



New South Wales

Crimes (Forensic Procedures) Amendment Bill 2007

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Crimes (Forensic Procedures) Act 2000*:

- (a) to extend the circumstances in which a person suspected of a crime may be requested or required to undergo a non-intimate forensic procedure involving the taking of a sample of the suspect's hair or the carrying out of a self-administered buccal swab, and
- (b) to make it clear that a forensic procedure may be ordered in relation to a suspect for the purpose of obtaining evidence tending to confirm or disprove that the suspect has committed an offence only if there are reasonable grounds to believe that the suspect has committed that offence.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

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

Clause 4 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendments

Schedule 1 [1] and [2] amend the *Crimes (Forensic Procedures) Act 2000* to allow a police officer to request a suspect to undergo a non-intimate forensic procedure involving the taking of a sample of a suspect's hair or the carrying out of a self-administered buccal swab in connection with the investigation of any offence (rather than just indictable offences and other prescribed offences).

Schedule 1 [3] and [4] make similar changes to the provisions of the *Crimes (Forensic Procedures) Act 2000* that allow a police officer or Magistrate to order a suspect to undergo a forensic procedure. The amendments will allow a non-intimate forensic procedure involving the taking of a sample of a suspect's hair or the carrying out of a self-administered buccal swab to be ordered by a police officer or Magistrate in connection with the investigation of any offence (rather than just indictable offences and other prescribed offences).

The amendments in **Schedule 1 [3] and [4]** also clarify that a police officer or Magistrate may order a forensic procedure only if there are reasonable grounds to believe that a suspect has committed an offence, and the sample is taken for the purpose of proving or disproving that the suspect has committed that offence. The provisions do not permit forensic procedures to be used to investigate whether the suspect has committed an offence if there are no reasonable grounds to believe that the suspect has committed that offence. **Schedule 1 [5]** is a related amendment that ensures that if forensic material is taken in relation to an offence but proceedings are taken in relation to another offence arising out of the same act or omission by the suspect, the provisions of the *Crimes (Forensic Procedures) Act 2000* relating to destruction of the forensic material do not apply.

Schedule 1 [6] enables savings and transitional regulations to be made as a consequence of the amendments.

First print



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New South Wales

Crimes (Forensic Procedures) Amendment Bill 2007

No. , 2007

A Bill for

An Act to amend the *Crimes (Forensic Procedures) Act 2000* to make further provision with respect to the carrying out of forensic procedures.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Crimes (Forensic Procedures) Amendment Act 2007</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5
3 Amendment of Crimes (Forensic Procedures) Act 2000 No 59	6
The <i>Crimes (Forensic Procedures) Act 2000</i> is amended as set out in Schedule 1.	7 8
4 Repeal of Act	9
(1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.	10 11
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	12 13

Schedule 1	Amendments	1
	(Section 3)	2
[1]	Section 11 Conditions under which police officer may request consent to forensic procedure	3 4
	Omit “, or a non-intimate forensic procedure involving the taking of a sample of the suspect’s hair or the carrying out of a self-administered buccal swab” from section 11 (2).	5 6 7
[2]	Section 11 (3)	8
	Omit “(other than a procedure involving the taking of a sample of the suspect’s hair or the carrying out of a self-administered buccal swab)”.	9 10
[3]	Section 20	11
	Omit the section. Insert instead:	12
	20 Matters to be considered by senior police officer before ordering non-intimate forensic procedure	13 14
	A senior police officer may not order the carrying out of a non-intimate forensic procedure under section 18 (1) unless satisfied:	15 16 17
	(a) that the suspect is under arrest, and	18
	(b) that there are reasonable grounds to believe that the suspect has committed an offence, and	19 20
	(c) that there are reasonable grounds to believe that the procedure might produce evidence tending to confirm or disprove that the suspect has committed the offence referred to in paragraph (b), and	21 22 23 24
	(d) that the suspect is neither a child nor an incapable person, and	25 26
	(e) that the carrying out of such a procedure is justified in the circumstances.	27 28
[4]	Section 24 Final order for carrying out forensic procedure	29
	Omit section 24 (2) and (3). Insert instead:	30
	(2) In the case of an intimate forensic procedure:	31
	(a) there must be reasonable grounds to believe that the suspect has committed a prescribed offence, and	32 33
	(b) there must be reasonable grounds to believe that the procedure might produce evidence tending to confirm or	34 35

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Schedule 1 Amendments

	disprove that the suspect has committed the offence referred to in paragraph (a).	1 2
(3)	In the case of a non-intimate forensic procedure:	3
(a)	there must be reasonable grounds to believe that the suspect has committed an offence, and	4 5
(b)	there must be reasonable grounds to believe that the procedure might produce evidence tending to confirm or disprove that the suspect has committed the offence referred to in paragraph (a).	6 7 8 9
[5]	Section 88 Destruction of forensic material after 12 months	10
	Omit section 88 (2) (c). Insert instead:	11
(c)	proceedings for an offence in respect of the act or omission in relation to which the forensic material was taken have not been instituted against the suspect, or have been discontinued,	12 13 14 15
[6]	Schedule 2 Savings, transitional and other provisions	16
	Insert at the end of clause 1 (1):	17
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