clause 16 (2), 40 (2) or 53 (2) was properly disregarded. For example, if a suspect argued that results of a forensic procedure should be excluded from evidence because he or she was detained for longer than allowed under the proposed Act, the prosecution would need to prove that any time disregarded by police officers was properly disregarded.

**Clause 106** places the burden of proof on the prosecution, on the balance of probabilities, of voluntary waiver of certain rights by an Aboriginal person or a Torres Strait Islander.

**Clause 107** protects a person who carries out a forensic procedure, or assists in carrying it out, from civil or criminal liability for actions properly or necessarily done in good faith so long as the person believed informed consent had been given or that the procedure had been duly ordered.

**Clause 108** makes it clear that the proposed Act does not require any medical practitioner, nurse, dentist, dental technician or other appropriately qualified police officer or person to carry out a forensic procedure.

**Clause 109** makes it an offence for a person who has access to information stored on the DNA database system or revealed by a forensic procedure carried out on a suspect, offender or volunteer to disclose that information except in certain circumstances specified in the clause.

**Clause 110** provides for the retention of electronic recordings required for investigative or evidentiary purposes.

## **Part 14 Operation of this Act and effect on other laws**

Proposed Part 14 contains provisions relating to the operation of the proposed Act and its relationship to other laws.

**Clause 111** makes it clear that the proposed Act does not authorise the carrying out of a forensic procedure on a person who is under 10 years of age.

**Clause 112** confirms that the proposed Act does not apply to the taking of photographs, hand prints, finger prints, foot prints or toe prints under sections 353A and 353AA of the *Crimes Act 1900* and section 63 of the *Crimes (Sentencing Procedure) Act 1999*.

**Clause 113** ensures that the provisions and protections of Part 10A of the *Crimes Act 1900* concerning the detention of persons after arrest (such as limits on the length of time a suspect can be held under arrest) continue to apply as far as possible. As many of the rights and protections provided under the proposed Act overlap with those provided by Part 10A, the clause also confirms that the rights and protections conferred by the proposed Act are in addition to those conferred by Part 10A.

**Clause 114** makes it clear that the proposed Act does not limit or exclude the operation of various other laws of the State relating to matters described in the clause.

**Clause 115** ensures that the proposed Act does not affect the taking, retention or use of forensic material or information obtained from forensic material in accordance with certain other laws.

## Part 15 Miscellaneous

Proposed Part 15 contains miscellaneous provisions.

**Clause 116** provides for the establishment and maintenance of a list of persons who are suitable, and willing, to be interviewed friends of Aboriginal persons or Torres Strait Islanders.

**Clause 117** provides for proceedings for an offence against the proposed Act and regulations.

**Clause 118** enables the Governor to make regulations for the purposes of the proposed Act.

**Clause 119** is a formal provision giving effect to the amendments to the *Crimes Act 1900* and *Justices Act 1902* set out in proposed Schedule 1.

**Clause 120** is a formal provision giving effect to the savings, transitional and other provisions set out in proposed Schedule 2.

**Clause 121** provides for the Ombudsman to monitor for a period of 18 months the exercise of police powers conferred by the proposed Act.

**Clause 122** provides for the review of the proposed Act at the end of 18 months after its date of assent, and for a tabling in Parliament of a report on the results of the review. The report will contain a report from the Ombudsman under clause 121 on the work and activities of the Ombudsman under that clause.

**Schedule 1** amends the *Justices Act 1902* to provide for the making of appeals on questions of law from certain decisions of Magistrates under the proposed Act. It also makes consequential amendments to the *Crimes Act 1900* to omit section 353A (3A) and (3B) (which relate to the taking of samples of blood, saliva and hair from persons in lawful custody).

**Schedule 2** contains a provision enabling the regulations under the proposed Act to contain provisions of a savings or transitional nature (clause 1) and makes it clear that the Act does not apply to the carrying out of forensic procedures on persons arrested for an offence, charged with an offence or summonsed to appear before a court before the commencement of proposed clause 2 of the Schedule.



New South Wales

# Crimes (Forensic Procedures) Bill 2000

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New South Wales

## Crimes (Forensic Procedures) Bill 2000

No. , 2000

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### A Bill for

An Act to make provision with respect to the powers to carry out forensic procedures on certain persons and to make provision with respect to a DNA database system; to make a related amendment to the *Justices Act 1902* and consequential amendments to the *Crimes Act 1900*; and for other purposes.

---

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

**Part 1 Preliminary** 2

**1 Name of Act** 3

This Act is the *Crimes (Forensic Procedures) Act 2000*. 4

**2 Commencement** 5

This Act commences on a day or days to be appointed by proclamation. 6  
7

**3 Interpretation** 8

(1) **Definitions** 9

In this Act: 10

**Aboriginal legal aid organisation** means an organisation that provides legal assistance to Aboriginal persons or Torres Strait Islanders, being an organisation prescribed by the regulations for the purposes of this definition. 11  
12  
13  
14

**Aboriginal person** means a person who: 15

- (a) is a member of the Aboriginal race of Australia, and 16
- (b) identifies as an Aboriginal, and 17
- (c) is accepted by the Aboriginal community as an Aboriginal. 18

**adult** means a person of or above 18 years of age. 19

**appropriately qualified**, in relation to carrying out a forensic procedure, means: 20  
21

- (a) having suitable professional qualifications or experience to carry out the forensic procedure, or 22  
23
- (b) qualified under the regulations to carry out the forensic procedure. 24  
25

**authorised applicant** for an order for the carrying out of a forensic procedure on a suspect means: 26  
27

- (a) the police officer in charge of a police station, or 28
- (b) a custody manager within the meaning of section 355 of the *Crimes Act 1900*, or 29  
30

(c) the investigating police officer in relation to an offence, or	1
(d) the Director of Public Prosecutions.	2
<b>child</b> means a person who is at least 10 years of age but under 18 years of age.	3 4
<b>Note.</b> The Act does not authorise the carrying out of a forensic procedure on a person who is under 10 years of age (see section 111).	5 6
<b>correctional centre medical officer</b> , in relation to a correctional centre or other place of detention, means any person appointed or acting as medical officer for the correctional centre or other place of detention.	7 8 9
<b>corresponding law</b> is defined in section 95.	10
<b>crime scene index</b> is defined in section 90.	11
<b>dentist</b> means a person registered, or taken to be registered, as a dentist under the <i>Dentists Act 1989</i> .	12 13
<b>destroy</b> is explained in subsection (5).	14
<b>DNA database system</b> is defined in section 90.	15
<b>exercise</b> a function includes perform a duty.	16
<b>forensic material</b> means:	17
(a) samples, or	18
(b) hand prints, finger prints, foot prints or toe prints, or	19
(c) photographs, or	20
(d) casts or impressions,	21
taken from or of a person's body.	22
<b>forensic procedure</b> means:	23
(a) an intimate forensic procedure, or	24
(b) a non-intimate forensic procedure, or	25
(c) the taking of a sample by buccal swab,	26
but does not include:	27
(d) any intrusion into a person's body cavities except the mouth, or	28
(e) the taking of any sample for the sole purpose of establishing the identity of the person from whom the sample is taken.	29 30
<b>Note.</b> Paragraph (e) makes it clear that the Act only applies to samples taken for forensic purposes and not to samples taken purely to establish the identity of a person.	31 32 33
<b>function</b> includes a power, authority or duty.	34

<b><i>incapable person</i></b> means an adult who:	1
(a) is incapable of understanding the general nature and effect of a forensic procedure, or	2 3
(b) is incapable of indicating whether he or she consents or does not consent to a forensic procedure being carried out.	4 5
<b><i>inform</i></b> is explained in subsection (4).	6
<b><i>informed consent</i></b> in relation to:	7
(a) a suspect—is defined in section 9, and	8
(b) a serious indictable offender—is defined in section 67, and	9
(c) a volunteer or parent or guardian of a volunteer—is defined in section 77.	10 11
<b><i>interview friend</i></b> is explained in section 4.	12
<b><i>intimate forensic procedure</i></b> means the following forensic procedures:	13
(a) an external examination of:	14
(i) the genital or anal area or the buttocks, or	15
(ii) the breasts of a female or a transgender person who identifies as a female,	16 17
(b) the taking of a sample of blood,	18
(c) the taking of a sample of saliva (otherwise than by buccal swab),	19 20
(d) the taking of a sample of pubic hair,	21
(e) the taking of a sample by swab or washing from:	22
(i) the external genital or anal area or the buttocks, or	23
(ii) the breasts of a female or a transgender person who identifies as a female,	24 25
(f) the taking of a sample by vacuum suction, by scraping or by lifting by tape from:	26 27
(i) the external genital or anal area or the buttocks, or	28
(ii) the breasts of a female or a transgender person who identifies as a female,	29 30
(g) the taking of a dental impression,	31
(h) the taking of a photograph of:	32
(i) the genital or anal area or the buttocks, or	33
(ii) the breasts of a female or a transgender person who identifies as a female,	34 35



- 
- |     |  |    |
|-----|--|----|
| (i) | the taking of an impression or cast of a wound from:   | 1  |
|     | (i) the genital or anal area or the buttocks, or   | 2  |
|     | (ii) the breasts of a female or a transgender person who identifies as a female.   | 3  |
|     |  | 4  |
|     | <b><i>investigating police officer</i></b> means 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. | 5  |
|     |  | 6  |
|     |  | 7  |
|     | <b><i>legal representative</i></b> of a suspect means a legal practitioner acting for the suspect.   | 8  |
|     |  | 9  |
|     | <b><i>non-intimate forensic procedure</i></b> means the following forensic procedures:   | 10 |
|     |  | 11 |
| (a) | an external examination of a part of the body other than:  | 12 |
|     | (i) the genital or anal area or the buttocks, or   | 13 |
|     | (ii) the breasts of a female or a transgender person who identifies as a female,   | 14 |
|     |  | 15 |
|     | that requires touching of the body or removal of clothing,   | 16 |
| (b) | the taking of a sample of hair other than pubic hair,  | 17 |
| (c) | the taking of a sample from a nail or under a nail,  | 18 |
| (d) | the taking of a sample by swab or washing from any external part of the body other than:   | 19 |
|     | (i) the genital or anal area or the buttocks, or   | 20 |
|     | (ii) the breasts of a female or a transgender person who identifies as a female,   | 21 |
|     |  | 22 |
|     |  | 23 |
| (e) | the taking of a sample by vacuum suction, by scraping or by lifting by tape from any external part of the body other than:   | 24 |
|     | (i) the genital or anal area or the buttocks, or   | 25 |
|     | (ii) the breasts of a female or a transgender person who identifies as a female,   | 26 |
|     |  | 27 |
|     |  | 28 |
| (f) | the taking of a hand print, finger print, foot print or toe print,   | 29 |
| (g) | the taking of a photograph of a part of the body other than:   | 30 |
|     | (i) the genital or anal area or the buttocks, or   | 31 |
|     | (ii) the breasts of a female or a transgender person who identifies as a female,   | 32 |
|     |  | 33 |
| (h) | the taking of an impression or cast of a wound from a part of the body other than:   | 34 |
|     | (i) the genital or anal area or the buttocks, or   | 35 |
|     |  | 36 |

- (ii) the breasts of a female or a transgender person who identifies as a female, 1  
2
- (i) the taking of physical measurements (whether or not involving marking) for biomechanical analysis of an external part of the body other than: 3  
4
  - (i) the genital or anal area or the buttocks, or 5  
6
  - (ii) the breasts of a female or a transgender person who identifies as a female. 7  
8
- offender*** means: 9
  - (a) a serious indictable offender, or 10
  - (b) a prescribed offender. 11
- order*** means: 12
  - (a) order of a Magistrate under section 24, or 13
  - (b) order of a Magistrate under section 27, or 14
  - (c) interim order of a Magistrate under section 32, or 15
  - (d) order of a court under section 74 or 75, or 16
  - (e) order of a Magistrate under section 80 or 81. 17
- parent*** of a child means a person who has parental responsibility for the child. 18  
19
- parental responsibility***, in relation to a child, means all the duties, powers, responsibilities and authority which, by law, parents have in relation to their children. 20  
21  
22
- participating jurisdiction*** is defined in section 95. 23
- police station*** includes: 24
  - (a) a police station of a State or Territory, and 25
  - (b) a building that is occupied by members of the Police Service and that is nominated by the Commissioner of Police for the purposes of this paragraph, and 26  
27  
28
  - (c) a building occupied by the Australian Federal Police. 29
- prescribed offence*** means: 30
  - (a) an indictable offence, or 31
  - (b) any other offence under a law of the State prescribed by the regulations for the purposes of this paragraph. 32  
33

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<b><i>prescribed offender</i></b> means a person who is convicted of a prescribed offence.	1 2
<b><i>recognised transgender person</i></b> means a person the record of whose sex is altered under Part 5A of the <i>Births, Deaths and Marriages Registration Act 1995</i> or under the corresponding provisions of a law of another Australian jurisdiction.	3 4 5 6
<b><i>recording</i></b> includes audio recording and video recording.	7
<b><i>responsible person</i></b> , in relation to the DNA database system, means the person responsible for the care, control and management of the system.	8 9
<b><i>sample</i></b> has a meaning affected by subsection (3).	10
<b><i>senior police officer</i></b> means a police officer of or above the rank of sergeant.	11 12
<b><i>serious indictable offence</i></b> means:	13
(a) an indictable offence under a law of the State or of a participating jurisdiction that is punishable by imprisonment for life or a maximum penalty of 5 or more years imprisonment, or	14 15 16
(b) an indictable offence under a law of the State that is punishable by a maximum penalty of less than 5 years imprisonment, being an offence the elements constituting which (disregarding territorial considerations) are the same as an offence under a law of a participating jurisdiction that is punishable by a maximum of 5 or more years imprisonment.	17 18 19 20 21 22
<b><i>serious indictable offender</i></b> means a person who has been convicted of a serious indictable offence.	23 24
<b><i>suspect</i></b> means the following:	25
(a) a person whom a police officer suspects on reasonable grounds has committed an offence,	26 27
(b) a person charged with an offence,	28
(c) a person who has been summoned to appear before a court in relation to an offence alleged to have been committed by the person,	29 30 31
(d) a person who has been served with an attendance notice issued under section 100AB of the <i>Justices Act 1902</i> in relation to an offence.	32 33 34

---

<i>time out</i> means:	1
(a) the time (if any) that is reasonably required to convey a suspect from the place where the suspect presents himself or herself to the investigating police officer to the nearest premises where facilities for carrying out a forensic procedure in accordance with this Act are available to the investigating police officer,	2 3 4 5 6
(b) any time that is reasonably spent waiting for an investigating police officer or appropriately qualified person who is to carry out the forensic procedure to arrive at the place where the procedure is to be carried out,	7 8 9 10
(c) any time that is reasonably spent waiting for facilities or equipment that are needed to carry out the procedure to become available,	11 12 13
(d) any time during which carrying out the procedure is suspended or delayed to allow the suspect, or someone else on the suspect's behalf, to communicate with a legal practitioner, friend, relative, parent, guardian, interpreter, medical practitioner, dentist or other person as provided by this Act,	14 15 16 17 18
(e) any time during which carrying out the procedure is suspended or delayed to allow such a legal practitioner, friend, relative, parent, guardian, interpreter, medical practitioner, dentist or other person to arrive at the place where the procedure is to be carried out,	19 20 21 22 23
(f) any time during which carrying out the procedure is suspended or delayed to allow the suspect to consult with a legal practitioner, friend, relative, parent, guardian, interpreter, medical practitioner, dentist or other person at the place where the procedure is to be carried out as provided by this Act,	24 25 26 27 28
(g) any time during which carrying out the procedure is suspended or delayed to allow the suspect to receive medical attention,	29 30
(h) any time during which carrying out the procedure is suspended or delayed to allow the suspect to recover from the effects of intoxication due to alcohol or another drug (or both),	31 32 33
(i) any time during which carrying out the procedure is suspended or delayed to allow the suspect to rest or receive refreshments or to give the suspect access to toilet and other facilities,	34 35 36
(j) any time during which carrying out the procedure is suspended or delayed at the request of the suspect,	37 38

- 
- (k) any time that is reasonably spent waiting for a senior police officer or Magistrate to make an order as provided by this Act. 1  
2
- Torres Strait Islander** means a person who: 3
- (a) is a member of the Torres Strait Islander race, and 4
- (b) identifies as a Torres Strait Islander, and 5
- (c) is accepted by the Torres Strait Islander community as a Torres Strait Islander. 6  
7
- transgender person** is defined in subsection (6). 8
- under arrest** is explained in subsection (2). 9
- volunteer** is defined in section 76. 10
- volunteers (limited purposes) index** is defined in section 90. 11
- volunteers (unlimited purposes) index** is defined in section 90. 12
- (2) **Under arrest** 13
- For the purposes of this Act, a person is **under arrest** if he or she is a person to whom Part 10A of the *Crimes Act 1900* applies. 14  
15
- (3) **Taking samples** 16
- For the purposes of this Act, a **sample** taken from a person includes a sample taken from the person that consists of matter from another person's body. 17  
18  
19
- (4) **Informs** 20
- For the purposes of this Act, a person **informs** another person of a matter if the person informs the other person of the matter, through an interpreter if necessary, in a language (including sign language or braille) in which the other person is able to communicate with reasonable fluency. 21  
22  
23  
24  
25
- (5) **Destroy forensic material or information** 26
- For the purposes of this Act, a person **destroys** forensic material taken from another person by a forensic procedure, the results of the analysis of the material or other information gained from it (including information placed on the DNA database system) if the person destroys any means of identifying the forensic material or information with the person from whom it was taken or to whom it relates. 27  
28  
29  
30  
31  
32
- (6) **Transgender persons** 33
- In this Act, a reference to a person being **transgender** or a **transgender person** is a reference to a person, whether or not the person is a recognised transgender person: 34  
35  
36
-

(a)	who identifies as a member of the opposite sex, by living, or seeking to live, as a member of the opposite sex, or	1 2
(b)	who has identified as a member of the opposite sex by living as a member of the opposite sex, or	3 4
(c)	who, being of indeterminate sex, identifies as a member of a particular sex by living as a member of that sex,	5 6
	and includes a reference to the person being thought of as a transgender person, whether the person is, or was, in fact a transgender person.	7 8 9
(7)	In this Act (other than subsection (6)), a reference:	10
(a)	to a member of the opposite sex of a person means, if the person is a transgender person, a member of the opposite sex to the sex with which the transgender person identifies, and	11 12 13
(b)	to a member of the same sex as a person means, if the person is a transgender person, a member of the same sex as the sex with which the transgender person identifies.	14 15 16
(8)	Notes included in the text of this Act do not form part of this Act.	17
<b>4</b>	<b>Interview friends</b>	18
(1)	This section lists the people who may act as an <i>interview friend</i> of a suspect or serious indictable offender for the purposes of a provision of this Act referring to an interview friend. Different people may act as interview friends of a suspect or offender for the purposes of different provisions of this Act.	19 20 21 22 23
(2)	If the suspect or serious indictable offender is a child or an incapable person, the following people may act as <i>interview friends</i> :	24 25
(a)	a parent or guardian, or other person, chosen by, or acceptable to, the suspect or offender,	26 27
(b)	a legal representative of the suspect or offender,	28
(c)	if the suspect or offender is an Aboriginal person or a Torres Strait Islander and none of the previously mentioned persons is available—a representative of an Aboriginal legal aid organisation or a person whose name is on the relevant list maintained under section 116 (1) who is chosen by, or acceptable to, the suspect or offender,	29 30 31 32 33 34

- 
- (d) if none of the previously mentioned persons is available—a person who is not a police officer or in any way involved in the investigation of an offence in relation to which a forensic procedure is proposed to be carried out, or is carried out, on the suspect or offender. 1  
2  
3  
4  
5
- (3) Where the suspect or serious indictable offender is an Aboriginal person or a Torres Strait Islander not covered by subsection (2), the following people may act as *interview friends*: 6  
7  
8
- (a) a relative or other person chosen by the suspect or offender, 9
- (b) a legal practitioner acting for the suspect or offender, 10
- (c) if none of the previously mentioned persons is available—a representative of an Aboriginal legal aid organisation, or a person whose name is included in the relevant list maintained under section 116 (1). 11  
12  
13  
14
- (4) A suspect or serious indictable offender who has a legal representative may also have an interview friend who is not the suspect's or offender's legal representative. 15  
16  
17

Clause 5 Crimes (Forensic Procedures) Bill 2000

Part 2 Authority and time limits for forensic procedures on suspects: summary of rules

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## Part 2 Authority and time limits for forensic procedures on suspects: summary of rules

### 5 How forensic procedures may be authorised in different circumstances

The following table shows the circumstances in which a forensic procedure may be carried out on a suspect, and shows the provisions that authorise the carrying out of the procedure.

#### Authority for forensic procedures

Suspect's status	Intimate forensic procedure or buccal swab	Non-intimate forensic procedure
1 Adult not under arrest	With informed consent under Part 3	With informed consent under Part 3
	By order of a Magistrate under Part 5	By order of a Magistrate under Part 5
2 Adult under arrest	With informed consent under Part 3	With informed consent under Part 3
	By order of a Magistrate under Part 5	By order of a senior police officer under Part 4
3 Incapable person (whether or not under arrest)	By order of a Magistrate under Part 5	By order of a Magistrate under Part 5
4 Child at least 10 but under 18 (whether or not under arrest)	By order of a Magistrate under Part 5	By order of a Magistrate under Part 5



**6 Time limits for carrying out forensic procedures**

The following table sets out in general terms the time limits that apply to the carrying out of a forensic procedure on a suspect depending on the status of the suspect and the source of the authority to carry out the procedure.

**Time limits for forensic procedures**

<b>Suspect's status</b>	<b>Procedure with suspect's consent (Part 3)</b>	<b>Procedure by order of a senior police officer (Part 4)</b>	<b>Procedure by order of a Magistrate (Part 5)</b>
1 Child or an incapable person, not under arrest	Not applicable	Not applicable	Procedure must be carried out within 2 hours after suspect presents to investigating police officer, disregarding "time out" (see section 40)
2 Suspect, including Aboriginal person or Torres Strait Islander (not a child or an incapable person), not under arrest	Procedure must be carried out within 2 hours after suspect presents to investigating police officer, disregarding "time out" (see section 16)	Not applicable	Procedure must be carried out within 2 hours after suspect presents to investigating police officer, disregarding "time out" (see section 40)

Clause 6 Crimes (Forensic Procedures) Bill 2000

Part 2 Authority and time limits for forensic procedures on suspects: summary of rules

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<b>Suspect's status</b>	<b>Procedure with suspect's consent (Part 3)</b>	<b>Procedure by order of a senior police officer (Part 4)</b>	<b>Procedure by order of a Magistrate (Part 5)</b>	
3 Child or an incapable person, under arrest	Not applicable	Not applicable	Procedure must be carried out not later than 2 hours after the end of the investigation period permitted under section 356D of the <i>Crimes Act 1900</i> , disregarding "time out" (see Division 4 of Part 5)	1 2 3 4 5 6 7 8 9 10 11
4 Suspect, including Aboriginal person or Torres Strait Islander (not a child or an incapable person), under arrest	Suspect may be detained in accordance with Part 10A of the <i>Crimes Act 1900</i> , for 2 hours after the end of the investigation period permitted under section 356D of the <i>Crimes Act 1900</i> , disregarding "time out" (see section 7 (3) and (4))	Suspect may be detained in accordance with Part 10A of the <i>Crimes Act 1900</i> , for 2 hours after the end of the investigation period permitted under section 356D of the <i>Crimes Act 1900</i> , disregarding "time out" (see section 17 (3) and (4))	Procedure must be carried out not later than 2 hours after the end of the investigation period permitted under section 356D of the <i>Crimes Act 1900</i> , disregarding "time out"	12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27

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## Part 3 Forensic procedures on suspect by consent

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|--|--|
| <b>7 Forensic procedure may be carried out with informed consent of suspect</b>  | 1                                      |
| (1) A person is authorised to carry out a forensic procedure on a suspect with the informed consent of the suspect. The person is authorised to carry out the procedure in accordance with Part 6 and not otherwise.   | 2<br>3<br>4<br>5<br>6                  |
| (2) This Part does not authorise the carrying out of a forensic procedure on a suspect who is:   | 7<br>8                                 |
| (a) a child, or  | 9                                      |
| (b) an incapable person.   | 10                                     |
| (3) This Part does not authorise keeping a suspect under arrest, in order to carry out a forensic procedure, for more than 2 hours after the expiration of the investigation period provided for by section 356D of the <i>Crimes Act 1900</i> .   | 11<br>12<br>13<br>14                   |
| (4) In working out any period of time for the purposes of subsection (3), any time out is to be disregarded.   | 15<br>16                               |
| (5) Nothing in this Act or Part 10A of the <i>Crimes Act 1900</i> prevents the carrying out of a forensic procedure, with the informed consent of the suspect, during the investigation period provided for by section 356D of the <i>Crimes Act 1900</i> . However, neither carrying out the forensic procedure, nor any delays associated with carrying out the forensic procedure, operates to extend the investigation period provided for by section 356D of the <i>Crimes Act 1900</i> . | 17<br>18<br>19<br>20<br>21<br>22<br>23 |
| <b>8 People who cannot consent to forensic procedures</b>  | 24                                     |
| (1) A child cannot consent to a forensic procedure.  | 25                                     |
| (2) An incapable person cannot consent to a forensic procedure.  | 26                                     |
| <b>9 Informed consent to forensic procedures—general</b>   | 27                                     |
| (1) This section applies where:  | 28                                     |
| (a) a police officer intends to ask a suspect to consent to a forensic procedure, and  | 29<br>30                               |
| (b) the police officer does not believe on reasonable grounds that the suspect is an Aboriginal person or a Torres Strait Islander.  | 31<br>32                               |

(2)	A suspect gives informed consent to a forensic procedure if the suspect consents after a police officer:	1 2
(a)	asks the suspect to consent to the forensic procedure under section 11, and	3 4
(b)	gives the suspect a written statement setting out:	5
(i)	the information that the suspect must be given under section 13 (1) (a), (e), (f), (g), (i), (j) and (k), and	6 7
(ii)	the nature of the information that the suspect must be given under section 13 (1) (b), (c) and (d) (but not the specific information that the suspect is to be given under these paragraphs in relation to the particular forensic procedure), and	8 9 10 11 12
(c)	informs the suspect about the forensic procedure in accordance with section 13, and	13 14
(d)	gives the suspect a reasonable opportunity to communicate, or attempt to communicate, with a legal practitioner of the suspect's choice and, subject to subsection (3), to do so in private.	15 16 17 18
(3)	If the suspect is under arrest, the police officer need not allow the suspect to communicate, or attempt to communicate, with the legal practitioner in private if the police officer suspects on reasonable grounds that the suspect might attempt to destroy or contaminate any evidence that might be obtained by carrying out the forensic procedure.	19 20 21 22 23
<b>10</b>	<b>Informed consent to forensic procedures—Aboriginal persons and Torres Strait Islanders</b>	24 25
(1)	This section applies where:	26
(a)	a police officer intends to ask a suspect to consent to a forensic procedure, and	27 28
(b)	the police officer believes on reasonable grounds that the suspect is an Aboriginal person or a Torres Strait Islander.	29 30
(2)	A suspect gives informed consent to a forensic procedure if the suspect consents after a police officer:	31 32
(a)	asks the suspect to consent to the forensic procedure under section 11, and	33 34

- 
- (b) gives the suspect a written statement setting out: 1
- (i) the information that the suspect must be given under 2  
section 13 (1) (a), (e), (f), (g), (h), (i), (j) and (k), and 3
- (ii) the nature of the information that the suspect must be 4  
given under section 13 (1) (b), (c) and (d) (but not the 5  
specific information that the suspect is to be given 6  
under these paragraphs in relation to the particular 7  
forensic procedure), and 8
- (c) informs the suspect about the forensic procedure in accordance 9  
with section 13, and 10
- (d) complies with the rest of this section. 11
- (3) The police officer must not ask the suspect to consent to the forensic 12  
procedure unless: 13
- (a) an interview friend is present, or 14
- (b) the suspect has expressly and voluntarily waived his or her right 15  
to have an interview friend present. 16
- Note.** Section 106 relates to proving a waiver under paragraph (b). 17
- (4) Before asking the suspect to consent to a forensic procedure, the police 18  
officer must: 19
- (a) inform the suspect that a representative of an Aboriginal legal 20  
aid organisation will be notified that the suspect is to be asked 21  
to consent to a forensic procedure, and 22
- (b) notify such a representative accordingly. 23
- (5) The police officer is not required to comply with subsection (4) if: 24
- (a) he or she is aware that the suspect has arranged for a legal 25  
practitioner to be present while the suspect is asked to consent 26  
to the forensic procedure, or 27
- (b) subsection (3) (b) applies. 28
- (6) After asking a suspect covered by subsection (3) (b) to consent to a 29  
forensic procedure, the police officer must give the suspect a 30  
reasonable opportunity to communicate, or attempt to communicate, 31  
with a legal practitioner of the suspect's choice and, subject to 32  
subsection (8), to do so in private. 33

(7)	After asking a suspect not covered by subsection (3) (b) to consent to a forensic procedure, the police officer must allow the suspect to communicate with the interview friend (if any), and with the suspect's legal representative (if any), and, subject to subsection (8), to do so in private.	1 2 3 4 5
(8)	If a suspect covered by subsection (6) or (7) is under arrest, the police officer need not allow the suspect to communicate, or attempt to communicate, with the legal practitioner, or the suspect's interview friend or legal representative, in private if the police officer suspects on reasonable grounds that the suspect might attempt to destroy or contaminate any evidence that might be obtained by carrying out the forensic procedure.	6 7 8 9 10 11 12
(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 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.	13 14 15 16 17
<b>11</b>	<b>Police officer may request suspect to consent to forensic procedure</b>	18
	A police officer may request a suspect to undergo a forensic procedure if the police officer has complied with sections 9 and 10 and is satisfied as required by section 12.	19 20 21
<b>12</b>	<b>Matters to be considered by police officer before requesting consent to forensic procedure</b>	22 23
	The police officer must be satisfied that:	24
(a)	the person on whom the procedure is proposed to be carried out is a suspect, and	25 26
(b)	the person on whom the procedure is proposed to be carried out is not a child or an incapable person, and	27 28
(c)	if the forensic procedure concerned is an intimate forensic procedure—there are reasonable grounds to believe that the forensic procedure might produce evidence tending to confirm or disprove that the suspect committed:	29 30 31 32
	(i) a prescribed offence, or	33
	(ii) another prescribed offence arising out of the same circumstances as that offence, or	34 35

- 
- (iii) another prescribed offence in respect of which evidence likely to be obtained as a result of carrying out the procedure on the suspect is likely to have probative value, and
- Note.** *Prescribed offence* is defined in section 3 as an indictable offence or any other offence prescribed by the regulations.
- (d) if the forensic procedure concerned is a non-intimate forensic procedure other than the taking of a sample of hair other than pubic hair—there are reasonable grounds to believe that the forensic procedure might produce evidence tending to confirm or disprove that the suspect committed:
- (i) an indictable or a summary offence, or
- (ii) another indictable or summary offence arising out of the same circumstances as that offence, or
- (iii) another indictable or summary offence in respect of which evidence likely to be obtained as a result of carrying out the procedure on the suspect is likely to have probative value, and
- (e) if the forensic procedure concerned is the taking of a sample of hair other than pubic hair—there are reasonable grounds to believe that the forensic procedure might produce evidence tending to confirm or disprove that the suspect committed:
- (i) a prescribed offence, or
- (ii) another prescribed offence arising out of the same circumstances as that offence, or
- (iii) another prescribed offence in respect of which evidence likely to be obtained as a result of carrying out the procedure on the suspect is likely to have probative value, and
- (f) if the forensic procedure concerned is the taking of a sample by buccal swab—there are reasonable grounds to believe that the forensic procedure might produce evidence tending to confirm or disprove that the suspect committed:
- (i) a prescribed offence, or
- (ii) another prescribed offence arising out of the same circumstances as that offence, or
- (iii) another prescribed offence in respect of which evidence likely to be obtained as a result of carrying out the procedure on the suspect is likely to have probative value, and

- (g) the request for consent to the forensic procedure is justified in all the circumstances. 1  
2

**13 Matters that suspect must be informed of before giving consent** 3

- (1) The police officer must (personally or in writing) inform the suspect of the following matters: 4  
5
  - (a) that the giving of information under this section, and the giving of consent (if any) by the suspect, is being or will be recorded by electronic means, or in writing, and that the suspect has a right to be given an opportunity to hear or view the recording as provided by section 100, 6  
7  
8  
9  
10
  - (b) the purpose for which the forensic procedure is required, 11
  - (c) the offence in relation to which the police officer wants the forensic procedure carried out, 12  
13
  - (d) the way in which the forensic procedure is to be carried out, 14
  - (e) that the forensic procedure may produce evidence against the suspect that might be used in a court of law, 15  
16
  - (f) that the forensic procedure will be carried out by an appropriately qualified police officer or person, 17  
18
  - (g) if relevant, the matters specified in subsection (2), 19
  - (h) if the police officer believes on reasonable grounds that the suspect is an Aboriginal person or a Torres Strait Islander—that the suspect’s interview friend may be present while the forensic procedure is carried out, 20  
21  
22  
23
  - (i) that the suspect may refuse to consent to the carrying out of the forensic procedure, 24  
25
  - (j) the consequences of not consenting, as specified in subsection (3), (4), (5), (6) or (7) (whichever is applicable), 26  
27
  - (k) if the police officer intends forensic material obtained from the carrying out of the forensic procedure to be used for the purpose of deriving a DNA profile on the suspect—that information obtained from analysis of the forensic material obtained from carrying out the forensic procedure may be placed on the DNA database system and the rules that will apply under this Act to its disclosure and use. 28  
29  
30  
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- (2) **Suspect's right to have medical practitioner or dentist present during some forensic procedures** 1
- The police officer must inform the suspect that the suspect may ask 2  
that a medical practitioner or dentist (depending on the kind of forensic 3  
procedure) of his or her choice be present while the forensic procedure 4  
is carried out unless the forensic procedure is: 5
- (a) the taking of a hand print, finger print, foot print or toe print, or 6  
7
- (b) the taking of a sample of saliva or a sample by buccal swab, or 8
- (c) the external examination of a part of the body other than: 9  
(i) the genital or anal area or the buttocks, or 10  
(ii) the breasts of a female or a transgender person who 11  
identifies as a female, 12  
that requires the touching of the body or removal of clothing, 13  
or 14
- (d) the taking of a sample of hair other than pubic hair, or 15
- (e) the taking of a sample from a nail or from under a nail, or 16
- (f) the taking of a sample by swab or washing from any external 17  
part of the body other than: 18  
(i) the genital or anal area or the buttocks, or 19  
(ii) the breasts of a female or a transgender person who 20  
identifies as a female, or 21
- (g) the taking of a sample by vacuum suction, scraping or lifting by 22  
tape from any external part of the body other than: 23  
(i) the genital or anal area or the buttocks, or 24  
(ii) the breasts of a female or a transgender person who 25  
identifies as a females, or 26
- (h) the taking of a photograph of an external part of the body other 27  
than: 28  
(i) the genital or anal area or the buttocks, or 29  
(ii) the breasts of a female or a transgender person who 30  
identifies as a female, or 31
- (i) the taking of physical measurements (whether or not involving 32  
marking) for biomechanical analysis of an external part of the 33  
body other than: 34  
(i) the genital or anal area or the buttocks, or 35  
(ii) the breasts of a female or a transgender person who 36  
identifies as a female. 37
-

- (3) **Failure to consent to non-intimate forensic procedure—suspect under arrest** 1  
If the suspect is under arrest and the forensic procedure is a 2  
non-intimate forensic procedure, the police officer must inform the 3  
suspect that, if the suspect does not consent, a senior police officer 4  
may order the carrying out of the forensic procedure under Part 4 if he 5  
or she is satisfied of the matters referred to in section 20. 6 7
- (4) **Failure to consent to intimate forensic procedure—suspect under arrest** 8  
If the suspect is under arrest in relation to a prescribed offence and the 9  
forensic procedure is an intimate forensic procedure, the police officer 10  
must inform the suspect that, if the suspect does not consent, an 11  
application may be made to a Magistrate for an order authorising the 12  
carrying out of the forensic procedure. 13
- (5) **Failure to consent to intimate or non-intimate forensic procedure—suspect not under arrest** 14  
If the suspect is not under arrest and the forensic procedure is a non- 15  
intimate forensic procedure or an intimate forensic procedure, the 16  
police officer must inform the suspect that, if the suspect does not 17  
consent, an application may be made to a Magistrate for an order 18  
authorising the carrying out of the forensic procedure. 19 20
- (6) **Failure to consent to taking of sample by buccal swab—suspect under arrest** 21  
If the suspect is under arrest for a prescribed offence and the forensic 22  
procedure is the taking of a sample by buccal swab, the police officer 23  
must inform the suspect that, if the suspect does not consent: 24 25
- (a) a senior police officer may order the taking of a sample of hair 26  
other than pubic hair under Part 4, or 27
- Note.** See section 19. 28
- (b) an application may be made to a Magistrate for an order 29  
authorising the taking of a sample by buccal swab or some 30  
other forensic procedure. 31
- (7) **Failure to consent to taking of sample by buccal swab—suspect not under arrest** 32  
If the suspect is not under arrest for a prescribed offence and the 33  
forensic procedure is the taking of a sample by buccal swab, the police 34  
officer must inform the suspect that, if the suspect does not consent, an 35  
application may be made to a Magistrate for an order authorising the 36  
taking of a sample by buccal swab or some other forensic procedure. 37 38

<b>14</b>	<b>Withdrawal of consent</b>	1
	If a person expressly withdraws consent to the carrying out of a forensic procedure under this Part (or if the withdrawal of such consent can reasonably be inferred from the person's conduct) before or during the carrying out of the forensic procedure:	2
		3
		4
		5
	(a) the forensic procedure is to be treated from the time of the withdrawal as a forensic procedure for which consent has been refused, and	6
		7
		8
	(b) the forensic procedure is not to proceed except by order of a senior police officer under Part 4 or a Magistrate under Part 5.	9
		10
<b>15</b>	<b>Recording of giving information and suspect's responses</b>	11
	(1) The police officer must, if practicable, ensure that the giving of the information about the proposed forensic procedure and the suspect's responses (if any) are recorded by electronic means.	12
		13
		14
	(2) If recording the giving of the information and the suspect's responses (if any) by electronic means is not practicable, the police officer must ensure that a written record of the giving of the information and the suspect's responses (if any) is made, and that a copy of the record is made available to the suspect.	15
		16
		17
		18
		19
	<b>Note.</b> Part 13 contains provisions about making copies of material (including copies of tapes) available to the suspect.	20
		21
<b>16</b>	<b>Time for carrying out forensic procedure—suspect not under arrest</b>	22
	(1) If a suspect who is not under arrest:	23
	(a) consents to a forensic procedure, and	24
	(b) presents himself or herself to the investigating police officer to undergo the procedure,	25
		26
	the procedure must be carried out as quickly as reasonably possible but in any case within 2 hours after the suspect so presents himself or herself.	27
		28
		29
	(2) In working out any period of time for the purposes of subsection (1), any time out is to be disregarded.	30
		31

<b>Part 4 Non-intimate forensic procedures on suspects by order of senior police officer</b>	1 2
<b>17 Non-intimate forensic procedure may be carried out by order of senior police officer</b>	3 4
(1) A person is authorised to carry out a non-intimate forensic procedure on a suspect by order of a senior police officer under section 18 or 19. The person is authorised to carry out the procedure in accordance with Part 6 and not otherwise.	5 6 7 8
(2) This Part does not authorise the carrying out of a forensic procedure on a suspect who is:	9 10
(a) a child, or	11
(b) an incapable person.	12
(3) This Part does not authorise keeping a suspect under arrest, in order to carry out a forensic procedure, for more than 2 hours after the expiration of the investigation period provided for by section 356D of the <i>Crimes Act 1900</i> .	13 14 15 16
(4) In working out any period of time for the purposes of subsection (3), any time out is to be disregarded.	17 18
(5) Nothing in this Act or Part 10A of the <i>Crimes Act 1900</i> prevents the carrying out of a forensic procedure, in accordance with a senior police officer's order under section 18 or 19, during the investigation period provided for by section 356D of the <i>Crimes Act 1900</i> . However, neither carrying out the forensic procedure, nor any delays associated with carrying out the forensic procedure, operate to extend the investigation period provided for by Part 10A of the <i>Crimes Act 1900</i> .	19 20 21 22 23 24 25
<b>18 Circumstances in which senior police officer may order non-intimate forensic procedure</b>	26 27
A senior police officer may order the carrying out of a non-intimate forensic procedure on a suspect who is under arrest if:	28 29
(a) the suspect has been asked under Part 3 to consent to the carrying out of the forensic procedure, and	30 31
(b) the suspect has not consented, and	32
(c) the senior police officer is satisfied as required by section 20.	33

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<b>19</b>	<b>Sample of hair may be taken by order of senior police officer if consent to take sample by buccal swab refused</b>	1 2
	A senior police officer may order the taking of a sample of hair other than pubic hair from a suspect who is under arrest for a prescribed offence if:	3 4 5
	(a) the suspect has been asked under Part 3 to consent to the taking of a sample by buccal swab, and	6 7
	(b) the suspect has not consented, and	8
	(c) the senior police officer is satisfied as required by section 20.	9
<b>20</b>	<b>Matters to be considered by senior police officer before ordering non-intimate forensic procedure</b>	10 11
	A senior police officer who makes an order under section 18 or 19 must be satisfied that:	12 13
	(a) the suspect is under arrest, and	14
	(b) the suspect is not a child or an incapable person, and	15
	(c) there are reasonable grounds to believe that the suspect committed:	16 17
	(i) an offence, or	18
	(ii) another offence arising out of the same circumstances as that offence, or	19 20
	(iii) another offence in respect of which evidence likely to be obtained as a result of carrying out the procedure on the suspect is likely to have probative value, and	21 22 23
	(d) there are reasonable grounds to believe that the forensic procedure might produce evidence tending to confirm or disprove that the suspect committed such an offence, and	24 25 26
	(e) the carrying out of the forensic procedure without consent is justified in all the circumstances.	27 28

<b>21 Making and recording senior police officer's order</b>	1
(1) The senior police officer may make an order under section 18 or 19 in person or, if that is not practicable, by telephone, radio, telex, facsimile or other means of transmission.	2 3 4
(2) If an order is made by radio or other form of oral communication, the senior police officer must ensure that:	5 6
(a) the suspect or the suspect's legal representative, if any, and	7
(b) the suspect's interview friend, if any,	8
are given an opportunity to speak to the police officer.	9
(3) If the order is made by telex, facsimile or other form of written communication, the senior police officer must ensure that:	10 11
(a) the suspect or the suspect's legal representative, if any, and	12
(b) the suspect's interview friend, if any,	13
are given an opportunity to make a written submission to the senior police officer, or to speak to the senior police officer by telephone, radio or other form of oral communication.	14 15 16
(4) The senior police officer must, at the time of, or as soon as practicable after, making an order under section 18 or 19, make a record of:	17 18
(a) the order made, and	19
(b) the date and time when the order was made, and	20
(c) the reasons for making it,	21
and must sign the record.	22
(5) The senior police officer must ensure that a copy of the record is sent to or made available to the suspect as soon as practicable after the record is made.	23 24 25

<b>Part 5 Forensic procedures by order of Magistrate</b>	1
<b>Division 1 General</b>	2
<b>22 Forensic procedure may be carried out by order of Magistrate</b>	3
A person is authorised to carry out a forensic procedure on a suspect by order of a Magistrate under section 24, 27 or 32. The person is authorised to carry out the procedure in accordance with Part 6 and not otherwise.	4 5 6 7
<b>23 Circumstances in which Magistrate may order forensic procedure</b>	8
A Magistrate may, under section 24 or 32, order the carrying out of a forensic procedure on a suspect if:	9 10
(a) the suspect is not under arrest and has not consented to the forensic procedure, or	11 12
(b) the suspect is under arrest and has not consented to the forensic procedure, or	13 14
(c) under section 8, the suspect cannot consent to the forensic procedure.	15 16
<b>Division 2 Final orders</b>	17
<b>24 Final order for carrying out of forensic procedure</b>	18
A Magistrate may order the carrying out of a forensic procedure on a suspect if:	19 20
(a) section 23 applies, and	21
(b) the Magistrate is satisfied as required by section 25.	22
<b>25 Matters to be considered by Magistrate before ordering forensic procedure</b>	23 24
The Magistrate must be satisfied that:	25
(a) the person on whom the procedure is proposed to be carried out is a suspect, and	26 27

- (b) if the forensic procedure concerned is an intimate forensic procedure, on the evidence before the Magistrate there are reasonable grounds to believe that the suspect committed:
- (i) a prescribed offence, or
  - (ii) another prescribed offence arising out of the same circumstances as that offence, or
  - (iii) another prescribed offence in respect of which evidence likely to be obtained as a result of carrying out the procedure on the suspect is likely to have probative value, and
- Note.** A *prescribed offence* is defined in section 3 as an indictable offence or any other offence prescribed by the regulations.
- (c) if the forensic procedure concerned is a non-intimate forensic procedure other than the taking of a sample of hair other than pubic hair, on the evidence before the Magistrate, there are reasonable grounds to believe that the suspect committed:
- (i) an indictable or a summary offence, or
  - (ii) another indictable or summary offence arising out of the same circumstances as that offence, or
  - (iii) another indictable or summary offence in respect of which evidence likely to be obtained as a result of carrying out the procedure on the suspect is likely to have probative value, and
- (d) if the forensic procedure concerned is the taking of a sample of hair other than pubic hair, on the evidence before the Magistrate, there are reasonable grounds to believe that the suspect committed:
- (i) a prescribed offence, or
  - (ii) another prescribed offence arising out of the same circumstances as that offence, or
  - (iii) another prescribed offence in respect of which evidence likely to be obtained as a result of carrying out the procedure on the suspect is likely to have probative value, and
- (e) if the forensic procedure concerned is the taking of a sample by buccal swab, on the evidence before the Magistrate, there are reasonable grounds to believe that the suspect committed:
- (i) a prescribed offence, or
  - (ii) another prescribed offence arising out of the same circumstances as that offence, or



(iii)	another prescribed offence in respect of which evidence likely to be obtained as a result of carrying out the procedure on the suspect is likely to have probative value, and	1 2 3 4
(f)	there are reasonable grounds to believe that the forensic procedure might produce evidence tending to confirm or disprove that the suspect committed the relevant offence, and	5 6 7
(g)	the carrying out of the forensic procedure is justified in all the circumstances.	8 9
<b>26</b>	<b>Application for order</b>	<b>10</b>
(1)	An authorised applicant (but no other person) may apply to a Magistrate for an order under section 24 authorising him or her to arrange the carrying out of a forensic procedure on a suspect.	11 12 13
(2)	An application for an order must:	14
(a)	be made in writing, and	15
(b)	be supported by evidence on oath or by affidavit dealing with the matters referred to in section 25 (a) and, if relevant, section 25 (b), (c), (d) and (e), and	16 17 18
(c)	specify the type of forensic procedure sought to be carried out, and	19 20
(d)	be made in the presence of the suspect (subject to any contrary order made by the Magistrate).	21 22
(3)	If a Magistrate refuses an application for an order authorising the carrying out of a forensic procedure on a suspect, the authorised applicant (or any other person aware of the application) may not make a further application to carry out the same forensic procedure on the suspect unless he or she provides additional information that justifies the making of the further application.	23 24 25 26 27 28
<b>27</b>	<b>Application and order for repeated forensic procedure</b>	<b>29</b>
(1)	An authorised applicant (but no other person) may apply to a Magistrate for an order under this section authorising him or her to arrange the carrying out for a second time of a forensic procedure on a suspect on whom a forensic procedure has already been carried out by order of a Magistrate under section 24.	30 31 32 33 34

(2) The application for the order must:	1
(a) be made in writing, and	2
(b) specify the type of forensic procedure carried out and the grounds for authorising it to be carried out a second time, and	3
(c) be supported by evidence on oath or by affidavit.	4
(3) A Magistrate may order the carrying out for a second time of a forensic procedure on a suspect under this section if the Magistrate is satisfied that:	5
(a) the forensic procedure already carried out on the suspect was authorised by an order under section 24 and was carried out in accordance with Part 6, and	6
(b) the forensic material obtained as a result of the carrying out of that forensic procedure is insufficient for analysis or has been contaminated, and	7
(c) the carrying out of the forensic procedure for a second time is justified in all the circumstances.	8
<b>28 Securing the presence of suspect at hearing—suspect under arrest</b>	9
(1) If the suspect has been arrested by a police officer ( <i>original arrest</i> ), the Magistrate may, on the application of another police officer, issue a warrant directing the person holding the suspect under original arrest to deliver the suspect into the custody of the other police officer ( <i>temporary custody</i> ) for the hearing of an application for an order under this Part.	10
(2) The police officer given temporary custody must return the suspect to the place of original arrest:	11
(a) if the application for the order is refused—without delay, or	12
(b) if the order is made—without delay at the end of the period for which the suspect may be detained under arrest under section 42.	13
<b>29 Securing the presence of suspect at hearing—suspect not under arrest</b>	14
(1) If the suspect is not under arrest, the Magistrate may, on the application of a police officer:	15
(a) issue a summons for the appearance of the suspect at the hearing of the application, or	16

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- |           |  |                |
|-----------|--|----------------|
| (b)       | issue a warrant for the arrest of the suspect for the purpose of bringing the suspect before the Magistrate for the hearing of the application.                              | 1<br>2<br>3    |
| (2)       | An application for a summons under subsection (1) must be:   | 4              |
| (a)       | made by information on oath, and   | 5              |
| (b)       | accompanied by an affidavit dealing with the matters referred to in subsection (3).  | 6<br>7         |
| (3)       | The Magistrate may issue a summons only if satisfied:  | 8              |
| (a)       | that the issue of the summons is necessary to ensure the appearance of the suspect at the hearing of the application, or   | 9<br>10        |
| (b)       | that the issue of the summons is otherwise justified.  | 11             |
| (4)       | An application for a warrant under subsection (1) must be:   | 12             |
| (a)       | made by information on oath, and   | 13             |
| (b)       | accompanied by an affidavit dealing with the matters referred to in subsection (5).  | 14<br>15       |
| (5)       | The Magistrate may issue a warrant only if satisfied:  | 16             |
| (a)       | that the arrest is necessary to ensure the appearance of the suspect at the hearing of the application, and that the issue of a summons would not ensure that appearance, or | 17<br>18<br>19 |
| (b)       | that the suspect might destroy evidence that might be obtained by carrying out the forensic procedure, or  | 20<br>21       |
| (c)       | that the issue of the warrant is otherwise justified.  | 22             |
| <b>30</b> | <b>Procedure at hearing of application for order</b>   | 23             |
| (1)       | An order may only be made in the presence of the suspect concerned, subject to any contrary order made by the Magistrate.  | 24<br>25       |
| (2)       | A suspect who is:  | 26             |
| (a)       | a child, or  | 27             |
| (b)       | an incapable person,   | 28             |
|           | must have an interview friend and may also be represented by a legal practitioner.   | 29<br>30       |
| (3)       | If the authorised applicant believes on reasonable grounds that the suspect is an Aboriginal person or a Torres Strait Islander not covered by subsection (2), the suspect:  | 31<br>32<br>33 |
-

(a)	must have an interview friend, and	1
(b)	may also be represented by a legal practitioner.	2
(4)	Subsection (3) (a) does not apply if the suspect expressly and voluntarily waives his or her right to have an interview friend present.	3 4
(5)	Any other suspect (including a suspect covered by subsection (2)) may be represented by a legal practitioner.	5 6
(6)	The suspect or his or her representative:	7
(a)	may cross-examine the applicant for the order, and	8
(b)	may, with the leave of the Magistrate, call or cross-examine any other witness, and	9 10
(c)	may address the Magistrate.	11
(7)	A Magistrate must not give leave under subsection (6) (b) unless the Magistrate is of the opinion that there are substantial reasons why, in the interests of justice, the witness should be called or cross-examined.	12 13 14
(8)	Despite subsections (2) and (3), the suspect's interview friend may be excluded from the hearing if the interview friend unreasonably interferes with or obstructs the hearing of the application.	15 16 17
<b>31</b>	<b>Making of order</b>	18
(1)	If a Magistrate makes an order for the carrying out of a forensic procedure, the Magistrate must:	19 20
(a)	specify the forensic procedure authorised to be carried out, and	21
(b)	give reasons for making the order, and	22
(c)	ensure that a written record of the order is kept, and	23
(d)	order the suspect to attend for the carrying out of the forensic procedure, and	24 25
(e)	inform the suspect that reasonable force may be used to ensure that he or she complies with the order for the carrying out of the forensic procedure.	26 27 28
(2)	The Magistrate may give directions as to the time and place at which the procedure is to be carried out.	29 30

<b>Division 3</b>	<b>Interim orders</b>	1
<b>32</b>	<b>Interim order for carrying out of a forensic procedure</b>	2
(1)	A Magistrate may make an interim order authorising the carrying out of a forensic procedure on a suspect that must be carried out without delay if:	3
		4
		5
(a)	section 23 applies, and	6
(b)	the Magistrate is satisfied that the probative value of evidence obtained as a result of the forensic procedure concerned is likely to be lost or destroyed if there is delay in carrying out the procedure, and	7
		8
		9
		10
(c)	the Magistrate is satisfied that there is sufficient evidence to indicate that a Magistrate is reasonably likely to be satisfied of the existence of the matters referred to in section 25 when the application is finally determined.	11
		12
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		14
(2)	An interim order may authorise the carrying out of an intimate forensic procedure on a suspect only if the person is a suspect in relation to a prescribed offence.	15
		16
		17
(3)	An interim order operates as provided by this Division until a Magistrate, at a hearing held under Division 2, confirms the interim order or disallows the interim order.	18
		19
		20
	<b>Note.</b> Section 35 (2) requires that an interim order specify the intended date, time and place of the later hearing.	21
		22
(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, and an order confirming the interim order is taken to be an order under section 24.	23
		24
		25
		26
<b>33</b>	<b>Application for interim order</b>	27
(1)	An authorised applicant may, without bringing a suspect before a Magistrate and without obtaining an order under section 24, make an application seeking an interim order authorising the carrying out of a forensic procedure on a suspect that must be carried out without delay.	28
		29
		30
		31
(2)	An application seeking an interim order authorising the carrying out of an intimate forensic procedure on a suspect may be made only if the person is a suspect in relation to a prescribed offence.	32
		33
		34

- (3) An application for an interim order must: 1
- (a) be supported by evidence on oath or by affidavit dealing with the matters referred to in section 32 (1), and 2  
3
  - (b) specify the type of forensic procedure sought to be carried out. 4
- (4) An application for an interim order may be made in person or, if that is not practicable, by telephone, radio, telex, facsimile or other means of transmission. 5  
6  
7
- (5) If the suspect who is in the presence of the authorised applicant when an application for an interim order is made is: 8  
9
- (a) a child, or 10
  - (b) an incapable person, 11
- an interview friend or legal representative of the suspect must also (if reasonably practicable) be in the presence of the authorised applicant. 12  
13
- (6) If the authorised applicant believes on reasonable grounds that a suspect who is in the presence of the authorised applicant when an application for an interim order is made is an Aboriginal person or a Torres Strait Islander who is not covered by subsection (5), an interview friend or legal representative of the suspect must also (if reasonably practicable) be in the presence of the authorised applicant. 14  
15  
16  
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- (7) If a suspect who is in the presence of the authorised applicant when an application for an interim order is made is not covered by subsection (5) or (6), the suspect's legal representative (if any) must also (if reasonably practicable) be in the presence of the authorised applicant. 20  
21  
22  
23
- (8) Despite subsections (5) and (6), the suspect's interview friend may be excluded from the presence of the authorised applicant if the interview friend unreasonably interferes with or obstructs the making of the application. 24  
25  
26  
27
- 34 Procedure at hearing of application for interim order 28**
- (1) If the application is made in person, or by telephone or radio or other form of oral communication, the Magistrate must ensure that: 29  
30
- (a) the suspect or the suspect's legal representative, if any, and 31
  - (b) the suspect's interview friend, if any, 32
- are given an opportunity to speak to the Magistrate. 33

- (2) If the application is made by telex, facsimile or other form of written communication, the Magistrate must ensure that:
- (a) the suspect or the suspect's legal representative, if any, and
  - (b) the suspect's interview friend, if any,
- are given an opportunity to make a written submission to accompany the application, or to speak to the Magistrate by telephone, radio or other form of oral communication.
- (3) Despite subsections (1) and (2), the suspect's interview friend may be excluded from the presence of the Magistrate if the interview friend unreasonably interferes with or obstructs the hearing of the application.
- 35 Making of interim order**
- (1) A Magistrate who makes an interim order must inform the applicant for the order personally, or by telephone, radio, telex, facsimile or other means of transmission:
- (a) that the order has been made, and
  - (b) of the terms of the order, including the matters mentioned in subsection (2), and
  - (c) of any orders made or directions given under subsection (3) in relation to the order.
- (2) An interim order must specify the date, time and place at which a further hearing on the application will take place and the application will be finally determined.
- (3) A Magistrate may make such orders and give such directions in relation to an interim order as the Magistrate may make or give in relation to an order under section 24.
- 36 Records of application and interim order**
- (1) The applicant for an interim order must, at the time of, or as soon as practicable after, applying for the interim order, make a record (the *applicant's record*) of:
- (a) the application, and
  - (b) the grounds for seeking the order, and
  - (c) the order made, and

(d) the date and time when the order was made, and	1
(e) the Magistrate's name,	2
and sign the record.	3
(2) The applicant must send a copy of the applicant's record to the Magistrate as soon as practicable after it is made.	4 5
(3) The Magistrate must, at the time of, or as soon as practicable after, making an interim order, make a record (the <i>Magistrate's record</i> ) of:	6 7
(a) the application, and	8
(b) the grounds for seeking the order, and	9
(c) the order made, and	10
(d) the date and time when the order was made, and	11
(e) the reasons for making it,	12
and sign the record.	13
(4) The Magistrate must send a copy of the Magistrate's record to the applicant as soon as practicable after the record is made.	14 15
(5) The applicant must ensure that a copy of the Magistrate'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 Magistrate's record.	16 17 18
(6) If the applicant's record does not, in all material respects, accord with the Magistrate's record, the order is taken to have had no effect.	19 20
<b>37 Suspect may be prevented from destroying or contaminating evidence</b>	21
(1) A police officer may, while waiting for the application seeking an interim order to be determined, use reasonable force to prevent the suspect destroying or contaminating any evidence that might be obtained by carrying out the forensic procedure if the order is made.	22 23 24 25
(2) Nothing in this section authorises any person to carry out a forensic procedure before an interim order is made.	26 27
<b>38 Results of forensic procedure carried out under interim order</b>	28
(1) A sample taken under an interim order must not be analysed unless:	29
(a) the sample is likely to perish before a final order is made, or	30
(b) a final order is made.	31



(2)	A person who conducts an analysis in the circumstances set out in subsection (1) (a) must not intentionally or recklessly disclose the results of the analysis to any person other than the suspect:	1
		2
		3
(a)	during the period before a final order is made, or	4
(b)	if the interim order is disallowed.	5
	Maximum penalty (subsection (2)): imprisonment for 12 months.	6
<b>Division 4</b>	<b>Time limits for forensic procedures ordered by Magistrate</b>	7
		8
<b>39</b>	<b>Application</b>	9
	This Division applies where a Magistrate orders the carrying out of a forensic procedure on a suspect under this Act.	10
		11
<b>40</b>	<b>Time for carrying out forensic procedure—suspect not under arrest</b>	12
(1)	If a suspect who is not under arrest presents himself or herself to the investigating police officer to undergo the procedure after it is ordered by the Magistrate, the procedure must be carried out as quickly as reasonably possible but in any case within 2 hours after the suspect so presents himself or herself.	13
		14
		15
		16
		17
(2)	In working out any period of time for the purposes of subsection (1), any time out is to be disregarded.	18
		19
<b>41</b>	<b>Arrest of suspect not under arrest</b>	20
(1)	If the suspect is not under arrest, the Magistrate may, on the application of a police officer, issue a warrant for the arrest of the suspect for the purpose of carrying out the forensic procedure.	21
		22
		23
(2)	An application for a warrant must be:	24
(a)	made by information on oath, and	25
(b)	accompanied by an affidavit dealing with the matters referred to in subsection (3) (a) and (b).	26
		27
(3)	The Magistrate may issue a warrant only if satisfied:	28
(a)	that the arrest is necessary to ensure that the forensic procedure can be carried out, or	29
		30
(b)	that the issue of the warrant is otherwise justified.	31

- (4) A Magistrate must not issue a warrant for the arrest of a suspect for the purpose of carrying out a forensic procedure if a warrant has previously been issued (by any Magistrate) for the arrest of the suspect for the purpose of carrying out that forensic procedure. 1  
2  
3  
4

**42 Time for carrying out forensic procedure—suspect under arrest** 5

- (1) If the suspect is under arrest (whether or not as the result of the issue of a warrant under section 41), he or she may be detained under arrest for such period as is reasonably necessary to carry out the forensic procedure but in any case for no longer than 2 hours after the end of the investigation period permitted under Part 10A of the *Crimes Act 1900* starting when: 6  
7  
8  
9  
10  
11
- (a) the Magistrate orders the carrying out of the procedure, or 12
- (b) the suspect is arrested pursuant to a warrant under section 41. 13
- (2) In working out any period of time for the purposes of subsection (1), any time out is to be disregarded. 14  
15

**Division 5 Reports of proceedings under Act** 16

**43 Restrictions on publication** 17

- (1) A person must not intentionally or recklessly, in any report of a proceeding under this Act, publish: 18  
19
- (a) the name of the suspect on whom a forensic procedure is carried out or proposed to be carried out in relation to an offence, or 20  
21  
22
- (b) any information likely to enable the identification of the suspect, 23  
24
- unless the suspect has been charged with the offence or the Magistrate, by order, has authorised such publication. 25  
26
- Maximum penalty: 50 penalty units or imprisonment for 12 months, or both. 27  
28
- (2) This section does not make it an offence to publish the name of a suspect or any information likely to enable the identification of a suspect if the publication is solely for the purposes of the internal management of the Police Service. 29  
30  
31  
32

<b>Part 6 Carrying out forensic procedures on suspects</b>	1
<b>Note.</b> This Part also applies to the carrying out of forensic procedures on serious indictable offenders and volunteers. See sections 65 and 76 (4).	2 3
<b>Division 1 General</b>	4
<b>44 General rules for carrying out forensic procedures</b>	5
A forensic procedure:	6
(a) must be carried out in circumstances affording reasonable privacy to the suspect and except as permitted (expressly or impliedly) by any other provision of this Act, must not be carried out in the presence or view of a person who is of the opposite sex to the suspect, and	7 8 9 10 11
(b) must not be carried out in the presence or view of a person whose presence is not necessary for the purposes of the forensic procedure or required or permitted by another provision of this Act, and	12 13 14 15
(c) must not involve the removal of more clothing than is necessary for the carrying out of the procedure, and	16 17
(d) must not involve more visual inspection than is necessary for the carrying out of the procedure.	18 19
<b>45 No questioning during forensic procedure</b>	20
(1) A forensic procedure must not be carried out while the suspect is being questioned. If questioning has not been completed before the forensic procedure is to be carried out, it must be suspended while the forensic procedure is carried out.	21 22 23 24
(2) In this section, a reference to <i>questioning</i> of a suspect is a reference to questioning the suspect, or carrying out an investigation (in which the suspect participates), to investigate the involvement (if any) of the suspect in any offence (including an offence for which the suspect is not under arrest).	25 26 27 28 29

<b>46</b>	<b>Suspect must be cautioned before forensic procedure starts</b>	1
	Before anyone starts to carry out a forensic procedure on a suspect, a police officer must caution the suspect that he or she does not have to say anything while the procedure is carried out but that anything the person does say may be used in evidence.	2 3 4 5
<b>47</b>	<b>Use of force in carrying out forensic procedures</b>	6
(1)	Subject to subsection (2) and section 48, a person authorised to carry out a forensic procedure on a suspect, or a police officer, may use reasonable force:	7 8 9
(a)	to enable the forensic procedure to be carried out, or	10
(b)	to prevent loss, destruction or contamination of any sample.	11
(2)	All forensic procedures are to be carried out in a manner consistent with appropriate medical or other relevant professional standards.	12 13
<b>48</b>	<b>Forensic procedures not to be carried out in cruel, inhuman or degrading manner</b>	14 15
	Nothing in this Act authorises the carrying out of a forensic procedure in a cruel, inhuman or degrading manner but the carrying out of a forensic procedure on a suspect in accordance with this Act is not of itself taken to be cruel, inhuman or degrading to the suspect.	16 17 18 19
<b>49</b>	<b>Taking of samples of hair</b>	20
	A person is authorised to take a sample of hair of a suspect by removing the root of the hair only if:	21 22
(a)	the person takes only so much hair as the person believes is necessary for analysis of the sample, or other examination of the hair, to be carried out for the purpose of investigating:	23 24 25
(i)	a prescribed offence, or	26
(ii)	another prescribed offence arising out of the same circumstances as that offence, or	27 28
(iii)	another prescribed offence in respect of which evidence likely to be obtained as a result of carrying out the procedure on the suspect is likely to have probative value, and	29 30 31 32
(b)	strands of hair are taken using the least painful technique known and available to the person.	33 34

<b>Division 2</b>	<b>Persons involved in forensic procedures</b>	1
<b>50</b>	<b>Persons who may carry out forensic procedures</b>	2
(1)	The table to this section shows, for each forensic procedure specified in the first column of the table, the persons who may carry out the procedure under this Act. A person not specified in the second column of the table is not authorised to carry out a forensic procedure under this Part except as mentioned in section 52.	3 4 5 6 7
(2)	The third column of the table to this section shows, for each forensic procedure, whether the suspect is entitled to request that a medical practitioner or dentist of the suspect's choice is present while the forensic procedure is carried out.	8 9 10 11
	<b>Note.</b> Section 53 makes detailed provision for the presence of a medical practitioner or dentist of the suspect's choice while a forensic procedure is carried out.	12 13 14
(3)	A person is authorised to carry out a particular forensic procedure if he or she is an appropriately qualified police officer or person in relation to the procedure even if the person also satisfies another description specified in the table to this section that is not specified in relation to the particular forensic procedure.	15 16 17 18 19
	<b>Note.</b> For example, a police officer who is an appropriately qualified police officer or person to take samples of blood may take such samples even though the table does not expressly list police officers as persons who may take samples of blood.	20 21 22
(4)	This section does not prevent a suspect from carrying out a forensic procedure specified in item 3 of the first column of the table to this section on himself or herself under the supervision of an appropriately qualified police officer or person.	23 24 25 26

Clause 50 Crimes (Forensic Procedures) Bill 2000

Part 6 Carrying out forensic procedures on suspects

Division 2 Persons involved in forensic procedures

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### Who may carry out forensic procedures

Forensic procedure	Persons who may carry out forensic procedure	Is suspect entitled to request presence of medical practitioner or dentist of suspect's choice?	
			1
			2
			3
			4
			5
			6
			7
			8
			9
			10
1 external examination of the genital or anal area or the buttocks or the breasts of a female or a transgender person who identifies as a female	medical practitioner nurse appropriately qualified police officer or person	yes (medical practitioner)	11 12 13 14 15 16
2 the taking of a sample of blood	medical practitioner nurse appropriately qualified police officer or person	yes (medical practitioner)	17 18 19 20
3 the taking of a sample of saliva, or a sample by buccal swab	medical practitioner dentist dental technician nurse appropriately qualified police officer or person	no	21 22 23 24 25 26
4 the taking of a sample of pubic hair	medical practitioner nurse appropriately qualified police officer or person	yes (medical practitioner)	27 28 29 30 31
5 the taking of a sample by swab or washing from the external genital or anal area or the buttocks or the breasts of a female or a transgender person who identifies as a female	medical practitioner nurse appropriately qualified police officer or person	yes (medical practitioner)	32 33 34 35 36 37 38 39

<b>Forensic procedure</b>	<b>Persons who may carry out forensic procedure</b>	<b>Is suspect entitled to request presence of medical practitioner or dentist of suspect's choice?</b>	
6 the taking of a sample by vacuum suction, scraping or lifting by tape from the external genital or anal area or the buttocks or the breasts of a female or a transgender person who identifies as a female	medical practitioner nurse appropriately qualified police officer or person	yes (medical practitioner)	1
			2
			3
			4
			5
			6
			7
			8
			9
7 the making of a dental impression	medical practitioner dentist dental technician	yes (dentist)	10
			11
			12
8 the taking of a photograph of, or an impression or cast of a wound from, the genital or anal area or the buttocks or the breasts of a female or a transgender person who identifies as a female	appropriately qualified police officer or person	yes (medical practitioner)	13
			14
			15
			16
			17
			18
			19
			20
			21
9 external examination of a part of the body other than the genital or anal area or the buttocks or the breasts of a female or a transgender person who identifies as a female that requires touching of the body or removal of clothing	medical practitioner nurse appropriately qualified police officer or person	no	22
			23
			24
			25
			26
			27
			28
			29
			30
31			
10 the taking of a sample of hair other than pubic hair	medical practitioner nurse appropriately qualified police officer or person	no	32
			33
			34
			35

Clause 50 Crimes (Forensic Procedures) Bill 2000

Part 6 Carrying out forensic procedures on suspects

Division 2 Persons involved in forensic procedures

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	<b>Forensic procedure</b>	<b>Persons who may carry out forensic procedure</b>	<b>Is suspect entitled to request presence of medical practitioner or dentist of suspect's choice?</b>	
11	the taking of a sample from a nail or from under a nail	medical practitioner nurse appropriately qualified police officer or person	no	1 2 3 4
12	the taking of a sample by swab or washing from any external part of the body other than the genital or anal area or the buttocks or the breasts of a female or a transgender person who identifies as a female	medical practitioner nurse appropriately qualified police officer or person	no	5 6 7 8 9 10 11 12 13
13	the taking of a sample by vacuum suction, scraping or lifting by tape from any external part of the body other than the genital or anal area or the buttocks or the breasts of a female or a transgender person who identifies as a female	medical practitioner nurse appropriately qualified police officer or person	no	14 15 16 17 18 19 20 21 22 23 24
14	the taking of a hand print, finger print, foot print or toe print	appropriately qualified police officer or person	no	25 26 27
15	the taking of a photograph of an external part of the body other than the genital or anal area or the buttocks or the breasts of a female or a transgender person who identifies as a female	appropriately qualified police officer or person	no	28 29 30 31 32 33 34 35 36



<b>Forensic procedure</b>	<b>Persons who may carry out forensic procedure</b>	<b>Is suspect entitled to request presence of medical practitioner or dentist of suspect's choice?</b>	
16 the taking of an impression or cast of a wound from an external part of the body other than the genital or anal area or the buttocks or the breasts of a female or a transgender person who identifies as a female	appropriately qualified police officer or person	yes (medical practitioner)	1 2 3 4 5 6 7 8 9 10
17 the taking of physical measurements (whether or not involving marking) for biomechanical analysis of an external part of the body other than the genital or anal area or the buttocks or the breasts of a female or a transgender person who identifies as a female	appropriately qualified police officer or person	no	11 12 13 14 15 16 17 18 19 20 21 22
<b>Note.</b> <i>Appropriately qualified</i> (as used in the expression "appropriately qualified police officer or person") is defined in section 3.			23 24
<b>Division 3</b>	<b>Further provisions about who may carry out forensic procedures</b>		25 26
<b>51</b>	<b>Certain forensic procedures generally to be carried out by person of same sex as suspect</b>		27 28
(1)	If practicable, an intimate forensic procedure (other than the taking of a sample of blood or saliva, or a dental impression) is to be carried out:		29 30
(a)	if the suspect is an adult—by a person of the same sex as the suspect, or		31 32

Clause 51 Crimes (Forensic Procedures) Bill 2000

Part 6 Carrying out forensic procedures on suspects

Division 3 Further provisions about who may carry out forensic procedures

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- (b) if the suspect is a child—by a person of the sex chosen by the suspect or, if the suspect does not wish to make such a choice, a person of the same sex as the suspect. 1  
2  
3
- (2) If practicable, a non-intimate forensic procedure for which the suspect is required to remove clothing other than his or her overcoat, coat, jacket, gloves, socks, shoes, scarf or hat is to be carried out: 4  
5  
6
- (a) if the suspect is an adult—by a person of the same sex as the suspect, or 7  
8
- (b) if the suspect is a child—by a person of the sex chosen by the suspect or, if the suspect does not wish to make such a choice, a person of the same sex as the suspect. 9  
10  
11
- (3) If practicable, a person asked under section 52 to help carry out a forensic procedure covered by subsection (1) or (2): 12  
13
- (a) is to be: 14
- (i) if the suspect is an adult—a person of the same sex as the suspect, or 15  
16
- (ii) if the suspect is a child—a person of the sex chosen by the suspect or, if the suspect does not wish to make such a choice, a person of the same sex as the suspect, and 17  
18  
19  
20
- (b) is to be a person who is not inappropriate to help carry out the forensic procedure. 21  
22

**52 Person may get help to carry out forensic procedures** 23

- (1) A person who is authorised to carry out a forensic procedure under the table to section 50 is authorised to ask another person to help him or her to carry out the procedure, and the other person is authorised to give that help. 24  
25  
26  
27
- (2) A person who is asked to help carry out a forensic procedure need not be a person mentioned in the table to section 50. 28  
29
- (3) A person who is asked to help carry out a forensic procedure may use reasonable force to enable the forensic procedure to be carried out. 30  
31

<b>Division 4</b>	<b>Presence of other people while forensic procedure is carried out</b>	1
		2
<b>53</b>	<b>Medical practitioner or dentist of suspect's choice may be present for some forensic procedures</b>	3
		4
(1)	A suspect is entitled to request a medical practitioner or dentist ( <i>the expert</i> ) of his or her choice as shown in the table to section 50 to be present while a forensic procedure is carried out unless the forensic procedure is:	5
		6
		7
		8
(a)	the taking of a hand print, finger print, foot print or toe print, or	9
(b)	the taking of a sample of saliva or a sample by buccal swab, or	10
(c)	the external examination of a part of the body other than:	11
	(i) the genital or anal area or the buttocks, or	12
	(ii) the breasts of a female or a transgender person who identifies as a female,	13
		14
	that requires the touching of the body or removal of clothing,	15
	or	16
(d)	the taking of a sample of hair other than pubic hair, or	17
(e)	the taking of a sample from a nail or from under a nail, or	18
(f)	the taking of a sample by swab or washing from any external part of the body other than:	19
	(i) the genital or anal area or the buttocks, or	20
	(ii) the breasts of a female or a transgender person who identifies as a female, or	21
		22
		23
(g)	the taking of a sample by vacuum suction, scraping or lifting by tape from any external part of the body other than:	24
	(i) the genital or anal area or the buttocks, or	25
	(ii) the breasts of a female or a transgender person who identifies as a female, or	26
		27
		28
(h)	the taking of a photograph of an external part of the body other than:	29
	(i) the genital or anal area or the buttocks, or	30
	(ii) the breasts of a female or a transgender person who identifies as a female, or	31
		32
		33

Clause 53	Crimes (Forensic Procedures) Bill 2000	
Part 6	Carrying out forensic procedures on suspects	
Division 4	Presence of other people while forensic procedure is carried out	
		<hr/>
	(i) the taking of physical measurements (whether or not involving marking) for biomechanical analysis of an external part of the body other than:	1
		2
	(i) the genital or anal area or the buttocks, or	3
	(ii) the breasts of a female or a transgender person who identifies as a female.	4
		5
		6
	<b>Note.</b> Section 99 provides that the request may be made by the suspect's legal representative or interview friend.	7
		8
	(2) The expert chosen is to be present at the forensic procedure unless he or she:	9
		10
	(a) is unable, or does not wish, to attend, or	11
	(b) cannot be contacted,	12
	within a reasonable time or, if relevant, within the time in which the person responsible for the effective carrying out of the forensic procedure considers the forensic procedure should be carried out if it is to be effective in affording evidence of the relevant offence.	13
		14
		15
		16
<b>54</b>	<b>Presence of interview friend or legal representative—children and incapable persons</b>	17
		18
	(1) This section applies if the suspect is:	19
	(a) a child, or	20
	(b) an incapable person.	21
	(2) Either an interview friend or a legal representative (if he or she is not the interview friend) of the suspect must, if reasonably practicable, be present while the forensic procedure is carried out. Both an interview friend and a legal representative may be present.	22
		23
		24
		25
	(3) An interview friend (other than a legal representative) of the suspect may be excluded from the place where the forensic procedure is being carried out if the interview friend unreasonably interferes with or obstructs the carrying out of the procedure.	26
		27
		28
		29
<b>55</b>	<b>Presence of interview friend or legal representative—Aboriginal persons and Torres Strait Islanders</b>	30
		31
	(1) This section applies if the investigating police officer believes on reasonable grounds that the suspect is an Aboriginal person or a Torres Strait Islander not covered by section 54.	32
		33
		34

- (2) Either an interview friend or a legal representative (if he or she is not the interview friend) of the suspect must, if reasonably practicable, be present while the forensic procedure is carried out. Both an interview friend and a legal representative may be present. 1  
2  
3  
4
- (3) Subsection (2) does not apply if the suspect expressly and voluntarily waives his or her right to have an interview friend present. 5  
6
- Note.** Section 106 relates to proving a waiver. 7
- (4) An interview friend (other than a legal representative) of the suspect may be excluded from the place where the forensic procedure is being carried out if the interview friend unreasonably interferes with or obstructs the carrying out of the procedure. 8  
9  
10  
11

## 56 Presence of police officers 12

- (1) The number of police officers who may be present during the carrying out of a forensic procedure must not exceed that which is reasonably necessary to ensure that the procedure is carried out effectively and in accordance with this Act. 13  
14  
15  
16
- (2) Where the presence of a police officer (other than a police officer who is carrying out or helping to carry out the procedure) is reasonably necessary to ensure that a forensic procedure is carried out effectively and in accordance with this Act, the police officer is, if reasonably practicable: 17  
18  
19  
20  
21
- (a) if the suspect is a child—to be a person of the sex chosen by the suspect or, if the suspect does not wish to make such a choice, a person of the same sex as the suspect, or 22  
23  
24
- (b) in any other case—to be of the same sex as the suspect unless it is not practicable for such a police officer to attend within a reasonable time. 25  
26  
27
- Note.** Section 51 provides that, if practicable, most forensic procedures are to be carried out by persons of the same sex as the suspect. 28  
29
- (3) This section does not apply to the following forensic procedures: 30
- (a) the taking of hand prints, finger prints, foot prints or toe prints, 31
- (b) any non-intimate forensic procedure that may be carried out without requiring the suspect to remove any clothing other than his or her overcoat, coat, jacket, gloves, socks, shoes, scarf or hat. 32  
33  
34  
35

<b>Division 5</b>	<b>Recording of forensic procedure</b>	1
<b>57</b>	<b>Recording of forensic procedure</b>	2
(1)	The carrying out of a forensic procedure (other than the taking of a hand print, finger print, foot print or toe print) must be recorded by electronic means unless:	3 4 5
(a)	the suspect objects to the recording, or	6
(b)	the recording is not practicable.	7
(2)	Before the forensic procedure is carried out, the suspect must be informed:	8 9
(a)	of the reasons for recording the carrying out of the forensic procedure, including the protection that the recording provides for the suspect, and	10 11 12
(b)	that the suspect may object to a video recording.	13
(3)	Despite section 99, an interview friend of an Aboriginal person or a Torres Strait Islander not covered by section 54 has no right to object to the recording of the forensic procedure.	14 15 16
	<b>Note.</b> Section 99 gives interview friends and legal representatives general powers to act on behalf of suspects. Section 54 applies to children and incapable persons, including children or incapable persons who are Aboriginal persons or Torres Strait Islanders, but does not apply to other Aboriginal persons or Torres Strait Islanders.	17 18 19 20
(4)	If the carrying out of the forensic procedure is not to be recorded by electronic means, the forensic procedure must be carried out in the presence of an independent person who is not a police officer.	21 22 23
(5)	Subsection (4) does not apply if the suspect expressly and voluntarily waives his or her right to have an independent person present.	24 25
<b>Division 6</b>	<b>Procedure after forensic procedure is carried out</b>	26
<b>58</b>	<b>Samples—sufficient material to share</b>	27
(1)	This section applies to a sample taken from a suspect under this Act if there is sufficient material to be analysed both in the investigation of the offence and on behalf of the suspect.	28 29 30

(2) The investigating police officer must ensure that:	1
(a) a part of the material sufficient for analysis is made available to the suspect as soon as practicable after the procedure has been carried out, and	2 3 4
(b) reasonable care is taken to ensure that the suspect's part of the material is protected and preserved until the suspect receives it, and	5 6 7
(c) reasonable assistance is given to the suspect to ensure that the material is protected and preserved until it can be analysed.	8 9
<b>Note.</b> Part 13 contains provisions about making material available to the suspect.	10
<b>59 Photographs</b>	11
Where a forensic procedure involves the taking of a photograph of a part of a suspect's body, the investigating police officer must ensure that a copy of the photograph is made available to the suspect.	12 13 14
<b>Note.</b> Part 13 contains provisions about making copies of material available to the suspect.	15 16
<b>60 Results of analysis</b>	17
(1) If material from a sample taken from a suspect is analysed in the investigation of an offence, the investigating police officer must ensure that a copy of the results of the analysis is made available to the suspect.	18 19 20 21
(2) Subsection (1) does not require a copy of the results of an analysis to be made available to a suspect at any time when to do so would prejudice the investigation of any offence. However, the copy must be made available to the suspect a reasonable time before evidence of it is adduced in any prosecution of the suspect for the offence.	22 23 24 25 26
(3) This section does not require the destruction of a DNA profile derived from a sample.	27 28
<b>Note.</b> Part 13 contains provisions about making copies of material available to the suspect.	29 30

<b>Part 7 Carrying out of certain forensic procedures after conviction of serious indictable offenders</b>	1 2
<b>61 Forensic procedures and offenders to which Part applies</b>	3
(1) <b>Intimate forensic procedures to which Part applies</b>	4
This Part applies to the taking of a sample of blood.	5
(2) <b>Non-intimate procedures to which Part applies</b>	6
This Part applies to the following non-intimate forensic procedures:	7
(a) the taking of a sample of hair other than pubic hair,	8
(b) the taking of a hand print, finger print, foot print or toe print.	9
(3) <b>Other forensic procedures to which Part applies</b>	10
This Part applies to the taking of a sample by buccal swab.	11
(4) A person is authorised to carry out a forensic procedure under this Part on a person who is serving a sentence of imprisonment for a serious indictable offence in a correctional centre or other place of detention whether or not the offender was convicted of the offence before or after the commencement of this section.	12 13 14 15 16
<b>62 Non-intimate forensic procedures authorised to be carried out on serious indictable offenders</b>	17 18
(1) A person is authorised to carry out a non-intimate forensic procedure to which this Part applies on a person (other than a child or an incapable person) who is serving a sentence of imprisonment for a serious indictable offence in a correctional centre or other place of detention:	19 20 21 22 23
(a) with the informed consent of the serious indictable offender, or	24
(b) by order of a police officer under section 70.	25
(2) A person is authorised to carry out a non-intimate forensic procedure to which this Part applies on a child, or an incapable person, who is serving a sentence of imprisonment for a serious indictable offence in a correctional centre or other place of detention by order of a court under section 74.	26 27 28 29 30



<b>63</b>	<b>Intimate forensic procedures authorised to be carried out on serious indictable offenders</b>	1 2
(1)	A person is authorised to carry out an intimate forensic procedure to which this Part applies on a person (other than a child or an incapable person) who is serving a sentence of imprisonment for a serious indictable offence in a correctional centre or other place of detention:	3 4 5 6
(a)	with the informed consent of the serious indictable offender, or	7
(b)	by order of a court under section 74.	8
(2)	A person is authorised by this section to carry out an intimate forensic procedure in accordance with Part 6 as applied by section 65 and not otherwise.	9 10 11
<b>64</b>	<b>Authority to take buccal swabs from serious indictable offenders</b>	12
(1)	A person is authorised to take a sample by buccal swab from a person (other than a child or an incapable person) who is serving a sentence of imprisonment for a serious indictable offence in a correctional centre or other place of detention:	13 14 15 16
(a)	with the informed consent of the serious indictable offender, or	17
(b)	by order of a court under section 74.	18
	<b>Note.</b> Section 70 authorises a police officer to take a sample of hair other than pubic hair if consent to the taking of a sample by buccal swab is refused.	19 20
(2)	A person is authorised by this section to take a sample by buccal swab in accordance with Part 6 as applied by section 65 and not otherwise.	21 22
<b>65</b>	<b>Application of Part 6</b>	23
(1)	Part 6 applies to the carrying out of a forensic procedure on a serious indictable offender under this Part as if the references to the suspect in Part 6 were references to a serious indictable offender.	24 25 26
(2)	A person is authorised by section 62, 63 or 64 to carry out a forensic procedure in accordance with Part 6 as applied by this section and not otherwise.	27 28 29
<b>66</b>	<b>Scope of authorisation</b>	30
(1)	A person is not authorised to carry out a forensic procedure under this Part on a serious indictable offender if the serious indictable offender is a suspect or a volunteer.	31 32 33

- (2) A forensic procedure may be carried out on a serious indictable offender who is a suspect only if authorised by and in accordance with Parts 2–5. 1  
2  
3
- (3) A forensic procedure may be carried out on a serious indictable offender who is a volunteer only if authorised by and in accordance with Part 8. 4  
5  
6

**67 Informed consent to forensic procedures** 7

- (1) A serious indictable offender gives informed consent to the carrying out of a forensic procedure under this Part if the offender consents to the carrying out of the procedure after a police officer: 8  
9  
10
- (a) requests the offender to consent to the forensic procedure under section 68, and 11  
12
  - (b) informs the offender about the forensic procedure in accordance with section 69, and 13  
14
  - (c) gives the offender the opportunity to communicate, or attempt to communicate, with a legal practitioner of the offender’s choice. 15  
16  
17
- (2) The police officer must allow the offender to communicate, or attempt to communicate, with the legal practitioner in private unless the police officer suspects on reasonable grounds that the offender might attempt to destroy or contaminate any evidence that might be obtained by carrying out the forensic procedure. 18  
19  
20  
21  
22

**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. 23  
24

**68 Police officer may request offender to consent to forensic procedure** 25

A police officer may request a serious indictable offender (other than a child or an incapable person) to consent to a forensic procedure to which this Part applies being carried out on the offender. 26  
27  
28

**69 Matters that offender must be informed of before giving consent** 29

- (1) The police officer must (personally or in writing) inform the serious indictable offender of the following: 30  
31
- (a) the purpose for which the forensic procedure is required, 32
  - (b) if the police officer wants the forensic procedure carried out in relation to an offence—the offence concerned, 33  
34

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- |     |  |  |
|-----|--|--|
| (c) | the way in which the forensic procedure is to be carried out,  | 1                                      |
| (d) | that the forensic procedure may produce evidence against the offender that might be used in a court of law,  | 2<br>3                                 |
| (e) | that the forensic procedure will be carried out by a person who may carry out the procedure under Part 6 as applied by section 65,   | 4<br>5<br>6                            |
| (f) | if the forensic procedure is the taking of a sample of blood—that the offender may request that the correctional centre medical officer be present while the blood is taken,   | 7<br>8<br>9                            |
| (g) | that the offender may refuse consent to the carrying out of the forensic procedure,  | 10<br>11                               |
| (h) | the consequences of not consenting, as specified in subsection (2), (3) or (4) (whichever is applicable),  | 12<br>13                               |
| (i) | the effect of section 84 (if applicable),  | 14                                     |
| (j) | that information obtained from analysis of forensic material obtained from carrying out the forensic procedure may be placed on the DNA database system and used for the purposes of a criminal investigation or for any other purpose for which the DNA database system may be used under Part 11 or 12.  | 15<br>16<br>17<br>18<br>19             |
| (2) | <b>Failure to consent to non-intimate forensic procedure</b><br>The police officer must (personally or in writing) inform a serious indictable offender requested to undergo a non-intimate forensic procedure to which this Part applies that, if the offender does not consent, a police officer may order the carrying out of the forensic procedure under section 70 if the police officer has taken into account the matters set out in section 71. | 20<br>21<br>22<br>23<br>24<br>25<br>26 |
| (3) | <b>Failure to consent to intimate forensic procedure</b><br>The police officer must (personally or in writing) inform a serious indictable offender requested to undergo an intimate forensic procedure to which this Part applies that, if the offender does not consent, an application may be made to a court for an order authorising the carrying out of the forensic procedure.  | 27<br>28<br>29<br>30<br>31<br>32       |
| (4) | <b>Failure to consent to taking of sample by buccal swab</b><br>The police officer must (personally or in writing) inform a serious indictable offender requested to permit the taking of a sample by buccal swab, that, if the offender does not consent:   | 33<br>34<br>35<br>36                   |

(a)	a senior police officer may order the taking of a sample of hair other than pubic hair under section 70, or	1 2
(b)	that an application may be made to a court for an order authorising the taking of a sample by buccal swab or some other forensic procedure.	3 4 5
<b>70</b>	<b>Circumstances in which police officer may order non-intimate forensic procedures</b>	6 7
(1)	A police officer may order the carrying out of a non-intimate forensic procedure on a serious indictable offender if:	8 9
(a)	the offender has been requested under section 68 to consent to the carrying out of the forensic procedure, and	10 11
(b)	the offender has not consented, and	12
(c)	the police officer has taken into account the matters set out in section 71.	13 14
(2)	A police officer may take a sample of hair other than pubic hair from a serious indictable offender if:	15 16
(a)	the offender has been requested under section 68 to consent to the taking of a sample by buccal swab, and	17 18
(b)	the offender has not consented, and	19
(c)	a senior police officer has ordered that the sample be taken after taking into account the matters set out in section 71.	20 21
<b>71</b>	<b>Matters to be taken into account by police officer</b>	22
	In determining whether to make an order under section 70, the police officer concerned is to take into account whether this Act would authorise the forensic procedure to be carried out in the absence of the order.	23 24 25 26
<b>72</b>	<b>Form of consent</b>	27
	The consent of a serious indictable offender to the carrying out of a forensic procedure under this Part is not effective unless:	28 29
(a)	the consent is in writing and in a form containing the particulars prescribed by the regulations, and	30 31
(b)	the consent is signed by the offender, and	32

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(c)	the signature is witnessed by a person other than a police officer, and	1 2
(d)	the offender is given a copy of the consent as soon as practicable after it is signed and witnessed.	3 4
<b>73</b>	<b>Record of police officer's order</b>	5
(1)	The police officer must, at the time of, or as soon as practicable after, making an order under section 70, make a record of:	6 7
(a)	the order, and	8
(b)	the date and time when the order was made, and	9
(c)	the reasons for making it,	10
	and sign the record.	11
(2)	The police officer must ensure that a copy of the record is made available to the serious indictable offender as soon as practicable after the record is made.	12 13 14
<b>74</b>	<b>Court order for carrying out forensic procedure on serious indictable offender</b>	15 16
(1)	A police officer may apply to any court for an order directing a serious indictable offender serving a sentence of imprisonment in a correctional centre or other place of detention to permit an intimate forensic procedure to which this Part applies to be carried out on the offender.	17 18 19 20 21
(2)	A police officer may apply to any court for an order for the carrying out of a non-intimate procedure to which this Part applies on a child or an incapable person who is a serious indictable offender.	22 23 24
(3)	A police officer may apply to any court for an order for the taking of a sample by buccal swab or the carrying out of any other forensic procedure on a serious indictable offender.	25 26 27
(4)	A police officer may make such an application to the court that is sentencing a serious indictable offender or to any court at a later time.	28 29
(5)	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.	30 31 32

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Clause 74 Crimes (Forensic Procedures) Bill 2000

Part 7 Carrying out of certain forensic procedures after conviction of serious indictable offenders

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- (6) In determining whether to make an order under this section, a court is to take into account whether this Act would authorise the forensic procedure to be carried out in the absence of the order. 1  
2  
3
- (7) An order under this section takes effect immediately. However, any forensic material taken must not (unless the sample is likely to perish if analysis is delayed) be analysed: 4  
5  
6
- (a) until the expiration of any appeal period or after the final determination of any appeal in relation to the serious indictable offence committed by the serious indictable offender concerned, whichever is the later, or 7  
8  
9  
10
- (b) if the conviction is quashed. 11

**75 Carrying out of forensic procedure following conviction** 12

- (1) If a court orders a serious indictable offender who is serving a sentence of imprisonment in a correctional centre or other place of detention to permit a forensic procedure to be carried out, the court may order that a police officer, together with a person who, under Part 6 as applied by section 65, may carry out the forensic procedure, be permitted to attend on the offender in the correctional centre or place of detention to allow the forensic procedure to be carried out. 13  
14  
15  
16  
17  
18  
19
- (2) A serious indictable offender ordered under section 74 to permit the carrying out of a forensic procedure must not, without reasonable excuse, refuse or fail to permit the forensic procedure to be carried out. 20  
21  
22
- Maximum penalty: 50 penalty units or 12 months imprisonment, or both. 23  
24

<b>Part 8</b>	<b>Carrying out of forensic procedures on volunteers and certain other persons</b>	1
		2
<b>76</b>	<b>Carrying out of forensic procedures on volunteers</b>	3
(1)	In this Act:	4
	<i>volunteer</i> means a person (other than a suspect):	5
(a)	who volunteers to a police officer to undergo a forensic procedure, or	6
		7
(b)	in the case of a child or an incapable person—whose parent or guardian volunteers to a police officer that the child or incapable person undergo a forensic procedure.	8
		9
		10
(2)	A person is authorised to carry out a forensic procedure:	11
(a)	on a volunteer other than a child or an incapable person—with the informed consent of the volunteer given in accordance with section 77, or	12
		13
		14
(b)	on a volunteer who is a child or an incapable person:	15
(i)	with the informed consent of the parent or guardian of the volunteer given in accordance with section 77 or by order of a Magistrate under section 80, and	16
		17
		18
(ii)	after the person has informed the child or incapable person that, even though consent has been given or an order made, if he or she objects to or resists the carrying out of the forensic procedure, it will not be carried out.	19
		20
		21
		22
(3)	Subsection (2) (b) (i) does not authorise a person to carry out a forensic procedure on a child or an incapable person who objects to or resists the carrying out of the forensic procedure.	23
		24
		25
(4)	Part 6 applies to the carrying out of a forensic procedure under this Part as if the references to a suspect in that Part were references to a volunteer referred to in this section. A person is authorised by this section to carry out a forensic procedure on a volunteer in accordance with Part 6 as so applied and not otherwise.	26
		27
		28
		29
		30

<b>77</b>	<b>Informed consent of volunteer or parent or guardian of volunteer</b>	1
(1)	A volunteer, or parent or guardian of a volunteer, gives informed consent in accordance with this section if the volunteer, parent or guardian consents in the presence of an independent person (not being a police officer) after a police officer informs the volunteer, parent or guardian (personally or in writing) of the following matters:	2 3 4 5 6
(a)	the way in which the forensic procedure is to be carried out,	7
(b)	that the volunteer is under no obligation to undergo the forensic procedure,	8 9
(c)	that the forensic procedure may produce evidence that might be used in a court of law,	10 11
(d)	to the extent that they are relevant, the matters specified in subsection (2),	12 13
(e)	that the volunteer, parent or guardian may consult a legal practitioner of the volunteer's, parent's or guardian's choice before deciding whether or not to consent to the forensic procedure,	14 15 16 17
(f)	that the volunteer, parent or guardian may at any time withdraw consent to undergoing the forensic procedure or retention of the forensic material taken or of information obtained from the analysis of that material.	18 19 20 21
(2)	The police officer must (personally or in writing) inform the volunteer, or parent or guardian of the volunteer, of the following:	22 23
(a)	that information obtained from analysis of forensic material taken from a person under this Part, and as to the identity of the person, may be placed on the DNA database system,	24 25 26
(b)	if the police officer intends the information to be placed on the volunteers (limited purposes) index of that system—the purpose for which it is to be placed on that index and that the information may be used only for that purpose,	27 28 29 30
(c)	if the police officer intends the information to be placed on the volunteers (unlimited purposes) index of that system—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,	31 32 33 34 35



- 
- (d) that information placed on the DNA database system will be retained for such period as the Commissioner of Police and the volunteer (or in the case of a volunteer who is a child or an incapable person, a parent or guardian of the volunteer) agree and must then be removed from the system, 1  
2  
3  
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5
- (e) any other matters prescribed by the regulations. 6
- 78 Form of consent** 7
- The consent of a volunteer, or a parent or guardian of a volunteer, to the carrying out of a forensic procedure under this Part is not effective unless: 8  
9  
10
- (a) the consent is in writing and in a form containing the particulars prescribed by the regulations, and 11  
12
- (b) the consent is signed by the volunteer, parent or guardian, and 13
- (c) the signature is witnessed by a person other than a police officer or other person involved in the investigation of an offence to which the forensic procedure relates, and 14  
15  
16
- (d) the volunteer, parent or guardian is given a copy of the consent as soon as practicable after it is signed and witnessed. 17  
18
- 79 Withdrawal of consent** 19
- (1) If a volunteer, or parent or guardian of a volunteer, expressly withdraws consent to the carrying out of a forensic procedure under this Part (or if the withdrawal of such consent can reasonably be inferred from the volunteer's, parent's or guardian's conduct) before or during the carrying out of the forensic procedure: 20  
21  
22  
23  
24
- (a) the forensic procedure is to be treated from the time of the withdrawal as a forensic procedure for which consent has been refused, and 25  
26  
27
- (b) the forensic procedure is not to proceed except (in the case of a child or incapable person) by order of a Magistrate under section 80. 28  
29  
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Part 8 Carrying out of forensic procedures on volunteers and certain other persons

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- (2) If, after the carrying out of a forensic procedure under this Part on a volunteer, the volunteer, or the parent or guardian of the volunteer, expressly withdraws consent to retention of the forensic material taken or of information obtained from the analysis of that material, the forensic material and any information obtained from analysis of the material is, subject to any order made under section 81, to be destroyed as soon as practicable after the consent is withdrawn. 1  
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7
- (3) A police officer may request, but cannot require, a volunteer, or a parent or guardian of a volunteer, who withdraws consent to the carrying out of a forensic procedure under this Part to confirm the withdrawal of consent in writing. 8  
9  
10  
11

**80 Circumstances in which Magistrate may order the carrying out of forensic procedure on child or incapable person** 12  
13

- (1) A Magistrate may order the carrying out of a forensic procedure on a child or incapable person if: 14  
15
- (a) the consent of the parent or guardian of the child or incapable person to the carrying out of the forensic procedure cannot reasonably be obtained from a parent or guardian of the child or incapable person, or 16  
17  
18  
19
- (b) the parent or guardian of the child or incapable person refuses consent to the carrying out of the forensic procedure and the Magistrate is satisfied that there are reasonable grounds to believe that: 20  
21  
22  
23
- (i) the child or incapable person, or the parent or guardian, is a suspect, and 24  
25
- (ii) the forensic procedure is likely to produce evidence tending to confirm or disprove that he or she committed an offence, or 26  
27  
28
- (c) the parent or guardian of the child or incapable person consented to the carrying out of the forensic procedure, but subsequently withdrew that consent. 29  
30  
31
- (2) In determining whether to make an order under this section, the Magistrate is to take into account the following: 32  
33
- (a) whether this Part would authorise the carrying out of the forensic procedure apart from this section, 34  
35

(b)	if the forensic procedure is being carried out for the purposes of the investigation of a particular offence—the seriousness of the circumstances surrounding the commission of the offence,	1 2 3
(c)	the best interests of the child or incapable person,	4
(d)	so far as they can be ascertained, any wishes of the child or incapable person with respect to whether the forensic procedure should be carried out,	5 6 7
(e)	except in the circumstances referred to in subsection (1) (b), any wishes expressed by the parent or guardian of the child or incapable person with respect to whether the forensic procedure should be carried out,	8 9 10 11
(f)	whether the carrying out of the forensic procedure is justified in all the circumstances.	12 13
(3)	An order under this section may:	14
(a)	require the forensic procedure to be carried out at a time or place specified in the order, or	15 16
(b)	specify the period for which forensic material obtained from carrying out the procedure may be retained,	17 18
	or both.	19
<b>81</b>	<b>Retention of forensic material by order of a Magistrate after parent or guardian of child or incapable person withdraws consent</b>	20 21
(1)	An authorised applicant may apply to a Magistrate for an order under subsection (2).	22 23
(2)	A Magistrate may order that forensic material taken or information obtained from carrying out a forensic procedure on a volunteer who withdraws consent to the retention of the material be retained if the Magistrate is satisfied that:	24 25 26 27
(a)	during an investigation into the commission of a serious indictable offence material reasonably believed to be from the body of a person who committed the offence had been found:	28 29 30
(i)	at the scene of the offence, or	31
(ii)	on the victim of the offence or anything reasonably believed to have been worn or carried by the victim when the offence was committed, or	32 33 34

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- |       |  |                  |
|-------|--|------------------|
| (iii) | on the volunteer or anything reasonably believed to have been worn or carried by the volunteer at the scene of the offence or when the offence was committed, or   | 1<br>2<br>3      |
| (iv)  | on an object or person reasonably believed to have been associated with the commission of the offence, and   | 4<br>5           |
| (b)   | there are reasonable grounds to believe that information obtained from analysis of the forensic material taken from the volunteer is likely to produce evidence of probative value in relation to the serious indictable offence being investigated, and | 6<br>7<br>8<br>9 |
| (c)   | the retention of the forensic material taken from the volunteer is justified in all the circumstances.   | 10<br>11         |
| (3)   | The order may specify the period for which the forensic material or information obtained from carrying out the procedure may be retained.  | 12<br>13         |

## Part 9 Admissibility of evidence

1

### Division 1 Forensic evidence

2

#### 82 Inadmissibility of evidence from improper forensic procedures

3

(1) This section applies where:

4

(a) a forensic procedure has been carried out on a person, and

5

(b) there has been any breach of, or failure to comply with:

6

(i) any provision of this Act in relation to a forensic procedure carried out on a person (including, but not limited to, any breach of or failure to comply with a provision requiring things to be done at any time before or after the forensic procedure is carried out), or

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(ii) any provision of Part 11 with respect to recording or use of information on the DNA database system.

12

13

(2) This section does not apply if:

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(a) a provision of this Act required forensic material to be destroyed, and

15

16

(b) the forensic material has not been destroyed.

17

**Note.** Section 83 applies where this Act requires forensic material to have been destroyed.

18

19

(3) This section applies:

20

(a) to evidence of forensic material, or evidence consisting of forensic material, taken from a person by a forensic procedure, and

21

22

23

(b) to evidence of any results of the analysis of the forensic material, and

24

25

(c) to any other evidence made or obtained as a result of or in connection with the carrying out of the forensic procedure.

26

27

(4) If this section applies, evidence described in subsection (3) is not admissible in any proceedings against the person in a court unless:

28

29

(a) the person does not object to the admission of the evidence, or

30

- (b) in the opinion of the court the desirability of admitting the evidence outweighs the undesirability of admitting evidence that was not obtained in compliance with the provisions of this Act, or 1  
2  
3  
4
- (c) in the opinion of the court, the breach of, or failure to comply with, the provisions of this Act arose out of mistaken but reasonable belief as to the age of a child. 5  
6  
7
- (5) The matters that may be considered by the court for the purposes of subsection (4) (b) are the following: 8  
9
- (a) the probative value of the evidence, 10
- (b) the reasons given for the failure to comply with the provision of this Act, 11  
12
- (c) the gravity of the failure to comply with the provisions of this Act, and whether the failure deprived the person of a significant protection under this Act, 13  
14  
15
- (d) whether the failure to comply with the provision of this Act was intentional or reckless, 16  
17
- (e) the nature of the provision of this Act that was not complied with, 18  
19
- (f) the nature of the offence concerned and the subject matter of the proceedings, 20  
21
- (g) whether admitting the evidence would seriously undermine the protection given to suspects by this Act, 22  
23
- (h) whether the breach of or failure to comply with the provision of this Act was contrary to or inconsistent with a right of a person recognised by the International Covenant on Civil and Political Rights, 24  
25  
26  
27
- (i) whether any other proceeding (whether or not in a court) has been or is likely to be taken in relation to the breach or failure to comply, 28  
29  
30
- (j) the difficulty (if any) of obtaining the evidence without contravention of an Australian law, 31  
32
- (k) any other matters the court considers to be relevant. 33
- (6) The probative value of the evidence does not by itself justify the admission of the evidence. 34  
35

(7) If a judge permits evidence to be given before a jury under subsection (4), the judge must:	1
(a) inform the jury of the breach of, or failure to comply with, a provision of this Act, and	2
(b) give the jury such warning about the evidence as the judge thinks appropriate in the circumstances.	3
	4
	5
	6
<b>83 Inadmissibility of evidence where forensic material required to be destroyed</b>	7
	8
(1) If a provision of this Act requires forensic material taken from a person by a forensic procedure to be destroyed, subsection (2) applies:	9
(a) to evidence of the forensic material, and	10
(b) if the material has not been destroyed—to evidence consisting of the forensic material, and	11
(c) to any results of the analysis of the forensic material, and	12
(d) to any other evidence made or obtained as a result of or in connection with the carrying out of the forensic procedure.	13
	14
	15
	16
(2) The results of the analysis, and the other evidence, are not admissible if adduced by the prosecution in any proceedings against the person, but may be admissible if adduced in such proceedings by the person.	17
	18
	19
<b>Division 2 Other evidence</b>	20
<b>84 Admissibility of evidence relating to consent to forensic procedure</b>	21
Evidence of a person's refusal or failure to consent, or withdrawal of consent, to a forensic procedure is not admissible in proceedings against the person except to establish or rebut an allegation that a police officer or another person investigating the commission of the offence concerned acted contrary to law in carrying out that investigation.	22
	23
	24
	25
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	27
<b>85 Admissibility of evidence relating to carrying out of forensic procedure</b>	28
Despite section 82 (4), evidence of how a forensic procedure was carried out is admissible in proceedings against a person in a court:	29
(a) to establish or rebut an allegation that unreasonable force was used to enable the procedure to be carried out, or	30
	31
	32

Clause 85 Crimes (Forensic Procedures) Bill 2000

Part 9 Admissibility of evidence

Division 2 Other evidence

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- (b) to determine the admissibility of a confession or admission or other evidence adverse to the person where the person alleges that the evidence was induced or obtained by the use of unreasonable force, or 1  
2  
3  
4
- (c) to establish or rebut an allegation that the forensic procedure was not carried out in accordance with Part 6. 5  
6



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## Part 10 Destruction of forensic material

	1
<b>86 Destruction of forensic material where interim order disallowed or specified retention period ended</b>	2 3
(1) If an interim order made under section 32 for the carrying out of a forensic procedure is disallowed after the forensic procedure is carried out, the investigating police officer must ensure that:	4 5 6
(a) any forensic material obtained as a result of carrying out the forensic procedure is destroyed as soon as practicable after the disallowance, and	7 8 9
(b) a copy of the results of any analysis of the forensic material are made available by the person who conducted the analysis to the suspect.	10 11 12
<b>Note.</b> Part 13 contains provisions about making copies of material available to the suspect. Section 3 (5) explains the meaning of <b>destroy</b> .	13 14
(2) If an order for:	15
(a) the carrying out of a forensic procedure made under section 80, or	16 17
(b) the retention of forensic material under section 81,	18
specifies a period for which forensic material obtained as a result of the carrying out of the procedure may be retained the forensic material is to be destroyed as soon as practicable after the end of the period.	19 20 21
<b>87 Destruction of forensic material taken from offender after conviction quashed</b>	22 23
If an order is obtained under section 75 for the carrying out of a forensic procedure on a serious indictable offender and the offender's conviction is quashed after the making of the order, the police officer who obtained the order (or some other police officer) 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.	24 25 26 27 28 29 30
<b>88 Destruction of forensic material after 12 months</b>	31
(1) This section applies where forensic material has been taken from a suspect by a forensic procedure carried out under Part 3, 4 or 5.	32 33

- (2) If: 1
- (a) forensic material has been taken from a suspect, and 2
  - (b) a period of 12 months has elapsed since the forensic material was taken, and 3  
4
  - (c) proceedings in respect of the offence in relation to which the forensic material was taken have not been instituted against the suspect, or have been discontinued, 5  
6  
7
- the forensic material must be destroyed as soon as practicable unless a warrant for the apprehension of the suspect has been issued. 8  
9
- Note.** Section 3 (5) explains the meaning of *destroy*. 10
- (3) If a warrant for the apprehension of the suspect is issued during the period of 12 months after forensic material is taken, the forensic material must be destroyed as soon as practicable after: 11  
12  
13
- (a) the warrant lapses, or 14
  - (b) a period of 12 months elapses after the suspect is apprehended. 15
- (4) If forensic material has been taken from a person who is a suspect and: 16
- (a) the person is found to have committed an offence to which the forensic material relates but no conviction is recorded, or 17  
18
  - (b) the person is acquitted of such an offence and: 19
    - (i) no appeal is lodged against the acquittal, or 20
    - (ii) an appeal is lodged against the acquittal and the acquittal is confirmed or the appeal is withdrawn, 21  
22
- the forensic material must be destroyed as soon as practicable unless an investigation into, or a proceeding against the person for, another offence is pending. 23  
24  
25
- (5) A Magistrate may, on application by a police officer or the Director of Public Prosecutions, extend the period of 12 months referred to in subsection (2), or that period as previously extended under this subsection in relation to particular forensic material, if the Magistrate is satisfied that there are special reasons for doing so. 26  
27  
28  
29  
30
- (6) A Magistrate to whom an application is made under subsection (5) is not to extend the period unless: 31  
32
- (a) the applicant for the extension has taken reasonable steps to notify the person from whom the forensic material was taken of the making of the application, and 33  
34  
35

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(b)	the person or his or her legal representative or interview friend (if any) has been given an opportunity to speak to or make a submission to the Magistrate concerning the extension.	1 2 3
(7)	An extension in relation to particular forensic material may be given on more than one occasion.	4 5
(8)	The Magistrate is to ensure that the responsible person in relation to the DNA database system is notified of any extension given under this section.	6 7 8
	<b>Note.</b> Part 13 contains provisions restricting the use of information obtained as a result of the carrying out of a forensic procedure.	9 10
<b>89</b>	<b>Destruction of forensic material where related evidence is inadmissible</b>	11
(1)	If a court finds that evidence described in section 82 relating to a forensic procedure is inadmissible under section 85, the Commissioner of Police must, as soon as practicable, ensure that the forensic material taken from the suspect by that forensic procedure is destroyed.	12 13 14 15
(2)	This section does not require the destruction of a DNA profile derived from forensic material.	16 17
	<b>Note.</b> The Commissioner of Police may delegate this function. See section 31 of the <i>Police Service Act 1990</i> . Section 3 (5) explains the meaning of <b>destroy</b> .	18 19

## Part 11 DNA database system

1

### 90 Definitions

2

In this Act:

3

**crime scene index** means an index of DNA profiles derived from forensic material found:

4

5

(a) at any place (whether within or outside Australia) where an offence (whether a serious indictable offence or a prescribed offence or an offence under the law of a participating jurisdiction) was, or is reasonably suspected of having been, committed, or

6

7

8

9

10

(b) on or within the body of the victim of such an offence, or

11

(c) on anything worn or carried by the victim at the time when such an offence was committed, or

12

13

(d) on or within the body of any person, on any thing, or at any place, associated with the commission of such an offence.

14

15

**DNA database system** means a database (whether in computerised or other form and however described) containing:

16

17

(a) the following indexes of DNA profiles:

18

(i) a crime scene index,

19

(ii) a missing persons index,

20

(iii) an offenders index,

21

(iv) a suspects index,

22

(v) an unknown deceased persons index,

23

(vi) a volunteers (limited purposes) index,

24

(vii) a volunteers (unlimited purposes) index,

25

and information that may be used to identify the person from whose forensic material each DNA profile was derived, and

26

27

(b) a statistical index, and

28

(c) any other index prescribed by the regulations.

29

**missing persons index** means an index of DNA profiles derived from forensic material of:

30

31

(a) persons who are missing, and

32

(b) volunteers who are relatives by blood of such persons.

33

- 
- offenders index*** means an index of DNA profiles derived from forensic material taken: 1
- (a) in accordance with Part 7 or under a corresponding law of a participating jurisdiction from serious indictable offenders, and 2
- (b) from suspects who have been convicted of prescribed offences or offences under the laws of participating jurisdictions. 3
- statistical index*** means an index of information that: 4
- (a) is obtained from the analysis of forensic material taken from persons in accordance with this Act or under a corresponding law of a participating jurisdiction, and 5
- (b) has been compiled for statistical purposes, and 6
- (c) cannot be used to discover the identity of the persons from whom the forensic material was taken. 7
- suspects index*** means an index of DNA profiles derived from forensic material taken from suspects in accordance with Part 3, 4 or 5 or under a corresponding law of a participating jurisdiction. 8
- unknown deceased persons index*** means an index of DNA profiles derived from forensic material of deceased persons whose identities are unknown. 9
- volunteers (limited purposes) index*** means an index of DNA profiles derived from forensic material taken in accordance with Part 8 or under a corresponding law of a participating jurisdiction from volunteers who (or whose parents or guardians) have been informed that information obtained will be used only for a purpose specified to them under section 77 (2) (b). 10
- volunteers (unlimited purposes) index*** means an index of DNA profiles derived from material taken: 11
- (a) in accordance with Part 8 or under a corresponding law of a participating jurisdiction from volunteers who (or whose parents or guardians) have been informed under section 77 (2) (c) that information obtained may be used for the purpose of a criminal investigation or any other purpose for which the DNA database system may be used under this Part or Part 12, and 12
- (b) from deceased persons whose identity is known. 13
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<b>91</b>	<b>Supply of forensic material for DNA database system purposes</b>	1
(1)	A person:	2
(a)	whose conduct causes the supply of forensic material taken from any person under this Act (or under a corresponding law of a participating jurisdiction) to any person for prohibited analysis, and	3 4 5 6
(b)	who intends or is reckless as to the supply of material of that kind,	7 8
	is guilty of an offence.	9
	Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.	10 11
(2)	A person:	12
(a)	whose conduct causes the supply of forensic material (other than permitted forensic material) to any person for analysis for the purpose of deriving a DNA profile for inclusion on an index of the DNA database system, and	13 14 15 16
(b)	who intends or is reckless as to the supply of material of that kind,	17 18
	is guilty of an offence.	19
	Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.	20 21
(3)	In this section:	22
	<b><i>permitted forensic material</i></b> means forensic material:	23
(a)	found at a crime scene, or	24
(b)	taken from a suspect in relation to an offence in accordance with Part 3, 4 or 5 or under a corresponding law of a participating jurisdiction and who is subsequently convicted of the offence, or	25 26 27 28
(c)	taken from an offender or a volunteer in accordance with Part 7 or 8 or under a corresponding law of a participating jurisdiction, or	29 30 31
(d)	taken from the body of a deceased person, or	32
(e)	that is from the body of a missing person, or	33
(f)	taken from a volunteer who is a relative by blood of a deceased or missing person.	34 35

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*prohibited analysis* means analysis for the purpose of deriving a DNA profile for inclusion on an index of the DNA database system when the forensic material is required to be destroyed by this Act or under a corresponding law of a participating jurisdiction. 1  
2  
3  
4

**92 Use of information on DNA database system** 5

- (1) A person must not access information stored on the DNA database system unless the information is accessed in accordance with this section. 6  
7  
8

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both. 9  
10

- (2) A person authorised by the responsible person for the DNA database system may access information stored on the DNA database system for one or more of the following purposes: 11  
12  
13

(a) the purpose of forensic matching permitted under section 93, 14

(b) the purpose of making the information available, in accordance with the regulations, to the person to whom the information relates, 15  
16  
17

(c) the purpose of administering the DNA database system, 18

(d) the purposes of any arrangement entered into between the State and another State or Territory or the Commonwealth for the provision of access to information contained in the DNA database system by law enforcement officers or by any other persons prescribed by the regulations, 19  
20  
21  
22  
23

(e) the purposes of and in accordance with the *Mutual Assistance in Criminal Matters Act 1987*, or the *Extradition Act 1988*, of the Commonwealth, 24  
25  
26

(f) the purpose of a review of, or inquiry into, a conviction or sentence under Part 13A of the *Crimes Act 1900*, 27  
28

(g) the purposes of the investigation of complaints about the conduct of police officers under Part 8A of the *Police Service Act 1990*, 29  
30  
31

(h) the purposes of a coronial inquest or inquiry, 32

(i) the purpose of the investigation of a complaint by the Privacy Commissioner, 33  
34

(j) any other purposes prescribed by the regulations. 35

- (3) This section does not apply in relation to information that cannot be used to discover the identity of any person. 1  
2

**Note.** Section 109 prevents the disclosure of accessed information except in certain specified circumstances. 3  
4

**93 Permissible matching of DNA profiles** 5

- (1) A matching of a DNA profile on an index of the DNA database system specified in column 1 of the following table with a DNA profile on another index of the system specified in column 2, 3, 4, 5, 6, 7 or 8 of the table is not permitted by this Part if: 6  
7  
8  
9

(a) “no” is shown in relation to the index specified in column 2, 3, 4, 5, 6, 7 or 8 opposite the index specified in column 1, or 10  
11

(b) “only if within purpose” is shown in relation to the index specified in column 2, 6, 7 or 8 opposite the volunteers (limited purposes) index specified in column 1 and the matching is carried out for a purpose other than a purpose for which the DNA profile placed on the volunteers (limited purposes) index was so placed. 12  
13  
14  
15  
16  
17

- (2) A matching of a DNA profile on an index of the DNA database system specified in column 1 of the following table with a DNA profile on another index of the system specified in column 2, 3, 4, 5, 6, 7 or 8 of the table is permitted by this Part if: 18  
19  
20  
21

(a) “yes” is shown in relation to the index specified in column 2, 3, 4, 5, 6, 7 or 8 opposite the index specified in column 1, or 22  
23

(b) “only if within purpose” is shown in relation to the index specified in column 2, 6, 7 or 8 opposite the volunteers (limited purposes) index specified in column 1 and the matching is carried out for a purpose for which the DNA profile placed on the volunteers (limited purposes) index was so placed. 24  
25  
26  
27  
28



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	yes	yes	no	yes	yes	yes	yes	yes	9
suspects	yes	no	no	no	yes	no	yes		10
volunteers (limited purposes)	only if within purpose	no	no	no	only if within purpose	only if within purpose	only if within purpose		11 12 13
volunteers (unlimited purposes)	yes	no	no	no	yes	yes	yes		14 15 16
offenders	yes	yes	no	no	yes	yes	yes		17
missing persons	yes	yes	yes	yes	yes	yes	yes		18
unknown deceased persons	yes	yes	yes	yes	yes	yes	no		19 20 21

- (3) A person: 22
  - (a) whose conduct gives rise to a matching that is not permitted by this Part of a DNA profile on an index of the DNA database system with a DNA profile on the same or another index of the DNA database system, and 23  
24  
25  
26
  - (b) who intends or is reckless as to any such matching of profiles, 27  
is guilty of an offence. 28  
Maximum penalty: 100 penalty units or imprisonment for 2 years, or both. 29  
30
- (4) This section does not make it an offence for conduct to cause a matching that is not permitted by this Part if the matching is solely for the purpose of administering the DNA database system. 31  
32  
33

<b>94</b>	<b>Recording, retention and removal of identifying information on DNA database system</b>	1
		2
(1)	A person:	3
(a)	whose conduct causes any identifying information about a person obtained from forensic material taken from the person under this Act to be recorded or retained in a DNA database system at any time after this Act requires the forensic material to be destroyed, and	4 5 6 7 8
	<b>Note.</b> See, for example, section 88 (2) which requires forensic material taken from a suspect to be destroyed if 12 months has elapsed since the forensic material was taken and proceedings have not been instituted against the suspect.	9 10 11 12
(b)	who intends or is reckless as to the recording or retention, is guilty of an offence.	13 14
	Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.	15 16
(2)	The responsible person for the DNA database system must ensure that any identifying information relating to a person from whose forensic material a DNA profile on the volunteers (unlimited purposes) index or volunteers (limited purposes) index of the system was derived is removed from the system as soon as practicable after the end of the identifying period for the profile.	17 18 19 20 21 22
	Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.	23 24
(3)	The responsible person for the DNA database system must remove any identifying information relating to a DNA profile of an offender on the offenders index of the system from the system as soon as practicable after becoming aware that the offender has been pardoned or acquitted of the offence concerned or if the conviction has been quashed.	25 26 27 28 29
	Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.	30 31
(4)	In this section:	32
	<b>identifying information</b> means any information that could be used:	33
(a)	to discover the identity of the person from whose forensic material the DNA profile was derived, or	34 35
(b)	to get information about an identifiable person.	36

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- identifying period*** for a DNA profile means: 1
- (a) if the DNA profile is derived from forensic material taken from 2  
a volunteer—such period after the DNA profile is placed on the 3  
DNA database system as is agreed by the Commissioner of 4  
Police and the volunteer (or, in the case of a volunteer who is 5  
a child or an incapable person, a parent or guardian of the 6  
volunteer), or 7
- (b) if the DNA profile is derived from forensic material taken from 8  
a deceased person (not being a person who was a volunteer) 9  
whose identity is known—such period as the Commissioner of 10  
Police orders the responsible person to retain identifying 11  
information relating to the profile. 12

## Part 12 Interstate enforcement

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### 95 Definitions

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In this Act:

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*appropriate authority* means:

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(a) in relation to a participating jurisdiction other than the Australian Capital Territory—an authority exercising, in relation to the police force of that jurisdiction, functions corresponding to those of the Commissioner of Police and any other authority prescribed by the regulations, or

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(b) in relation to the Australian Capital Territory—the Commissioner of the Australian Federal Police and any other authority prescribed by the regulations.

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*corresponding law* means a law relating to the carrying out of forensic procedures and DNA databases that substantially corresponds to Part 11 or that is prescribed by the regulations for the purposes of this definition.

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*DNA database* means:

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(a) in relation to the State—the DNA database system, and

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(b) in relation to a participating jurisdiction—a DNA database system that is kept under a corresponding law of the participating jurisdiction.

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*participating jurisdiction* means the Commonwealth, or a State or Territory, in which there is a corresponding law in force.

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*responsible Minister* of a participating jurisdiction means a Minister of that jurisdiction who is responsible for administration of a corresponding law.

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### 96 Registration of orders

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(1) The Minister may enter into arrangements with the responsible Ministers of the participating jurisdictions for the establishment and maintenance, in one of those jurisdictions, of a register of orders for the carrying out of forensic procedures made under corresponding laws of participating jurisdictions.

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- (2) An order is registered when a copy of the order (being a copy certified by the person who made it) is registered in accordance with the law of the participating jurisdiction in which the register is kept. 1  
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- (3) A person is authorised to carry out the forensic procedure authorised by an order that is registered in accordance with such an arrangement in the State. The person is authorised to carry out the procedure in accordance with Part 6 and not otherwise. 4  
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- (4) An application for registration of an order, or for cancellation of registration of an order, may be made by the Commissioner of Police or an appropriate authority. 8  
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- 97 Database information** 11
- (1) The Minister may enter into arrangements with a responsible Minister of a participating jurisdiction under which: 12  
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- (a) information from the DNA database system of the State that may be relevant to the investigation of an offence against the law of the participating jurisdiction is to be transmitted to the appropriate authority in that jurisdiction for the purposes of the investigation of, or proceedings in respect of, that offence, and 14  
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- (b) information from a DNA database of the participating jurisdiction that may be relevant to the investigation of an offence against the law of the State is to be transmitted to the Commissioner of Police for the purposes of the investigation of, or proceedings in respect of, that offence. 19  
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- (2) Information that is transmitted under this section must not be recorded or maintained in any database of information that may be used to discover the identity of a person or to obtain information about an identifiable person at any time after this Act or a corresponding law of a participating jurisdiction requires the forensic material to which it relates to be destroyed. 24  
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<b>Part 13</b>	<b>General provisions relating to operation of this Act</b>	1 2
<b>98</b>	<b>Interpreters</b>	3
(1)	Where:	4
(a)	a police officer proposes to take an action listed in subsection (2), and	5 6
(b)	the police officer believes on reasonable grounds that the suspect or serious indictable offender is unable, because of inadequate knowledge of the English language or a physical disability, to communicate orally with reasonable fluency in the English language,	7 8 9 10 11
	the police officer must, before taking the proposed action, arrange for the presence of an interpreter, and defer taking the proposed action until the interpreter is present.	12 13 14
(2)	The actions are as follows:	15
(a)	asking a suspect or offender to consent to a forensic procedure (Part 3 or 7),	16 17
(b)	ordering the carrying out of a non-intimate forensic procedure on, or taking of a sample by buccal swab from, a suspect or offender (Part 4 or 7),	18 19 20
(c)	applying to a Magistrate for an order for the carrying out of a forensic procedure on a suspect or offender (Part 5 or 7),	21 22
(d)	cautioning a suspect or offender (Part 6 or 7),	23
(e)	carrying out, or arranging for the carrying out of, a forensic procedure on a suspect or offender (Part 6 or 7),	24 25
(f)	giving a suspect or offender an opportunity to view a video recording made under this Act (section 100).	26 27
<b>99</b>	<b>Powers and entitlements of legal representatives and interview friends</b>	28
(1)	A request or objection that may be made by a suspect or offender under this Act may be made on the suspect's or offender's behalf by:	29 30
(a)	in any case—the suspect's or offender's legal representative, or	31
(b)	if the suspect or offender is a child or an incapable person—an interview friend of the suspect or offender, or	32 33

(c)	if the investigating police officer believes on reasonable grounds that the suspect or offender is an Aboriginal person or a Torres Strait Islander—an interview friend of the suspect or offender.	1 2 3 4
(2) If:		5
(a)	a provision of this Act requires a suspect or offender to be informed of a matter, and	6 7
(b)	an interview friend or legal representative of the suspect or offender is present when the suspect or offender is to be so informed,	8 9 10
	the interview friend or legal representative must also be informed of the matter.	11 12
<b>100</b>	<b>Obligation of investigating police officers relating to recordings</b>	<b>13</b>
(1)	If a recording is made as required by a provision of this Act, the investigating police officer must ensure that:	14 15
(a)	if an audio recording only or a video recording only is made—the suspect, offender or volunteer concerned is given the opportunity to listen to or view the recording, and	16 17 18
(b)	if both an audio recording and a video recording are made:	19
(i)	the suspect, offender or volunteer concerned is given an opportunity to listen to the audio recording, and	20 21
(ii)	the suspect, offender or volunteer concerned is given an opportunity to view the video recording, and	22 23
(c)	in any case, if a transcript of the recording is made—a copy of the transcript is made available to the suspect, offender or volunteer concerned.	24 25 26
(2)	Where an investigating police officer is required to ensure that a suspect, offender or volunteer is given an opportunity to view a video recording made under this Act, the investigating police officer must ensure that the same opportunity is given to:	27 28 29 30
(a)	in any case—the suspect's, offender's or volunteer's legal representative, and	31 32
(b)	if the suspect, offender or volunteer is a child or an incapable person—an interview friend of the suspect, offender or volunteer, and	33 34 35

- (c) if the investigating police officer believes on reasonable grounds that the suspect, offender or volunteer is an Aboriginal person or a Torres Strait Islander—an interview friend of the suspect, offender or volunteer. 1  
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**101 Material required to be made available to suspect, offender or volunteer** 5

- (1) Without limiting the way in which material from samples, copies, or any other material, that must be made available to a suspect, offender or volunteer under this Act may be made available, it: 6  
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  - (a) may be sent to the suspect, offender or volunteer at his or her last known address (if any), or to the suspect's, offender's or volunteer's legal representative (if any) at his or her last known address, or 9  
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  - (b) if there is no known address as mentioned in paragraph (a)—may be made available for collection by the suspect, offender or volunteer at the police station where the investigating police officer was based at the time the forensic procedure was carried out. 13  
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- (2) Material of any kind (other than material from samples and copies of records made under section 36) that is required by this Act to be made available to a suspect, offender or volunteer must be made available in accordance with subsection (1): 18  
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  - (a) within 90 days after the material comes into existence, or 22
  - (b) if the material is requested by the suspect, offender or volunteer or the suspect's, offender's or volunteer's interview friend or legal representative, within 90 days of the request. 23  
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**Note.** The timing of making copies of section 36 records available is covered in section 36 (5). 26  
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**102 No charge to be made for material or viewing video** 28

If a provision of this Act requires material of any kind to be given to a suspect, offender or volunteer, or an opportunity to view a video recording to be given to a suspect, offender or volunteer, the material or the opportunity to view the video recording must be given without charge. 29  
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<b>103</b>	<b>Proof of belief or suspicion</b>	1
	In any proceedings, the burden lies on the prosecution to prove on the balance of probabilities that a police officer had a belief on reasonable grounds, or suspected on reasonable grounds, as to a matter referred to in this Act.	2 3 4 5
<b>104</b>	<b>Proof of impracticability</b>	6
	In any proceedings, the burden lies on the prosecution to prove on the balance of probabilities that it was not practicable to do something required by this Act to be done if practicable.	7 8 9
<b>105</b>	<b>Proof that time should be disregarded</b>	10
	In any proceedings, the burden lies on the prosecution to prove on the balance of probabilities that any particular time was covered by a provision of section 16 (2), 40 (2) or 53 (2).	11 12 13
<b>106</b>	<b>Proof of voluntary waiver of certain rights</b>	14
	In any proceedings:	15
	(a) the burden lies on the prosecution to prove that an Aboriginal person or Torres Strait Islander has waived a right as mentioned in section 10 (3), 30 (4), 55 (3) or 57 (5), and	16 17 18
	(b) the burden is not discharged unless the court is satisfied on the balance of probabilities that the person voluntarily waived that right, and did so with full knowledge and understanding of what he or she was doing.	19 20 21 22
<b>107</b>	<b>Liability for forensic procedures</b>	23
	No civil or criminal liability is incurred by any person (including a police officer) who carries out, or helps to carry out, a forensic procedure under this Act in respect of anything properly and necessarily done or omitted to be done in good faith by the person in carrying out or helping to carry out the forensic procedure if the person believed on reasonable grounds that:	24 25 26 27 28 29
	(a) informed consent had been given to the carrying out of the forensic procedure, or	30 31

(b)	the carrying out of the forensic procedure without informed consent had been duly ordered by a police officer or Magistrate under this Act.	1 2 3
	<b>Note.</b> This section does not provide any protection in respect of action taken maliciously or recklessly.	4 5
<b>108</b>	<b>Experts not obliged to carry out forensic procedures</b>	6
	Nothing in this Act requires a medical practitioner, nurse, dentist, dental technician or appropriately qualified police officer or person to carry out a forensic procedure.	7 8 9
<b>109</b>	<b>Disclosure of information</b>	10
(1)	A person who has access:	11
(a)	to any information stored on the DNA database system, or	12
(b)	to any other information revealed by a forensic procedure carried out on a suspect, offender or volunteer,	13 14
	must not disclose that information except as provided by this section.	15
(2)	A person may only disclose information stored on the DNA database system for one or more of the following purposes:	16 17
(a)	the purposes of forensic comparison in the course of a criminal investigation by a police officer or other person prescribed by the regulations,	18 19 20
(b)	the purposes of making the information available, in accordance with the regulations, to the person to whom the information relates,	21 22 23
(c)	the purposes of administering the DNA database system,	24
(d)	the purposes of any arrangement entered into between the State and another State or Territory or the Commonwealth for the provision of access to information contained in the DNA database system by law enforcement officers or by any other persons prescribed by the regulations,	25 26 27 28 29
(e)	the purposes of a review, or inquiry into, a conviction or sentence under Part 13A of the <i>Crimes Act 1900</i> ,	30 31
(f)	the purposes of an investigation of a complaint by the Privacy Commissioner,	32 33
(g)	any other purpose prescribed by the regulations.	34

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| (3) A person may only disclose information revealed by the carrying out of a forensic procedure on a suspect, offender or volunteer:   | 1<br>2         |
| (a) if the person is the suspect, offender or volunteer to whom the information relates, or  | 3<br>4         |
| (b) if the information is already publicly known, or   | 5              |
| (c) in accordance with any other provision of this Act, or   | 6              |
| (d) in accordance with the <i>Mutual Assistance in Criminal Matters Act 1987</i> , or the <i>Extradition Act 1988</i> , of the Commonwealth, or  | 7<br>8<br>9    |
| (e) for the purposes of the investigation of any offence or offences generally, or   | 10<br>11       |
| (f) for the purpose of a decision whether to institute proceedings for an offence, or  | 12<br>13       |
| (g) for the purpose of proceedings for any offence, or   | 14             |
| (h) for the purpose of a coronial inquest or inquiry, or   | 15             |
| (i) for the purpose of civil proceedings (including proceedings under Part 9 of the <i>Police Service Act 1990</i> ) that relate to the way in which the procedure was carried out, or | 16<br>17<br>18 |
| (j) for the purpose of the suspect's, offender's or volunteer's medical treatment, or  | 19<br>20       |
| (k) for the purpose of the medical treatment of a victim of an offence that there are reasonable grounds to believe was committed by the suspect, or                                   | 21<br>22<br>23 |
| (l) if the suspect, offender or volunteer consents in writing to the disclosure, or  | 24<br>25       |
| (m) for the purposes of the investigation of complaints about the conduct of police officers under Part 8A of the <i>Police Service Act 1990</i> , or                                  | 26<br>27<br>28 |
| (n) for the purposes of scrutiny by the Ombudsman under section 121, or  | 29<br>30       |
| (o) for any other purpose prescribed by the regulations.   | 31             |
| (4) This section does not apply in relation to information that cannot be used to discover the identity of any person.   | 32<br>33       |

Clause 109 Crimes (Forensic Procedures) Bill 2000

Part 13 General provisions relating to operation of this Act

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(5) A person:	1
(a) whose conduct gives rise to the disclosure of information in contravention of this section, and	2 3
(b) who intends or is reckless as to the disclosure,	4
is guilty of an offence.	5
Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.	6 7
<b>110 Retention of electronic recordings</b>	8
(1) A recording made by electronic means by a police officer in accordance with this Act that is no longer required for investigative or evidentiary purposes may be retained for such other purposes, and for such period, as the Commissioner of Police directs.	9 10 11 12
(2) A recording that is retained under this section is to be stored so as to protect it against unauthorised access or use by any person.	13 14

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<b>Part 14</b>	<b>Operation of this Act and effect on other laws</b>	1
<b>111</b>	<b>Act does not apply to persons under 10</b>	2
	This Act does not authorise the carrying out of a forensic procedure on a person who is under 10 years of age.	3 4
<b>112</b>	<b>Relationship with sections 353A and 353AA of the Crimes Act 1900 and section 63 of the Crimes (Sentencing Procedure) Act 1999</b>	5 6
	This Act does not apply to the taking of photographs, hand prints, finger prints, foot prints or toe prints:	7 8
	(a) from a suspect who is under 14 years of age, if the suspect is in lawful custody as mentioned in section 353AA of the <i>Crimes Act 1900</i> , or	9 10 11
	(b) from a suspect who is at least 14 years of age, if the suspect is in lawful custody as mentioned in section 353A (3) of the <i>Crimes Act 1900</i> , or	12 13 14
	(c) from an offender as referred to in section 63 of the <i>Crimes (Sentencing Procedure) Act 1999</i> .	15 16
<b>113</b>	<b>Relationship with Part 10A of the Crimes Act 1900</b>	17
	(1) Nothing in this Act is intended to limit the rights and protections provided by Part 10A of the <i>Crimes Act 1900</i> to the extent that the provisions of that Part can operate in circumstances covered by this Act.	18 19 20 21
	(2) The rights and protections conferred by this Act are in addition to those conferred by Part 10A of the <i>Crimes Act 1900</i> but, to the extent (if any) that compliance with this Act results in compliance with that Part, the requirements of that Part are satisfied.	22 23 24 25
<b>114</b>	<b>Application of other laws</b>	26
	(1) This Act is not intended to limit or exclude the operation of another law of the State relating to the following:	27 28
	(a) the carrying out of forensic procedures, including procedures not referred to in this Act,	29 30

(b)	without limiting paragraph (a), the carrying out of breath analysis or a breath test or the production of samples of blood or urine to determine the level of alcohol or drugs, if any, present in a person's body,	1 2 3 4
(c)	the taking of forensic samples, including samples not referred to in this Act,	5 6
(d)	the taking of identification evidence,	7
(e)	the carrying out of searches of a person,	8
(f)	the retention or use of forensic material or information obtained as a result of activities described in paragraph (a), (b), (c), (d) or (e).	9 10 11
(2)	It is declared that even though another law of the State provides power to do one or more of the things referred to in subsection (1), a similar power conferred by this Act may be used despite the existence of the power under the other law.	12 13 14 15
<b>115</b>	<b>Taking, retention and use of forensic material</b>	16
(1)	<b>Taking, retention and use authorised by laws of other jurisdictions</b> Nothing in this Act affects the taking, retention or use of forensic material, or information obtained from forensic material, if the taking, retention or use of the material is authorised by or under another law of the State or a law of the Commonwealth.	17 18 19 20 21
(2)	Forensic material, or information obtained from it, that is taken in accordance with the law of another State or a Territory may be retained or used in the State for investigative, statistical or evidentiary purposes even if its retention or use would, but for this subsection, constitute a breach of, or failure to comply with, any provision of this Act relating to the carrying out of forensic procedures.	22 23 24 25 26 27
(3)	<b>Use and retention of forensic material taken before commencement of subsection</b> Forensic material, or information obtained from it, that was taken in accordance with the law of this or another State or a Territory, as in force immediately before the commencement of this subsection, may be retained or used in the State for investigative, statistical or evidentiary purposes even if its retention or use would, but for this subsection, constitute a breach of, or failure to comply with, any provision of this Act relating to the carrying out of forensic procedures.	28 29 30 31 32 33 34 35 36

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## Part 15 Miscellaneous

### 116 Lists of interview friends

- (1) The Minister must, so far as is reasonably practicable, establish, and update at such intervals as the Minister thinks appropriate, a list, in relation to a part of the State where there are likely to be persons under arrest or serving sentences of imprisonment in a correctional centre or other place of detention, of the names of persons (not being police officers) who:
- (a) are suitable to help Aboriginal persons or Torres Strait Islanders under arrest or serving a sentence of imprisonment, and
  - (b) are willing to give such help in that part of the State.
- (2) In establishing and maintaining a list in relation to a part of the State, the Minister must from time to time consult with any Aboriginal legal aid organisation providing legal assistance to Aboriginal persons or Torres Strait Islanders in that part of the State.
- (3) The Minister may, in writing, delegate to a person employed in the Attorney General's Department all or any of the functions of the Minister under this section.

### 117 Proceedings for offences

Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

### 118 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, the regulations may make provision for or with respect to:
- (a) the DNA database system, or
  - (b) the registration of orders under Part 12.
- (3) A regulation may create an offence punishable by a penalty not exceeding 20 penalty units.

<b>119</b>	<b>Amendments</b>	1
	Each Act specified in Schedule 1 is amended as set out in that Schedule.	2 3
<b>120</b>	<b>Savings, transitional and other provisions</b>	4
	Schedule 2 has effect.	5
<b>121</b>	<b>Monitoring of operation of Act by Ombudsman</b>	6
(1)	For the period of 18 months after the commencement of this section the Ombudsman is to keep under scrutiny the exercise of the functions conferred on police officers under this Act.	7 8 9
(2)	For that purpose, the Ombudsman may require the Commissioner of Police to provide information about the exercise of those functions.	10 11
(3)	The Ombudsman must, as soon as practicable after the expiration of that 18-month period, prepare a report of the Ombudsman's work and activities under this section and furnish a copy of the report to the Minister, the Minister for Police and the Commissioner of Police.	12 13 14 15
(4)	A copy of the report is to be tabled in each House of Parliament within 12 months after the expiration of that 18-month period.	16 17
<b>122</b>	<b>Review of Act</b>	18
(1)	The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.	19 20 21
(2)	The review is to be undertaken as soon as possible after the period of 18 months from the date of assent to this Act.	22 23
(3)	A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period referred to in subsection (2).	24 25 26
(4)	The report under this section may include the copy of the report received by the Minister from the Ombudsman under section 121.	27 28



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<b>Schedule 1</b>	<b>Amendments</b>	1
	(Section 119)	2
<b>1.1</b>	<b>Crimes Act 1900 No 40</b>	3
	<b>Section 353A Power to search person, make medical examination, take photograph, finger-print or palm-print</b>	4 5
	Omit section 353A (3A) and (3B).	6
<b>1.2</b>	<b>Justices Act 1902 No 27</b>	7
	<b>Section 104 When an appeal can be made by a defendant or other person</b>	8 9
	Insert after section 104 (5):	10
	(6) <b>Appeals concerning orders under the Crimes (Forensic Procedures) Act 2000</b>	11 12
	An appeal under this Division on a ground that involves a question of law alone may be made to the Supreme Court:	13 14
	(a) against an order made by a Magistrate under the <i>Crimes (Forensic Procedures) Act 2000</i> authorising the carrying out of a forensic procedure on a person, or	15 16 17
	(b) against the refusal of a Magistrate to make such an order.	18 19

<b>Schedule 2</b>	<b>Savings, transitional and other provisions</b>	1
	(Section 120)	2
<b>Part 1</b>	<b>Savings and transitional regulations</b>	3
<b>1</b>	<b>Regulations</b>	4
(1)	The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts: this Act	5 6 7
(2)	Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.	8 9
(3)	To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:	10 11 12
(a)	to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or	13 14 15
(b)	to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.	16 17 18
<b>Part 2</b>	<b>Provisions consequent on enactment of Act</b>	19
<b>2</b>	<b>Forensic procedures</b>	20
(1)	This Act does not apply in respect of the carrying out of a forensic procedure on a person:	21 22
(a)	arrested for an offence, or	23
(b)	charged with an offence, or	24
(c)	summonsed to appear before a court in relation to an offence, before the commencement of this clause.	25 26

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- (2) Section 353A (3A) and (3B) of the *Crimes Act 1900* continue to apply to and in respect of the taking of samples of the blood, saliva and hair of a person taken into lawful custody before the commencement of this clause. 1  
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- 3 DNA database system** 5
- (1) Nothing in this Act prevents a DNA profile derived from forensic material found, or obtained from the carrying out of a forensic procedure, before the commencement of this clause from being placed on the appropriate index of the DNA database system. 6  
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- (2) However, information obtained from analysis of forensic material taken from a volunteer before that commencement is not to be placed on the DNA database system unless the volunteer (or in the case of a child or an incapable person, a parent or guardian of the volunteer) has been informed of the matters set out in section 77 (2). 10  
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