



New South Wales

Crimes (Forensic Procedures) Regulation 2008

under the

Crimes (Forensic Procedures) Act 2000

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Crimes (Forensic Procedures) Act 2000*.

JOHN HATZISTERGOS, M.L.C.,
Attorney General

Explanatory note

The object of this Regulation is to remake, with minor amendments, the provisions of the *Crimes (Forensic Procedures) Regulation 2000*, which is repealed on 1 September 2008 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation makes provision with respect to the following:

- (a) the organisation that is to be an ***Aboriginal legal aid organisation*** for the purposes of the *Crimes (Forensic Procedures) Act 2000* (***the Act***),
- (b) the persons who are appropriately qualified to carry out particular forensic procedures,
- (c) the person responsible for the NSW DNA database system,
- (d) the particulars that must be included in consents to carry out certain forensic procedures,
- (e) the information that must be given to a person, or to the parent or guardian of a person, who volunteers to undergo a forensic procedure,
- (f) the circumstances in which information (revealed by the carrying out of a forensic procedure on a person or stored on the DNA database system) may be accessed and disclosed,
- (g) the laws of the Commonwealth, States and Territories that are ***corresponding laws*** for the purposes of the Act,
- (h) savings and formal matters.

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Explanatory note

This Regulation is made under the *Crimes (Forensic Procedures) Act 2000*, including sections 3 (1) (definitions of ***Aboriginal legal aid organisation***, ***appropriately qualified*** and ***responsible person***), 72 (a), 75J (a), 75Z (a), 77 (2) (e), 78 (a), 92 (2) (b) and (j), 95 (definition of ***corresponding law***), 109 (2) (b) and (g) and (3) (o) and 118 (the general regulation-making power).

This Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*, namely matters arising under legislation that is substantially uniform or complementary with legislation of the Commonwealth or another State or Territory.

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Clause 1 Crimes (Forensic Procedures) Regulation 2008

Crimes (Forensic Procedures) Regulation 2008

under the

Crimes (Forensic Procedures) Act 2000

1 Name of Regulation

This Regulation is the *Crimes (Forensic Procedures) Regulation 2008*.

2 Commencement

- (1) Except as provided in subclause (2), this Regulation commences on 1 September 2008.
- (2) Clause 9 commences on 1 September 2008 or on the commencement of section 75Z of the Act, whichever occurs later.

Note. This Regulation replaces the *Crimes (Forensic Procedures) Regulation 2000* which is repealed on 1 September 2008 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

- (1) In this Regulation:
the Act means the *Crimes (Forensic Procedures) Act 2000*.
- (2) Notes included in this Regulation do not form part of this Regulation.

4 Aboriginal legal aid organisations

The Aboriginal Legal Service (NSW/ACT) Limited is a prescribed organisation for the purposes of the definition of *Aboriginal legal aid organisation* in section 3 (1) of the Act.

5 Appropriately qualified persons

For the purposes of paragraph (b) of the definition of *appropriately qualified* in section 3 (1) of the Act, a person is qualified to carry out a forensic procedure if the procedure is one the Commissioner of Police has authorised the person in writing (either generally or in a particular case) to carry out.

6 Responsible persons

For the purposes of the definition of *responsible person* in section 3 (1) of the Act, the Chief Executive of the Sydney West Area Health Service is declared to be the person responsible for the care, control and management of the DNA database system.

7 Form of consent—serious indictable offender

For the purposes of section 72 (a) of the Act, the following are the prescribed particulars:

- (a) the name of the serious indictable offender giving consent to the carrying out of the forensic procedure,
- (b) a description of the forensic procedure,
- (c) the name of the police officer who has requested consent to the carrying out of the procedure,
- (d) a statement as to whether or not the police officer has informed the offender (personally or in writing) of the matters set out in section 69 of the Act,
- (e) a statement as to whether or not the offender has been given the opportunity to communicate, or attempt to communicate, with an Australian legal practitioner of the offender's choice.

8 Form of consent—untested former offender

For the purposes of section 75J (a) of the Act, the following are the prescribed particulars:

- (a) the name of the untested former offender giving consent to the carrying out of the forensic procedure,
- (b) a description of the forensic procedure,
- (c) the name of the police officer who has requested consent to the carrying out of the procedure,
- (d) a statement as to whether or not the police officer has informed the former offender (personally or in writing) of the matters set out in section 75H of the Act,
- (e) a statement as to whether or not the former offender has been given the opportunity to communicate, or attempt to communicate, with an Australian legal practitioner of the former offender's choice.

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9 Form of consent—untested registrable person

For the purposes of section 75Z (a) of the Act, the following are the prescribed particulars:

- (a) the name of the untested registrable person giving consent to the carrying out of the forensic procedure,
- (b) a description of the forensic procedure,
- (c) the name of the police officer who has requested consent to the carrying out of the procedure,
- (d) a statement as to whether or not the police officer has informed the registrable person (personally or in writing) of the matters set out in section 75X of the Act,
- (e) a statement as to whether or not the untested registrable person has been given the opportunity to communicate, or attempt to communicate, with an Australian legal practitioner of the registrable person's choice.

10 Informed consent—volunteer or volunteer's parent or guardian

For the purposes of section 77 (2) (e) of the Act, the following are prescribed matters:

- (a) that the DNA database system includes 2 indexes relevant to volunteers, a volunteers (limited purposes) index and a volunteers (unlimited purposes) index,
- (b) that the volunteer, or parent or guardian of the volunteer, may give consent subject to the condition that information obtained from the analysis of forensic material taken in accordance with the consent will only be placed on a specified index of that system, or will not be placed on either index.

11 Form of consent—volunteer or volunteer's parent or guardian

For the purposes of section 78 (a) of the Act, the following are the prescribed particulars:

- (a) the name of the person giving consent to the carrying out of the forensic procedure,
- (b) a description of the forensic procedure,
- (c) the name of the police officer who has requested consent to the carrying out of the procedure,
- (d) a statement as to whether or not the police officer has informed the person (personally or in writing) of the matters set out in section 77 of the Act,

- (e) the name of the independent person in whose presence the consent is given,
- (f) a statement indicating whether the consent is given subject to a condition about on which index, if any, information obtained from the analysis of forensic material taken in accordance with the consent may be placed.

12 Access to, and disclosure of, information on DNA database system

- (1) For the purposes of section 92 (2) (b) of the Act, a person may access information stored on the DNA database system for the purpose of making it available to the person to whom it relates if:
 - (a) an application in writing to make the information available to the person is made to the responsible person for the DNA database system by or on behalf of the person, and
 - (b) before the information is made available, the applicant provides such reasonable proof of identity (if any) as may be required by the responsible person.
- (2) For the purposes of section 109 (2) (b) of the Act, a person may disclose information stored on the DNA database system for the purpose of making it available to the person to whom it relates if:
 - (a) an application in writing to make the information available to the person is made to the responsible person for the DNA database system by or on behalf of the person, and
 - (b) before the information is made available, the applicant provides such reasonable proof of identity (if any) as may be required by the responsible person.

13 Use of information on DNA database system

- (1) For the purposes of section 92 (2) (j) of the Act, the purpose of facilitating the assessment of the validity of a claim of apparent or possible wrongful conviction for a serious indictable offence made by or in relation to a serious indictable offender is a prescribed purpose for which a person authorised by the responsible person for the DNA database system may access information stored on the DNA database system, whether that information relates to the offender or any other person.
- (2) This clause applies whether a person was convicted before or after the commencement of this clause.

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14 Disclosure of information

- (1) For the purposes of section 109 (2) (g) of the Act:
 - (a) the purpose of facilitating the assessment by persons or classes of persons authorised by the Minister for Police of the validity of a claim of apparent or possible wrongful conviction for a serious indictable offence made by or in relation to a serious indictable offender is a prescribed purpose for which a person may disclose information stored on the DNA database system, whether that information relates to the offender or any other person, and
 - (b) any purpose relating to the security classification, placement or management by or under the *Crimes (Administration of Sentences) Act 1999* of a classifiable person is a prescribed purpose for which a person may disclose information that relates to the classifiable person that is stored on the DNA database system.
- (2) For the purposes of section 109 (3) (o) of the Act:
 - (a) the purpose of analysing a sample to obtain a DNA profile to be placed on the DNA database system is a prescribed purpose for which a person may disclose information revealed by the carrying out of a forensic procedure on a suspect, offender or volunteer, and
 - (b) any purpose relating to the security classification, placement or management by or under the *Crimes (Administration of Sentences) Act 1999* of a classifiable person is a prescribed purpose for which a person may disclose information relating to the classifiable person revealed by the forensic procedure that was carried out on the classifiable person.
- (3) This clause applies:
 - (a) whether a person was convicted (as referred to in subclause (1)) before or after the commencement of this clause, and
 - (b) whether the information referred to in subclause (1) was stored on the DNA database system before, or is so stored after, the commencement of this clause, and
 - (c) whether the information referred to in subclause (2) is revealed by a forensic procedure that was carried out before or is carried out after the commencement of this clause.
- (4) In this clause, **classifiable person** means a person who is or was a serious indictable offender on whom a forensic procedure has been carried out under Part 7 of the Act.

15 Corresponding laws

For the purposes of paragraph (b) of the definition of *corresponding law* in section 95 of the Act, the following laws are prescribed:

- (a) the *Crimes (Forensic Procedures) Act 2000* of the Australian Capital Territory,
- (b) Part ID of the *Crimes Act 1914* of the Commonwealth,
- (c) Division 7 of Part VII of the *Police Administration Act* of the Northern Territory,
- (d) Chapter 17 of the *Police Powers and Responsibilities Act 2000* of Queensland,
- (e) the *Criminal Law (Forensic Procedures) Act 2007* of South Australia,
- (f) the *Forensic Procedures Act 2000* of Tasmania,
- (g) Subdivision (30A) of Division 1 of Part III of the *Crimes Act 1958* of Victoria,
- (h) the *Criminal Investigation (Identifying People) Act 2002* of Western Australia.

16 Saving

Any act, matter or thing that had effect under the *Crimes (Forensic Procedures) Regulation 2000* immediately before the repeal of that Regulation is taken to have effect under this Regulation.