



New South Wales

Crimes (Forensic Procedures) Amendment (Untested Registrable Persons) Act 2009 No 63

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Crimes (Forensic Procedures) Amendment (Untested Registrable Persons) Act 2009 No 63

Act No 63, 2009

An Act to amend the *Crimes (Forensic Procedures) Act 2000* to make further provision with respect to the carrying out of forensic procedures on untested registrable persons. [Assented to 16 September 2009]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crimes (Forensic Procedures) Amendment (Untested Registrable Persons) Act 2009*.

2 Commencement

This Act commences on the date of assent to this Act.

Schedule 1 Amendment of Crimes (Forensic Procedures) Act 2000 No 59

**[1] Sections 3 (1) (paragraph (d2) of the definition of “order”), 75Q (c),
75R (b) and 75ZD**

Omit “section 75ZB” wherever occurring. Insert instead “section 75ZC”.

[2] Section 75W

Omit the section. Insert instead:

75W Carrying out forensic procedure on untested registrable person

- (1) A police officer may request an untested registrable person (other than a child or an incapable person) to consent to a forensic procedure to which this Part applies being carried out on the person.
- (2) If the request is made when the untested registrable person attends a police station or other place in person to make a report under Part 3 of the *Child Protection (Offenders Registration) Act 2000*, the police officer may detain the untested registrable person at the police station or other place for so long as is reasonably necessary:
 - (a) to determine whether the registrable person consents to the carrying out of the forensic procedure under this Part, and
 - (b) if the person consents—to carry out the forensic procedure in accordance with this Part, and
 - (c) if the person does not consent—to order the carrying out of a non-intimate forensic procedure under section 75Y and, if the order is made, to carry out the forensic procedure.
- (3) In detaining the person, the police officer must tell the person:
 - (a) why the person is being detained, and
 - (b) that the detention is authorised under this Act, and
 - (c) that the person will be released immediately:
 - (i) if consent is refused and no order is to be made under section 75Y, or
 - (ii) if the forensic procedure is to be carried out with consent or by order, after it is carried out.

- (4) The detained person:
 - (a) must not be held for a period that is longer than is reasonably necessary to make the determination referred to in subsection (2) (a) and, if a forensic procedure is to be carried out with consent or by order, to carry it out, and
 - (b) must be released immediately if consent is refused and no order is to be made under section 75Y or, if the forensic procedure is to be carried out with consent or by order, after it is carried out.
- (5) The police officer may use reasonable force to ensure the detained person remains at the police station or other place for the period referred to in subsection (4).

[3] Section 75X Matters that untested registrable person must be informed of before giving consent

Omit “The police officer” from section 75X (1).

Insert instead “Before asking the untested registrable person whether he or she consents to the carrying out of a forensic procedure, the police officer”.

[4] Section 75X (2)

Insert “and that reasonable force may be used to enable the forensic procedure to be carried out” after “section 75Y”.

[5] Sections 75ZB and 75ZC

Omit the sections. Insert instead:

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

- (1) A police officer may apply to any court for an order under section 75ZC for the carrying out of a forensic procedure to which this Part applies on an untested registrable person.
- (2) An application may be made whether or not the untested registrable person has been requested to consent to the carrying out of the forensic procedure under this Part or been ordered to undergo the forensic procedure by a senior police officer.

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

- (1) The court may order the carrying out of a forensic procedure to which this Part applies on the untested registrable person if satisfied that the carrying out of the forensic procedure is justified in all the circumstances.

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- (2) The court may order the carrying out of a forensic procedure on an untested registrable person whether or not the person is present.
 - (3) The court may give directions as to the time and place at which the forensic procedure is to be carried out.
 - (4) If the court makes an order, the court must:
 - (a) specify the forensic procedure authorised to be carried out, and
 - (b) give reasons for making the order, and
 - (c) ensure that a written record of the order is kept, and
 - (d) order the registrable person (if present) to attend for the carrying out of the forensic procedure, and
 - (e) inform the registrable person (if present) that reasonable force may be used to ensure that he or she complies with the order for the carrying out of the forensic procedure.
 - (5) If the registrable person is not present when the order is made, all reasonable steps are to be taken by the police officer who applied for the order to notify the person that:
 - (a) the order has been made for the carrying out of the forensic procedure, and
 - (b) if the registrable person fails to attend for the carrying out of the forensic procedure in accordance with the order, the person may be arrested under section 75ZD (2).

[6] Section 75ZD Refusal or failure to permit forensic procedure

Insert at the end of the section:

- (2) If a police officer suspects on reasonable grounds that a person has committed an offence under this section, the police officer may, without a warrant, arrest the person for the purpose of carrying out the forensic procedure concerned.
- (3) A police officer who arrests a person under subsection (2) must, as soon as is reasonably practicable after the forensic procedure is carried out, release the person.
- (4) Nothing in this section affects any power of a police officer to arrest and deal with the person under Part 8 of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

[Second reading speech made in Legislative Council on 2 September 2009
Agreement in principle speech made in Legislative Assembly on 10 September 2009]

BY AUTHORITY