



New South Wales

# Crimes (Forensic Procedures) Amendment (Untested Registrable Persons) Bill 2009

## Explanatory note

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

## Overview of Bill

Part 7B of the *Crimes (Forensic Procedures) Act 2000* (the ***Forensic Procedures Act***) authorises the conduct of certain forensic procedures on persons who have been found guilty of sexual and other serious offences against children and who are required to be registered, and are subject to certain reporting obligations, under the *Child Protection (Offenders Registration) Act 2000* (the ***Child Protection Act***).

The object of this Bill is to amend Part 7B of the Forensic Procedures Act:

- (a) to enable a police officer to detain an untested registrable person when the person attends a police station or other place in person to make a report in accordance with the person's reporting obligations under the Child Protection Act at a police station or other place:
  - (i) for the purpose of determining whether the person consents to the carrying out of a forensic procedure in accordance with the Forensic Procedures Act, and
  - (ii) if the person consents, for the purpose of carrying out the forensic procedure, and

- (iii) if the person does not consent, for the purpose of obtaining a senior police officer's order to carry out the forensic procedure and carrying it out, and
- (b) to enable the police officer to use reasonable force to ensure the detained person remains at the police station or other place, and
- (c) to make it clear that an application may be made to a court for an order for the carrying out of a forensic procedure on an untested registrable person whether or not the untested registrable person has been requested to consent to the carrying out of the forensic procedure or been ordered to undergo the forensic procedure by a senior police officer, and
- (d) to make it clear that a court may order the carrying out of a forensic procedure on an untested registrable person whether or not the person is present, and
- (e) to enable a police officer to arrest an untested registrable person who fails to comply with a court order for the carrying out of a forensic procedure for the purpose of carrying out the procedure in accordance with the order, and
- (f) to make other minor and consequential amendments.

## 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 the date of assent to the proposed Act.

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

Currently, section 75W of the Forensic Procedures Act enables a police officer to request an untested registrable person (other than a child or an incapable person) to consent to the carrying out of a forensic procedure on the person.

**Schedule 1 [2]** substitutes section 75W to achieve the objects referred to in paragraphs (a) and (b) of the Overview.

**Schedule 1 [3]** amends section 75X (1) of the Forensic Procedures Act to make it clear that the police officer must inform a registrable person of certain matters before asking that person whether he or she consents to the carrying out of a forensic procedure. **Schedule 1 [4]** amends section 75X (2) of that Act to provide that a police officer must also inform the registrable person that reasonable force may be used to enable the forensic procedure to be carried out.

Currently, section 75ZB of the Forensic Procedures Act provides that a police officer may apply to any court for an order for the carrying out of a forensic procedure on an untested registrable person and that the court may make the order if satisfied that the carrying out of the forensic procedure is justified in all the circumstances. Section 75ZC sets out some requirements for the making of the order.

**Schedule 1 [5]** substitutes sections 75ZB and 75ZC to achieve the objects set out in paragraphs (c) and (d) of the Overview. Proposed new section 75ZB provides that a police officer may apply to any court for an order for the carrying out of a forensic procedure on an untested registrable person and makes it clear that 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 Part 7B or been ordered to undergo the forensic procedure by a senior police officer. Proposed new section 75ZC provides for the making of the order. It incorporates the requirement currently in section 75ZB (2) that the court may make the order if satisfied that the carrying out of the forensic procedure is justified in all the circumstances and the provisions currently in section 75ZC (1) and (2) relating to the making of a court order. In addition, it makes it clear that an order may be made whether or not the registrable person is present and requires a police officer to advise a registrable person who is not present of the making of the order. **Schedule 1 [1]** makes consequential amendments.

**Schedule 1 [6]** amends section 75ZD of the Forensic Procedures Act to achieve the object described in paragraph (e) of the Overview.



First print



New South Wales

# **Crimes (Forensic Procedures) Amendment (Untested Registrable Persons) Bill 2009**

## **Contents**

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	Page
1 Name of Act	2
2 Commencement	2
Schedule 1 Amendment of Crimes (Forensic Procedures) Act 2000 No 59	3





New South Wales

# **Crimes (Forensic Procedures) Amendment (Untested Registrable Persons) Bill 2009**

No. , 2009

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## **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 on untested registrable persons.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Crimes (Forensic Procedures) Amendment (Untested Registrable Persons) Act 2009</i> .	3 4
<b>2 Commencement</b>	5
This Act commences on the date of assent to this Act.	6



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<b>Schedule 1</b>	<b>Amendment of Crimes (Forensic Procedures) Act 2000 No 59</b>	1
		2
<b>[1]</b>	<b>Sections 3 (1) (paragraph (d2) of the definition of “order”), 75Q (c), 75R (b) and 75ZD</b>	3
	Omit “section 75ZB” wherever occurring. Insert instead “section 75ZC”.	4
		5
<b>[2]</b>	<b>Section 75W</b>	6
	Omit the section. Insert instead:	7
<b>75W</b>	<b>Carrying out forensic procedure on untested registrable person</b>	8
(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.	9
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(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 <i>Child Protection (Offenders Registration) Act 2000</i> , the police officer may detain the untested registrable person at the police station or other place for so long as is reasonably necessary:	13
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(a)	to determine whether the registrable person consents to the carrying out of the forensic procedure under this Part, and	19
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(b)	if the person consents—to carry out the forensic procedure in accordance with this Part, and	21
		22
(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.	23
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		25
(3)	In detaining the person, the police officer must tell the person:	26
(a)	why the person is being detained, and	27
(b)	that the detention is authorised under this Act, and	28
(c)	that the person will be released immediately:	29
(i)	if consent is refused and no order is to be made under section 75Y, or	30
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(ii)	if the forensic procedure is to be carried out with consent or by order, after it is carried out.	32
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(4)	The detained person:	1
(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	2 3 4 5
(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.	6 7 8 9
(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).	10 11 12
<b>[3]</b>	<b>Section 75X Matters that untested registrable person must be informed of before giving consent</b>	13 14
	Omit “The police officer” from section 75X (1).	15
	Insert instead “Before asking the untested registrable person whether he or she consents to the carrying out of a forensic procedure, the police officer”.	16 17
<b>[4]</b>	<b>Section 75X (2)</b>	18
	Insert “and that reasonable force may be used to enable the forensic procedure to be carried out” after “section 75Y”.	19 20
<b>[5]</b>	<b>Sections 75ZB and 75ZC</b>	21
	Omit the sections. Insert instead:	22
<b>75ZB</b>	<b>Application for court order for carrying out forensic procedure on untested registrable person</b>	23 24
(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.	25 26 27
(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.	28 29 30 31
<b>75ZC</b>	<b>Court order for carrying out forensic procedure on untested registrable person</b>	32 33
(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.	34 35 36 37

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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.  | 1<br>2<br>3    |
| (3) | The court may give directions as to the time and place at which the forensic procedure is to be carried out.  | 4<br>5         |
| (4) | If the court makes an order, the court must:  | 6              |
|     | (a) specify the forensic procedure authorised to be carried out, and  | 7<br>8         |
|     | (b) give reasons for making the order, and  | 9              |
|     | (c) ensure that a written record of the order is kept, and  | 10             |
|     | (d) order the registrable person (if present) to attend for the carrying out of the forensic procedure, and   | 11<br>12       |
|     | (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. | 13<br>14<br>15 |
| (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:  | 16<br>17<br>18 |
|     | (a) the order has been made for the carrying out of the forensic procedure, and   | 19<br>20       |
|     | (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).     | 21<br>22<br>23 |

<b>[6] Section 75ZD Refusal or failure to permit forensic procedure</b>	1
Insert at the end of the section:	2
(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 4 5 6
(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.	7 8 9
(4) Nothing in this section affects any power of a police officer to arrest and deal with the person under Part 8 of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> .	10 11 12