

Crimes (Forensic Procedures) Regulation 2000

[2000-731]



New South Wales

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The provisions displayed in this version of the legislation have all commenced.

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Contents

1 Name of Regulation	3
2 Commencement	3
3 Definitions	3
4 Notes	3
5 Aboriginal legal aid organisations.....	3
6 Appropriately qualified persons	3
6A Responsible persons.....	3
7 Form of consent—serious indictable offender.....	4
7AA Form of consent—untested former offender	4
7A Informed consent—volunteer or volunteer’s parent or guardian.....	4
8 Form of consent—volunteer or volunteer’s parent or guardian	5
9 Access to, and disclosure of, information on DNA database system.....	5
10 Use of information on DNA database system	5
11 Disclosure of information.....	6
12 Corresponding laws	7
13 Appropriate authorities.....	7

Crimes (Forensic Procedures) Regulation 2000



New South Wales

1 Name of Regulation

This Regulation is the *Crimes (Forensic Procedures) Regulation 2000*.

2 Commencement

(1) This Regulation commences on 1 January 2001, except as provided by subclause (2).

(2) Clauses 7A and 8 commence on the commencement of Part 8 of the Act.

Editorial note—

Date of commencement of Part 8 of the Act: 1.6.2003.

3 Definitions

In this Regulation:

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

4 Notes

The explanatory note, table of contents and notes in the text of this Regulation do not form part of this Regulation.

5 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.

6 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.

6A Responsible persons

For the purposes of the definition of **responsible person** in section 3 (1) of the Act, the

Director of the Institute of Clinical Pathology and Medical Research 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 a legal practitioner of the offender's choice.

7AA 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 a legal practitioner of the former offender's choice.

7A 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.

8 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.

9 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.

10 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.

11 Disclosure of information

- (1) For the purposes of section 109 (2) (g) of the Act, 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.
- (2) Subclause (1) applies whether a person was convicted before or after the commencement of subclause (1).
- (3) For the purposes of section 109 (2) (g) of the Act, 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.
- (4) Subclause (3) applies whether the information concerned was stored on the DNA database system before, or is so stored after, the commencement of subclause (3).
- (5) For the purposes of section 109 (3) (o) of the Act, 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.
- (6) Subclause (5) applies whether or not the information concerned is revealed by a forensic procedure that was carried out before or is carried out after the commencement of subclause (5).
- (6A) For the purposes of section 109 (3) (o) of the Act, 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.
- (6B) Subclause (6A) applies whether or not the information concerned is revealed by a

forensic procedure that was carried out before or is carried out after the commencement of subclause (6A).

- (7) 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 [Crimes \(Forensic Procedures\) Act 2000](#).

12 Corresponding laws

For the purposes of the definition of corresponding law in section 95 of the Act, the following laws are prescribed:

Crimes (Forensic Procedures) Act 2000 of the Australian Capital Territory.

Part 1D of the [Crimes Act 1914](#) of the Commonwealth.

Division 7 of Part VII of the *Police Administration Act* of the Northern Territory.

Part 4 of Chapter 8 of the *Police Powers and Responsibilities Act 2000* of Queensland.

Criminal Law (Forensic Procedures) Act 1998 of South Australia.

Forensic Procedures Act 2000 of Tasmania.

Subdivision (30A) of Division 1 of Part 3 of the *Crimes Act 1958* of Victoria.

section 236 of *The Criminal Code* of Western Australia (as in force before its amendment by Schedule 2 to the *Criminal Investigation (Identifying People) Act 2002* of Western Australia).

the provisions of the *Criminal Investigation (Identifying People) Act 2002* of Western Australia (as in force on and from their commencement).

13 Appropriate authorities

Pursuant to paragraph (a) of the definition of **appropriate authority** in section 95 of the Act, the CrimTrac Agency of the Commonwealth is prescribed as an appropriate authority in relation to the Commonwealth.