



New South Wales

Crimes (Forensic Procedures) Regulation 2024

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*.

MICHAEL DALEY, MP
Attorney General

Explanatory note

The object of this regulation is to remake, with changes, the *Crimes (Forensic Procedures) Regulation 2014*, which is repealed on 1 September 2024 by the *Subordinate Legislation Act 1989*, section 10(2).

This regulation provides for the following—

- (a) prescribing the Aboriginal Legal Service (NSW/ACT) Limited as an Aboriginal legal aid organisation for the *Crimes (Forensic Procedures) Act 2000* (**the Act**),
- (b) declaring the Secretary of the Ministry of Health as the person responsible for the DNA database system,
- (c) the laws of the Commonwealth, States and Territories that are corresponding laws for the Act,
- (d) the particulars required to be included in consents to carry out certain forensic procedures,
- (e) the information required to be given to a person, or to the parent or guardian of a person, who volunteers to undergo a forensic procedure,
- (f) restrictions on the placement of certain information on indexes of the DNA database system,
- (g) the circumstances in which information stored on the DNA database system may be accessed and disclosed,
- (h) the circumstances in which information revealed by the carrying out of a forensic procedure may be disclosed.

This regulation comprises or relates to matters set out in the *Subordinate Legislation Act 1989*, Schedule 3, namely—

- (a) matters of a machinery nature, and
- (b) matters arising under legislation that is substantially uniform or complementary with legislation of the Commonwealth or another State or Territory.

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Crimes (Forensic Procedures) Regulation 2024

under the

Crimes (Forensic Procedures) Act 2000

Part 1 Preliminary

1 Name of regulation

This regulation is the *Crimes (Forensic Procedures) Regulation 2024*.

2 Commencement

This regulation commences on 1 September 2024.

Note— This regulation replaces the *Crimes (Forensic Procedures) Regulation 2014*, which is repealed on 1 September 2024 by the *Subordinate Legislation Act 1989*, section 10(2).

3 Definitions

In this regulation—

authorised person, for Part 3—see section 14.

classifiable person, for Part 3—see section 14.

NSW Forensic and Analytical Science Service, for Part 3—see section 14.

the Act means the *Crimes (Forensic Procedures) Act 2000*.

Note— The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this regulation.

4 Aboriginal legal aid organisation

For the Act, section 3(1), definition of **Aboriginal legal aid organisation**, the Aboriginal Legal Service (NSW/ACT) Limited (ACN 118 431 066) is prescribed.

5 Responsible person

For the Act, section 3(1), definition of **responsible person**, the Secretary of the Ministry of Health is declared to be the person responsible for the care, control and management of the DNA database system.

6 Corresponding laws

For the Act, section 95, definition of **corresponding law**, paragraph (b), the following are declared to be corresponding laws—

- (a) all of the provisions of the *Crimes (Forensic Procedures) Act 2000* of the Australian Capital Territory,
- (b) the *Crimes Act 1914* of the Commonwealth, Part ID,
- (c) the *Police Administration Act 1978* of the Northern Territory, Part VII, Division 7,
- (d) the *Correctional Services Act 2014* of the Northern Territory, section 52,

- (e) the *Youth Justice Act 2005* of the Northern Territory, Part 2, Division 3 and section 159,
- (f) the *Police Powers and Responsibilities Act 2000* of Queensland, Chapter 17,
- (g) all of the provisions of the *Criminal Law (Forensic Procedures) Act 2007* of South Australia,
- (h) all of the provisions of the *Forensic Procedures Act 2000* of Tasmania,
- (i) the *Crimes Act 1958* of Victoria, Part III, Division 1, Subdivision (30A),
- (j) all of the provisions of the *Criminal Investigation (Identifying People) Act 2002* of Western Australia.

Part 2 Consent to forensic procedures

7 Form of consent—serious indictable offender

For the Act, section 72(a), the following are prescribed—

- (a) the name of the serious indictable offender giving consent to the carrying out of the forensic procedure,
- (b) a description of the procedure,
- (c) the name of the police officer who requested the consent,
- (d) whether the police officer has informed the offender, personally or in writing, of the matters set out in the Act, section 69,
- (e) whether 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 Act, section 75J(a), the following are prescribed—

- (a) the name of the untested former offender giving consent to the carrying out of the forensic procedure,
- (b) a description of the procedure,
- (c) the name of the police officer who requested the consent,
- (d) whether the police officer has informed the former offender, personally or in writing, of the matters set out in the Act, section 75H,
- (e) whether 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.

9 Form of consent—untested registrable person

For the Act, section 75Z(a), the following are prescribed—

- (a) the name of the untested registrable person giving consent to the carrying out of the forensic procedure,
- (b) a description of the procedure,
- (c) the name of the police officer who requested the consent,
- (d) whether the police officer has informed the registrable person, personally or in writing, of the matters set out in the Act, section 75X,
- (e) whether the 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 Act, section 77(2)(e), the following are prescribed matters—

- (a) that the DNA database system includes the following indexes relevant to volunteers—
 - (i) a volunteers (limited purposes) index,
 - (ii) a volunteers (unlimited purposes) index,
 - (iii) a missing persons index,

- (b) that if consent is given, restrictions will apply to the indexes, if any, on which information obtained from the analysis of forensic material taken from the volunteer may be placed.

Note— See section 12.

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

For the Act, section 78(a), the following are prescribed—

- (a) the name of the person giving consent to the carrying out of the forensic procedure,
- (b) a description of the procedure,
- (c) the name of the police officer who has requested the consent,
- (d) the name of the independent person in whose presence the consent is given,
- (e) whether the police officer has informed the person, personally or in writing, of the matters set out in the Act, section 77,
- (f) the index or indexes of the DNA database system, if any, on which the police officer intends to place information obtained from the analysis of forensic material taken from the volunteer.

12 Placement of volunteer’s information on DNA database system—the Act, s 118(2)(a)

- (1) If, before a volunteer, or a parent or guardian of a volunteer, gives consent to the carrying out of a forensic procedure under the Act, Part 8, the police officer informs the volunteer, or parent or guardian, that—
 - (a) the police officer intends to place the volunteer’s information on one or more specified indexes of the DNA database system, the information—
 - (i) must only be placed on the specified index or indexes, and
 - (ii) must not be placed on another index, or
 - (b) the police officer does not intend to place the volunteer’s information on a specified index, the information must not be placed on the specified index.
- (2) If the police officer does not inform the volunteer, or parent or guardian, of the police officer’s intentions about the placement of the volunteer’s information on the DNA database system, the information must not be placed on any index of the system.
- (3) In this section—
volunteer’s information, for a volunteer, means the information obtained from the analysis of forensic material taken from the volunteer under the Act, Part 8.

13 Form of consent—parent or guardian of child under 10 years of age

For the Act, section 81C(4)(a), the following are prescribed—

- (a) the name of the parent or guardian giving consent to the carrying out of the forensic procedure,
- (b) a description of the procedure,
- (c) the name of the police officer who has requested the consent,
- (d) the name of the independent person in whose presence the consent is given,
- (e) whether the police officer has informed the parent or guardian, personally or in writing, of the matters set out in the Act, section 81C(3),
- (f) a statement that the parent or guardian was informed that, under the Act, section 81M(2)—
 - (i) a DNA profile derived from forensic material taken from a child may only be placed on the following indexes of the DNA database system—

- (A) the volunteers (limited purposes) index,
 - (B) the missing persons index,
 - (C) the unknown deceased persons index, and
- (ii) if placed on an index, the DNA profile of the child may only be matched with another DNA profile on an index of the DNA database system if the matching is for a purpose for which the DNA profile of the child was placed on the index.

Part 3 Access to and disclosure of certain information

14 Definitions

In this part—

authorised person, in relation to accessing information stored on the DNA database system, means a person authorised by the responsible person under the Act, section 92(2).

classifiable person means a person who is a serious indictable offender on whom a forensic procedure has been carried out under the Act, Part 7.

NSW Forensic and Analytical Science Service means the NSW Forensic and Analytical Science Service, an administrative arm of the division of the Health Administration Corporation known as NSW Health Pathology.

15 Access to and disclosure of information—person to whom information relates

- (1) For the Act, section 92(2)(b), an authorised person may access information stored on the DNA database system for the purpose of making the information available to the person to whom the information relates if, before the information is accessed—
 - (a) the person to whom the information relates, or someone acting for the person, applies in writing to the responsible person to make the information available, and
 - (b) the applicant provides, to the satisfaction of the responsible person—
 - (i) reasonable proof of identity, and
 - (ii) if the applicant is not the person to whom the information relates—evidence the applicant is acting for the person to whom the information relates.
- (2) For the Act, section 109(2)(b), a person may disclose information stored on the DNA database system for the purpose of making the information available to the person to whom the information relates if the information was accessed in accordance with subsection (1).

16 Use of information on DNA database system

- (1) For the Act, section 92(2)(j), an authorised person may access information stored on the DNA database system for the following purposes—
 - (a) facilitating the assessment of a claim of apparent or possible wrongful conviction for a serious indictable offence made by, or in relation to, a serious indictable offender,
 - (b) allowing persons acting for the NSW Forensic and Analytical Science Service to check whether the DNA profiles of the following persons are contained on the offenders index—
 - (i) a person suspected of being an untested former offender,
 - (ii) a person suspected of being an untested registrable person.
- (2) The information accessed under subsection (1)(a) may relate to the offender or another person.
- (3) The information accessed under subsection (1)(b) may relate to the suspected person or another person.

17 Disclosure of information on DNA database system

- (1) For the Act, section 109(2)(g), a person may disclose information stored on the DNA database system for the following purposes—

- (a) facilitating the assessment of a claim of apparent or possible wrongful conviction for a serious indictable offence made by, or in relation to, a serious indictable offender,
 - (b) allowing persons acting for the NSW Forensic and Analytical Science Service to check whether the DNA profiles of the following persons are contained on the offenders index—
 - (i) a person suspected of being an untested former offender,
 - (ii) a person suspected of being an untested registrable person,
 - (c) the security classification, placement or management by or under the *Crimes (Administration of Sentences) Act 1999* of a classifiable person.
- (2) The information disclosed under subsection (1)(a) may relate to the offender or another person.

18 Disclosure of information revealed by forensic procedures on suspects, offenders or volunteers—the Act, s 109(3)(o)

- (1) A person may disclose information revealed by the carrying out of a forensic procedure on a suspect, offender or volunteer for the purpose of analysing a sample to obtain a DNA profile to be placed on the DNA database system.
- (2) A person may disclose information revealed by the carrying out of a forensic procedure on a classifiable person for a purpose relating to the security classification, placement or management by or under the *Crimes (Administration of Sentences) Act 1999* of the classifiable person.

Part 4 Miscellaneous

19 Savings

An act, matter or thing that, immediately before the repeal of the *Crimes (Forensic Procedures) Regulation 2014*, had effect under that regulation continues to have effect under this regulation.