

2008

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Crimes (Forensic Procedures) Amendment Bill 2008

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2008

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Crimes (Forensic Procedures) Amendment Bill 2008

A Bill for

An Act to amend the *Crimes (Forensic Procedures) Act 2000*, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

J2007-264

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Crimes (Forensic Procedures) Amendment Act 2008*.

4 **2 Commencement**

5 This Act commences on the day after its notification day.

6 *Note* The naming and commencement provisions automatically commence on
7 the notification day (see Legislation Act, s 75 (1)).

1 **Part 2** **Crimes (Forensic Procedures)**
2 **Act 2000**

3 **3** **Legislation amended—pt 2**

4 This part amends the *Crimes (Forensic Procedures) Act 2000*.

5 **4** **New section 4A**

6 *in chapter 1, insert*

7 **4A** **Offences against Act—application of Criminal Code etc**

8 Other legislation applies in relation to offences against this Act.

9 *Note 1* *Criminal Code*

10 The Criminal Code, ch 2 applies to the following offences against this
11 Act (see Code, pt 2.1):

- 12 • s 96 (1) (Use of information on ACT DNA database)
- 13 • s 97 (3) (Permissible matching of DNA profiles)
- 14 • s 98 (Recording, retention and removal of identifying information
15 on ACT DNA database).

16 The chapter sets out the general principles of criminal responsibility
17 (including burdens of proof and general defences), and defines terms
18 used for offences to which the Code applies (eg *conduct*, *intention*,
19 *recklessness* and *strict liability*).

20 *Note 2* *Penalty units*

21 The Legislation Act, s 133 deals with the meaning of offence penalties
22 that are expressed in penalty units.

1 **5 What is an *intimate forensic procedure*?**
2 **Section 6 (a), (d) and (e)**

3 *after*
4 transgender
5 *insert*
6 or intersex

7 **6 Section 6 (g)**

8 *substitute*
9 (g) the taking of a photograph or video recording of, or an
10 impression or cast of a wound from, the genital or anal area,
11 the buttocks, or, for a female or a transgender or intersex
12 person who identifies as a female, the breasts.

13 **7 What is a *non-intimate forensic procedure*?**
14 **Section 7 (a), (e) and (f)**

15 *after*
16 transgender
17 *insert*
18 or intersex

19 **8 Section 7 (h)**

20 *substitute*
21 (h) the taking of a photograph or video recording of, or an
22 impression or cast of a wound from, a part of the body (other
23 than the genital or anal area, the buttocks, or, for a female or a
24 transgender or intersex person who identifies as a female, the
25 breasts).

9 Section 11*substitute***11 Meaning of *investigating police officer***

An *investigating police officer*, for an offence in relation to which a forensic procedure is carried out or proposed to be carried out, is—

- (a) the police officer in charge of the investigation of the offence;
or
- (b) any other police officer directed by the police officer in charge to do something in relation to the investigation.

**10 Meaning of *authorised applicant*
Section 12 (b)***substitute*

- (b) an investigating police officer; or

**11 How forensic procedures may be authorised in different circumstances
Section 18, table 18, item 2***substitute*

2	<ul style="list-style-type: none"> • 19 • 27 • 31 	adult in custody	<ul style="list-style-type: none"> • with informed consent under part 2.3 • by forensic order of a magistrate under part 2.5 	<ul style="list-style-type: none"> • with informed consent under part 2.3 • by forensic order of a police officer under part 2.4 • by forensic order of a magistrate under part 2.5
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1 **12 Matters that suspect must be informed of before giving**
2 **consent**
3 **Section 24 (1) (a)**

4 *substitute*

- 5 (a) that the giving of information under this section, and the giving
6 of consent (if any) by the suspect, will be recorded by
7 electronic means or in writing, and that the suspect has a right
8 to a copy of that record;

9 *Note* See s 26 (Recording of giving of information and consent) and
10 s 104 (Obligation of investigating police officers relating to
11 electronic recordings).

12 **13 Section 24 (1) (k)**

13 *substitute*

- 14 (k) that information obtained from analysis of forensic material
15 obtained may be placed on the ACT DNA database and the
16 rules that will apply to its disclosure and use under this Act,
17 including that the information may be compared with
18 information from the DNA databases of other participating
19 jurisdictions;

- 20 (l) that the suspect may apply to a court for an order that the
21 forensic material obtained be destroyed, and the circumstances
22 when the court may order destruction.

23 *Note* Section 92 (Application for destruction of forensic material after
24 1 year) sets out when the court may order destruction.

14 Section 24 (2)

substitute

- (2) The police officer must inform the suspect that the suspect may request that a doctor of the suspect's choice be present while an intimate forensic procedure (other than the taking of a dental impression) is carried out or a sample of saliva or sample by buccal swab is taken.

15 Section 24 (3)

after

saliva or

insert

sample by

16 Section 24 (4) to (6)

substitute

- (4) If the suspect is in custody and the forensic procedure is a non-intimate forensic procedure, the police officer must inform the suspect that, if the suspect does not consent—
- (a) a police officer may order the carrying out of the forensic procedure under part 2.4 (Non-intimate forensic procedures on suspect by order of police officer) if the police officer is satisfied about the matters mentioned in section 23 (Matters to be considered by police officer before requesting consent to forensic procedure); and
- (b) reasonable force may be used to enable the forensic procedure to be carried out.

- 1 (5) If the suspect is in custody and the forensic procedure is an intimate
2 forensic procedure, the police officer must inform the suspect that, if
3 the suspect does not consent—
- 4 (a) an application may be made to a magistrate for an order
5 authorising the carrying out of the forensic procedure; and
- 6 (b) reasonable force may be used to enable the forensic procedure
7 to be carried out if the order is made.
- 8 (6) If the suspect is not in custody, the police officer must inform the
9 suspect that, if the suspect does not consent—
- 10 (a) an application may be made to a magistrate for an order
11 authorising the carrying out of the forensic procedure; and
- 12 (b) reasonable force may be used to enable the forensic procedure
13 to be carried out if the order is made.

14 **17 Circumstances in which magistrate may order forensic**
15 **procedure**
16 **Section 32 (b)**

17 *omit*

18 , and the procedure is an intimate forensic procedure

19 **18 Application for order**
20 **Section 35 (2) (d)**

21 *omit*

1 **19 Securing the presence of suspects at hearings—suspect**
2 **not in custody**
3 **Section 37 (1)**

4 *substitute*

- 5 (1) If the suspect is not in custody—
- 6 (a) the Magistrates Court may, on the application of a police
7 officer, issue a summons for the appearance of the suspect at
8 the hearing of the application; or
- 9 (b) a magistrate may, on the application of a police officer, issue a
10 warrant for the arrest of the suspect to bring the suspect before
11 the magistrate for the hearing of the application.

12 **20 Procedure at hearing of application for order**
13 **Section 38 (1)**

14 *substitute*

- 15 (1) This section applies if an authorised applicant has applied under
16 section 35 for an order authorising the carrying out of a forensic
17 procedure on a suspect.
- 18 (1A) The suspect must be present at the hearing of the application
19 unless—
- 20 (a) the suspect is remanded or otherwise detained in lawful
21 custody in a State and it is not practicable for the suspect to be
22 present by audio link or audiovisual link; or

23 *Note 1* **State** includes the Northern Territory (see Legislation Act, dict,
24 pt 1).

25 *Note 2* The *Evidence (Miscellaneous Provisions) Act 1991*, s 20
26 (Territory courts may take evidence and submissions from outside
27 ACT) applies in relation to the taking of evidence and making of
28 submissions by audiovisual link or audio link from a participating
29 State. See also the *Magistrates Court Act 1930*, s 311
30 (Appearance by audiovisual or audio links etc).

1 (b) the application (and any summons issued under
2 section 37 (1) (a)) has been served on the suspect and the
3 suspect is not present.

4 **21 New section 38 (6)**

5 *insert*

6 (6) In this section:

7 *audio link* means a system of 2-way communication linking
8 different places so that a person speaking at any of them can be
9 heard at the other places.

10 *audiovisual link* means a system of 2-way communication linking
11 different places so that a person at any of them can be seen and
12 heard at the other places.

13 **22 Action to be taken on making of orders**
14 **Section 39 (1) (c)**

15 *substitute*

16 (c) if the suspect is present or represented by a lawyer—inform the
17 suspect or lawyer that reasonable force may be used to enable
18 the forensic procedure to be carried out; and

19 (d) if the suspect is a child or incapable person—inform the
20 suspect's interview friend or lawyer that reasonable force may
21 be used to enable the forensic procedure to be carried out.

1 **23 Applications for interim orders**
2 **Section 42 (4)**

3 *substitute*

- 4 (4) The suspect must be in the presence of the authorised applicant
5 when the application is made unless the suspect is remanded or
6 otherwise detained in lawful custody in a State and it is not
7 practicable for the suspect to be present by audio link or audiovisual
8 link.

9 *Note 1* **State** includes the Northern Territory (see Legislation Act, dict, pt 1).

10 *Note 2* The *Evidence (Miscellaneous Provisions) Act 1991*, s 20 (Territory
11 courts may take evidence and submissions from outside ACT) applies in
12 relation to the taking of evidence and making of submissions by
13 audiovisual link or audio link from a participating State. See also the
14 *Magistrates Court Act 1930*, s 311 (Appearance by audiovisual or audio
15 links etc).

16 **24 New section 42 (7)**

17 *insert*

- 18 (7) In this section:

19 **audio link**—see section 38 (6).

20 **audiovisual link**—see section 38 (6).

21 **25 Procedure at hearing of application for interim order**
22 **Section 43 (1) (a) and (2) (a)**

23 *substitute*

- 24 (a) the suspect (if present);

1 **26 New section 48A**

2 *in division 2.6.1, insert*

3 **48A Meaning of *relevant person*—pt 2.6**

4 In this part:

5 *relevant person* means the suspect, serious offender or volunteer on
6 whom a forensic procedure is, or is to be, carried out.

7 **27 General rules for carrying out forensic procedures**
8 **Section 49 (a) and (b)**

9 *omit*

10 suspect

11 *substitute*

12 relevant person

13 **28 Section 49A**

14 *substitute*

15 **49A Rules for carrying out forensic procedures—giving and**
16 **recording information**

17 (1) Before a forensic procedure is carried out on a person in relation to
18 the investigation of a matter by a police officer, a police officer must
19 ensure that the person is informed about—

20 (a) the person's right to request—

21 (i) if a sample is to be taken from the person, and there is
22 sufficient material for an analysis to be carried out by or
23 for the person and the officer—that a part of the material
24 sufficient for analysis be made available to the person;
25 and

- 1 (ii) if a photograph or a video recording of a part of the
2 person's body is to be taken—that a copy of the
3 photograph or video recording be made available to the
4 person; and
- 5 (iii) if a sample is to be taken from the person, and material
6 from the sample is analysed in the investigation of the
7 matter—that a copy of the results of the analysis be made
8 available to the person; and
- 9 (b) the person's right (if any) to have a doctor or dentist of the
10 person's choice present.
- 11 (2) The police officer must, if practicable, ensure that the giving of the
12 information mentioned in subsection (1), and the person's responses
13 (if any) are recorded by audiotape, videotape or other electronic
14 means.
- 15 (3) If electronic recording of the giving of the information and the
16 person's responses (if any) is not practicable, the police officer must
17 ensure that a written record of the giving of the information and the
18 person's responses (if any) is made, and that a copy of the record is
19 made available to the person.
- 20 *Note* Pt 2.14 contains provisions about making copies of material (including
21 tapes) available to the person.

22 **49B Rules for carrying out forensic procedures—transgender**
23 **and intersex people**

- 24 (1) This section applies if—
- 25 (a) a forensic procedure is to be carried out on a transgender or
26 intersex person; and
- 27 (b) the provision under which it is carried out refers to a person of
28 the opposite sex, or the same sex.
- 29 (2) The transgender or intersex person may elect to be identified as a
30 male or female.

- 1 (3) If the transgender or intersex person is a child or incapable person,
2 the transgender or intersex person's interview friend or lawyer may
3 elect that the person be identified as a male or female.
- 4 (4) If the election is to be identified as a male, the transgender or
5 intersex person is taken, for this Act, to be male.
- 6 (5) If the election is to be identified as a female, the transgender or
7 intersex person is taken, for this Act, to be female.
- 8 (6) If the transgender or intersex person does not make an election
9 under subsection (2), but requires that the forensic procedure be
10 carried out by a male, the person is taken, for this Act, to be male.
- 11 (7) If the transgender or intersex person's interview friend or lawyer
12 does not make an election under subsection (3), but requires that the
13 forensic procedure be carried out by a male, the transgender or
14 intersex person is taken, for this Act, to be male.
- 15 (8) If the transgender or intersex person does not make an election
16 under subsection (2), but requires that the forensic procedure be
17 carried out by a female, the person is taken, for this Act, to be
18 female.
- 19 (9) If the transgender or intersex person's interview friend or lawyer
20 does not make an election under subsection (3), but requires that the
21 forensic procedure be carried out by a female, the transgender or
22 intersex person is taken, for this Act, to be female.

23 **29 Forensic procedures not to be carried out in cruel,**
24 **inhuman or degrading way**
25 **Section 51 (2)**

- 26 *omit*
- 27 *suspect*
- 28 *substitute*
- 29 *relevant person*

1 **30 Section 52**

2 *substitute*

3 **52 Taking samples of hair**

4 A person is authorised to take a sample of hair of a relevant person
5 by removing the root of the hair only if—

6 (a) the person takes only so much hair as the person believes is
7 necessary for analysis of the sample, or other examination of
8 the hair, to be carried out for the purpose of investigating the
9 relevant offence; and

10 (b) the sample is taken using the least painful technique known
11 and available to the person.

12 **31 People who may carry out forensic procedures**
13 **Section 53 (3) and note**

14 *omit*

15 suspect's

16 *substitute*

17 relevant person's

18 **32 Section 53 (4)**

19 *omit*

20 suspect

21 *substitute*

22 relevant person

1 **33 Section 53, table 53 and note**

2 *substitute*

Table 53 People involved in forensic procedures

column 1 item	column 2 forensic procedure	column 3 people who may carry out forensic procedure	column 4 is relevant person entitled to ask for doctor or dentist of person's choice to be present?
1	external examination of— <ul style="list-style-type: none"> • genital or anal area • buttocks • breasts of female or transgender or intersex person who identifies as female 	<ul style="list-style-type: none"> • doctor • nurse • appropriately qualified person 	yes, doctor
2	taking sample of blood	<ul style="list-style-type: none"> • doctor • nurse 	yes, doctor
3	taking sample of saliva or sample by buccal swab	<ul style="list-style-type: none"> • doctor • dentist • dental technician • nurse • appropriately qualified person 	yes, doctor or dentist
4	taking sample of pubic hair	<ul style="list-style-type: none"> • doctor • nurse 	yes, doctor

column 1 item	column 2 forensic procedure	column 3 people who may carry out forensic procedure	column 4 is relevant person entitled to ask for doctor or dentist of person's choice to be present?
5	taking sample by swab or washing from— <ul style="list-style-type: none"> • external genital or anal area • buttocks • breasts of female or transgender or intersex person who identifies as female 	<ul style="list-style-type: none"> • doctor • nurse 	yes, doctor
6	taking sample by vacuum suction, scraping or lifting by tape from— <ul style="list-style-type: none"> • external genital or anal area • buttocks • breasts of female or transgender or intersex person who identifies as female 	<ul style="list-style-type: none"> • doctor • nurse 	yes, doctor
7	taking dental impression	<ul style="list-style-type: none"> • doctor • dentist • dental technician 	yes, dentist

column 1 item	column 2 forensic procedure	column 3 people who may carry out forensic procedure	column 4 is relevant person entitled to ask for doctor or dentist of person's choice to be present?
8	taking photograph or video recording of, or impression or cast of, wound from— <ul style="list-style-type: none"> • genital or anal area • buttocks • breasts of female or transgender or intersex person who identifies as female 	<ul style="list-style-type: none"> • appropriately qualified person 	yes, doctor
9	external examination of part of body (other than— <ul style="list-style-type: none"> • genital or anal area • buttocks • breasts of female or transgender or intersex person who identifies as female) that requires touching of body or removal of clothing	<ul style="list-style-type: none"> • doctor • nurse • appropriately qualified person 	no
10	taking sample of hair (other than pubic hair)	<ul style="list-style-type: none"> • doctor • nurse • appropriately qualified person 	no

column 1 item	column 2 forensic procedure	column 3 people who may carry out forensic procedure	column 4 is relevant person entitled to ask for doctor or dentist of person's choice to be present?
11	taking sample from nail or from under nail	<ul style="list-style-type: none"> • doctor • nurse • appropriately qualified person 	no
12	taking sample by swab or washing from any external part of body (other than— <ul style="list-style-type: none"> • genital or anal area • buttocks • breasts of female or transgender or intersex person who identifies as female) 	<ul style="list-style-type: none"> • doctor • nurse • appropriately qualified person 	no
13	taking sample by vacuum suction, scraping or lifting by tape from any external part of body (other than— <ul style="list-style-type: none"> • genital or anal area • buttocks • breasts of female or transgender or intersex person who identifies as female) 	<ul style="list-style-type: none"> • doctor • nurse • appropriately qualified person 	no

column 1 item	column 2 forensic procedure	column 3 people who may carry out forensic procedure	column 4 is relevant person entitled to ask for doctor or dentist of person's choice to be present?
14	taking handprint, fingerprint, footprint or toeprint	<ul style="list-style-type: none"> appropriately qualified person 	no
15	taking photograph or video recording of, or impression or cast of wound from, external part of body (other than— <ul style="list-style-type: none"> genital or anal area buttocks breasts of female or transgender or intersex person who identifies as female) 	<ul style="list-style-type: none"> appropriately qualified person 	no

1 *Note* *Appropriately qualified person* is defined in s 13.

2 **34 Section 54**

3 *substitute*

4 **54 Sex of person carrying out or helping carry out forensic**
 5 **procedures**

6 (1) If an intimate forensic procedure (other than the taking of a sample
 7 of blood or a dental impression) is to be carried out on a relevant
 8 person, the person carrying it out, and anyone asked under
 9 section 55 to help carry it out, must be of the same sex as the
 10 relevant person.

- 1 (2) If an intimate forensic procedure that is the taking of a sample of
2 blood or a dental impression is to be carried out on a relevant
3 person—
- 4 (a) the person carrying it out must, if practicable, be of the same
5 sex as the relevant person; and
- 6 (b) anyone asked under section 55 to help carry it out must be of
7 the same sex as the relevant person.
- 8 (3) If a non-intimate forensic procedure (other than a forensic procedure
9 mentioned in subsection (4)) is to be carried out on a relevant
10 person, the person carrying it out, and anyone asked under
11 section 55 to help carry it out, must be of the same sex as the
12 relevant person.
- 13 (4) Subsection (3) does not apply to—
- 14 (a) the taking of a handprint, fingerprint, footprint or toeprint; or
- 15 (b) any other non-intimate forensic procedure that may be carried
16 out without—
- 17 (i) touching the relevant person; or
- 18 (ii) requiring the relevant person to remove any clothing
19 (other than his or her overcoat, coat, jacket, gloves,
20 socks, shoes and hat).
- 21 (5) If the person on whom a forensic procedure is to be carried out is a
22 volunteer—
- 23 (a) the person may request that a person of the opposite sex carry
24 out or help carry out the procedure; and
- 25 (b) any such request must be complied with, despite
26 subsections (1) to (3).

35 Section 56

2 *omit everything before subsection (3), substitute*

3 56 Doctor or dentist of person's choice may be present for
4 most forensic procedures

5 (1) A suspect or volunteer is entitled to request a doctor of the person's
6 choice to be present while an intimate forensic procedure (other than
7 the taking of a dental impression) is carried out or a sample of saliva
8 or sample by buccal swab is taken.

9 (1A) A suspect or volunteer is entitled to request a dentist of the person's
10 choice to be present while a dental impression, sample of saliva or
11 sample by buccal swab is taken.

12 (2) If a sample of blood is to be taken from a serious offender, the
13 offender is entitled to request that—

14 (a) if the serious offender is serving a sentence of imprisonment at
15 a correctional centre or other place of detention—a corrections
16 health professional for the centre or place be present while the
17 sample is taken; or

18 (b) if the serious offender is not serving a sentence of
19 imprisonment—a doctor of the serious offender's choice be
20 present while the sample is taken.

21 (2A) If a sample by buccal swab is to be taken from a serious offender,
22 the offender is entitled to request that—

23 (a) if the serious offender is serving a sentence of imprisonment at
24 a correctional centre or other place of detention—a corrections
25 health professional for the centre be present while the sample is
26 taken; or

1 (b) if the serious offender is not serving a sentence of
2 imprisonment—a doctor or dentist of the serious offender’s
3 choice be present while the sample is taken.

4 *Note* Section 103 provides that the request may be made by the relevant
5 person’s lawyer or interview friend.

6 **36 Presence of interview friend or lawyer while forensic**
7 **procedure is carried out**
8 **Section 57 (1)**

9 *omit*
10 suspect on
11 *substitute*
12 relevant person on

13 **37 Section 57 (1)**

14 *omit*
15 suspect’s
16 *substitute*
17 relevant person’s

18 **38 Section 57 (3)**

19 *omit*
20 suspect
21 *substitute*
22 relevant person

1 **39 Presence of police officers while forensic procedure is**
2 **carried out**
3 **Section 58 (2)**

4 *omit*
5 suspect
6 *substitute*
7 relevant person

8 **40 Section 58 (3) (b)**

9 *substitute*
10 (b) any other non-intimate forensic procedure that may be carried
11 out without—
12 (i) touching the relevant person; or
13 (ii) requiring the relevant person to remove any clothing
14 (other than his or her overcoat, coat, jacket, gloves,
15 socks, shoes and hat).

16 **41 Division 2.6.4**

17 *substitute*

18 **Division 2.6.4 Recording of carrying out of forensic**
19 **procedure**

20 **59 Recording of forensic procedure**

21 (1) The carrying out of a forensic procedure must be videorecorded
22 unless—
23 (a) the relevant person objects to video recording; or
24 (b) video recording is not reasonably practicable.

- 1 (2) However, the carrying out of the following forensic procedures need
2 not be videorecorded:
- 3 (a) the taking of a handprint, fingerprint, footprint or toeprint;
- 4 (b) the taking of a photograph or video recording of a part of the
5 body (other than the genital or anal area, the buttocks, or, for a
6 female or a transgender or intersex person who identifies as a
7 female, the breasts).
- 8 (3) Before the forensic procedure is carried out, the relevant person
9 must—
- 10 (a) be given an explanation of the value of making a video
11 recording of the carrying out of the forensic procedure to avoid
12 disputes about how it was carried out that might otherwise
13 arise between the relevant person and the person carrying out
14 the procedure after it is carried out; and
- 15 (b) be informed that the relevant person may object to the video
16 recording.
- 17 (4) If the carrying out of a forensic procedure (other than a forensic
18 procedure to which subsection (2) applies) is not to be
19 videorecorded, the forensic procedure must be carried out in the
20 presence of an independent person who is not a police officer.
- 21 (5) However, an independent person need not be present as mentioned
22 in subsection (4) if the relevant person expressly and voluntarily
23 waives the person's right to have an independent person present.
- 24 (6) Despite a waiver mentioned in subsection (5), a police officer may
25 direct that an independent person be present.

1 **42 Sections 60 to 62**

2 *substitute*

3 **60 Samples**

4 (1) This section applies to a sample taken from a relevant person under
5 this Act in relation to the investigation of a matter by a police officer
6 if there is sufficient material for an analysis to be carried out by or
7 for the relevant person and the officer.

8 (2) A police officer must ensure that reasonable care is taken to ensure
9 that a part of the material sufficient for analysis to be carried out by
10 or for the relevant person is protected and preserved until—

11 (a) if the relevant person makes a request under subsection (3)—
12 the person receives it; or

13 (b) in any other case—the material is required to be destroyed
14 under this Act or by a court order.

15 (3) The relevant person may request that a part of the material sufficient
16 for analysis be made available to the relevant person as soon as
17 practicable.

18 *Note* Section 103 provides that the request may be made by the lawyer or
19 interview friend of a suspect, serious offender or volunteer.

20 (4) If the relevant person makes a request under subsection (3)—

21 (a) a police officer must ensure that a part of the material
22 sufficient for analysis is made available to the relevant person
23 as soon as practicable; and

24 (b) reasonable assistance is given to the relevant person to ensure
25 that the material is protected and preserved until it is analysed.

26 *Note* Pt 2.14 contains provisions about making material available to suspects,
27 serious offenders and volunteers.

1 **61 Photographs or video recordings**

2 (1) This section applies if a forensic procedure involves the taking of a
3 photograph or video recording of a part of a relevant person's body.

4 (2) The relevant person may request that a copy of the photograph or
5 video recording be made available to the relevant person.

6 *Note 1* Section 103 provides that the request may be made by the lawyer or
7 interview friend of a suspect, serious offender or volunteer.

8 *Note 2* Section 105 provides that the copy must be made available as soon as
9 practicable after the request is made.

10 (3) If the relevant person makes a request under subsection (2), a police
11 officer must ensure that a copy of the photograph or video recording
12 is made available to the relevant person.

13 *Note* Pt 2.14 contains provisions about making material available to suspects,
14 serious offenders and volunteers.

15 **62 Results of analysis**

16 (1) This section applies if material from a sample taken from a relevant
17 person is analysed in the investigation of a matter by a police
18 officer.

19 (2) The relevant person may request that a copy of the results of the
20 analysis be made available to the relevant person.

21 *Note 1* Section 103 provides that the request may be made by the lawyer or
22 interview friend of a suspect, serious offender or volunteer.

23 *Note 2* Section 105 provides that the copy must be made available as soon as
24 practicable after the request is made.

25 (3) If the relevant person makes a request under subsection (2), a police
26 officer must ensure that a copy of the results of the analysis is made
27 available to the relevant person.

28 *Note* Pt 2.14 contains provisions about making material available to suspects,
29 serious offenders and volunteers.

- 1 **43 Non-intimate forensic procedures authorised to be**
2 **carried out**
3 **Section 65 note**
- 4 *omit*
- 5 **44 Sections 67 and 68**
- 6 *substitute*
- 7 **67 Forensic procedures to be in accordance with pt 2.6**
8 A person is authorised under section 65 or section 66 to carry out a
9 forensic procedure under this part only in accordance with part 2.6.
- 10 **68 Scope of authorisation**
11 A person is authorised to carry out a forensic procedure under this
12 part on a serious offender even if the serious offender is also a
13 suspect or volunteer.
- 14 **45 Matters that serious offender must be informed of before**
15 **giving consent**
16 **Section 72 (1) (e)**
- 17 *substitute*
- 18 (e) that the forensic procedure will be carried out by a person who
19 may carry out the procedure under part 2.6 (Carrying out
20 forensic procedures);
- 21 **46 Section 72 (1) (f) (i)**
- 22 *substitute*
- 23 (i) if the serious offender is serving a sentence of
24 imprisonment at a correctional centre or other place of
25 detention—a corrections health professional for the
26 centre or place be present while the blood is taken; or

47 New section 72 (1) (fa)

insert

(fa) if the forensic procedure is the taking of a sample by buccal swab—that the serious offender may request that—

(i) if the serious offender is serving a sentence of imprisonment at a correctional centre or other place of detention—a corrections health professional for the centre or place be present while the sample is taken; or

(ii) if the serious offender is not serving a sentence of imprisonment—a doctor or dentist of the serious offender’s choice be present while the sample is taken;

48 Section 72 (1) (j)

substitute

(j) that information obtained from analysis of forensic material obtained may be placed on the ACT DNA database and used for a criminal investigation or any other purpose for which the DNA database may be used, including that the information may be compared with information from the DNA databases of other participating jurisdictions.

Note Pt 2.11 and pt 2.13 set out the purposes for which the database may be used.

**49 Carrying out of forensic procedure following conviction
Section 78 (1)**

omit

as applied by section 67 (Application of pt 2.6 to carrying out of forensic procedures to which pt 2.7 applies)

1 **50 Carrying out of forensic procedures on volunteers**
2 **Section 79 (3) and (4)**

3 *substitute*

- 4 (3) A person is authorised under this section to carry out a forensic
5 procedure under this part only in accordance with part 2.6.
- 6 (4) However, the following provisions in part 2.6 do not apply to the
7 carrying out of a forensic procedure under this part on a volunteer:
- 8 (a) section 50 (Use of force in carrying out forensic procedures);
9 (b) section 55 (3) (Person may get help to carry out forensic
10 procedure);
11 (c) section 63 (Preventing the carrying out of forensic procedure).

12 **51 Sections 80 and 81**

13 *substitute*

14 **80 Informed consent of volunteer or parent or guardian of**
15 **volunteer**

- 16 (1) A volunteer, or a parent or guardian of a volunteer, gives informed
17 consent in accordance with this section if the volunteer, parent or
18 guardian consents in the presence of an independent person who is
19 not a police officer after a police officer informs the volunteer,
20 parent or guardian (orally or in writing) about the following:
- 21 (a) how the forensic procedure is to be carried out;
22 (b) that the volunteer, parent or guardian may request that a doctor
23 of the person's choice be present while an intimate forensic
24 procedure (other than the taking of a dental impression) is
25 carried out or a sample of saliva or sample by buccal swab is
26 taken;

- 1 (c) if the forensic procedure is the taking of a dental impression,
2 sample of saliva or sample by buccal swab—that the volunteer,
3 parent or guardian may request that a dentist of the person’s
4 choice be present while the procedure is carried out;
- 5 (d) that the volunteer is under no obligation to undergo the
6 forensic procedure;
- 7 (e) that the forensic procedure may produce evidence that might
8 be used in a court of law;
- 9 (f) that the volunteer, parent or guardian may consult a lawyer of
10 his or her choice before deciding whether or not to consent to
11 the forensic procedure;
- 12 (g) that if the volunteer, parent or guardian consents to the forensic
13 procedure—
- 14 (A) the consent is also consent to the retention of forensic
15 material taken and information obtained from analysis of
16 the material; and
- 17 (B) the chief police officer and the volunteer, parent or
18 guardian may set a period for which the material or
19 information may be retained, but it must then be
20 destroyed unless a magistrate orders retention under
21 section 84;
- 22 *Note* See s 80A (Consent to retention of forensic material taken etc).
- 23 (h) that the volunteer, parent or guardian may at any time
24 withdraw consent to the volunteer’s undergoing the forensic
25 procedure or to retention of the forensic material taken or of
26 information obtained from the analysis of the material;
- 27 (i) to the extent that they are relevant, the matters mentioned in
28 subsection (3).

- 1 (2) However, an independent person must not be present as mentioned
2 in subsection (1) if the volunteer, parent or guardian requests that an
3 independent person not be present.
- 4 (3) The police officer must inform the volunteer, or parent or guardian
5 of the volunteer, about the following:
- 6 (a) that information obtained from analysis of forensic material
7 taken from a person under this part, and about the identity of
8 the person, may be placed on the ACT DNA database, and that
9 the information may be compared with information from the
10 DNA databases of other participating jurisdictions;
- 11 (b) if the police officer intends the information to be placed on the
12 volunteers (limited purposes) index—the purpose for which it
13 is to be placed on the index, and that the information may be
14 used only for that purpose;
- 15 (c) if the police officer intends the information to be placed on the
16 volunteers (unlimited purposes) index—that the information
17 may be used for a criminal investigation or any other purpose
18 for which the ACT DNA database may be used;
- 19 *Note* Pt 2.11 and pt 2.13 set out the purposes for which the database
20 may be used.
- 21 (d) anything else prescribed by regulation.

22 **80A Consent to retention of forensic material taken etc**

- 23 (1) This section applies if—
- 24 (a) a volunteer, or parent or guardian of a volunteer, consents in
25 accordance with section 80 for a forensic procedure to be
26 carried out on the volunteer; and
- 27 (b) forensic material is taken from the volunteer.

1 (2) The volunteer, parent or guardian is taken to consent to the retention
2 of the forensic material and information obtained from analysis of
3 the material.

4 *Note* Section 82 (2) provides that, if the volunteer, parent or guardian
5 expressly withdraws consent to the retention, the forensic material or
6 information must be destroyed as soon as practicable after the consent is
7 withdrawn unless a magistrate orders retention under s 84.

8 (3) The chief police officer and the volunteer, parent or guardian may
9 set the period for which the forensic material or information
10 obtained from analysis of the material may be retained (the *agreed*
11 *retention period*).

12 *Note* Section 82 (4) provides that, if the agreed retention period ends, the
13 forensic material or information must be destroyed as soon as
14 practicable unless a magistrate orders retention under s 84.

15 **81 Recording of giving of information etc**

16 (1) This section applies if a police officer gives information to a
17 volunteer, or parent or guardian of a volunteer, in accordance with
18 section 80 in relation to a forensic procedure to be carried out on the
19 volunteer.

20 (2) The police officer must, if practicable, ensure that the following are
21 recorded by audiotape, videotape or other electronic means
22 (*electronic recording*):

23 (a) the giving of the information about the proposed forensic
24 procedure;

25 (b) the volunteer's, parent's or guardian's responses (if any);

26 (c) if the volunteer, parent or guardian makes a request mentioned
27 in section 80 (2)—the making of the request.

- 1 (3) However, a written record of the things mentioned in
2 subsection (2) (a) to (c) must be made, and a copy made available to
3 the volunteer, parent or guardian if—
- 4 (a) the volunteer, parent or guardian requests that a written record
5 is made instead of an electronic recording; or
- 6 (b) electronic recording is not practicable.
- 7 (4) Before the forensic procedure is carried out, the volunteer, parent or
8 guardian must be informed that the volunteer, parent or guardian
9 may request that a written record is made instead of an electronic
10 recording.

11 **52 Section 82 heading**

12 *substitute*

13 **82 Withdrawal of consent or end of agreed retention period**

14 **53 Section 82 (2)**

15 *substitute*

- 16 (2) If, after the carrying out of a forensic procedure under this part on a
17 volunteer, the volunteer, or a parent or guardian of the volunteer,
18 expressly withdraws consent to retention of the forensic material
19 taken or information obtained from analysis of the material, the
20 material or information must be destroyed as soon as practicable
21 after the consent is withdrawn.

22 **54 New section 82 (4) to (6)**

23 *insert*

- 24 (4) Forensic material taken from the volunteer or information obtained
25 from analysis of the material must be destroyed as soon as
26 practicable after the end of the agreed retention period.

1 (5) However, material or information is not required to be destroyed
2 under subsection (2) or (4) if an application for retention of the
3 material or information has been made under section 84 (Retention
4 of forensic material etc by order of magistrate) and the application
5 has not been finally decided or a magistrate has ordered retention.

6 (6) In this section:

7 *agreed retention period*—see section 80A (3).

8 **55** **Circumstances in which magistrate may order carrying**
9 **out of forensic procedure on child or incapable person**
10 **Section 83 (3)**

11 *substitute*

12 (3) An order under this section—

13 (a) may require the forensic procedure to be carried out at a date,
14 time or place, or in a way, stated in the order; and

15 (b) must state the period for which forensic material obtained from
16 carrying out the procedure or information obtained from
17 analysis of the material may be retained.

18 **56** **Section 84**

19 *omit everything before subsection (2) (a), substitute*

20 **84** **Retention of forensic material etc by order of magistrate**

21 (1) This section applies if—

22 (a) a volunteer, or parent or guardian of a volunteer, gave consent
23 in accordance with section 80 for a forensic procedure to be
24 carried out on the volunteer; and

25 (b) forensic material was taken from the volunteer; and

- 1 (c) either—
- 2 (i) the volunteer, parent or guardian withdraws consent to
- 3 the retention of the forensic material or information
- 4 obtained from analysis of the material; or
- 5 (ii) the agreed retention period for the forensic material or
- 6 information ends.

7 (1A) An authorised applicant may apply to a magistrate for an order

8 under subsection (2).

9 *Note* Section 82 (5) provides that the forensic material or information is not

10 required to be destroyed under s 82 (2) or (4) if an application for

11 retention of the material or information has been made under this

12 section and the application has not been finally decided or a magistrate

13 has ordered retention.

14 (2) A magistrate may order that the forensic material or information be

15 retained if satisfied that—

16 **57 Section 84 (3)**

17 *substitute*

18 (3) The order must state the period for which the forensic material or

19 information may be retained.

20 (4) In this section:

21 *agreed retention period*—see section 80A (3).

58 New section 84A

in part 2.8, insert

84A Certain volunteers—information about matching of DNA profile

- (1) This section applies if a volunteer volunteers to undergo a forensic procedure for the purpose of—
- (a) placing the volunteer's DNA profile on the ACT DNA database; and
 - (b) comparing the volunteer's DNA profile with a DNA profile on the missing person's index or unknown deceased person's index of a DNA database.
- (2) If the volunteer's DNA profile matches a DNA profile on the missing person's index or unknown deceased person's index, a police officer must inform the volunteer about the match as soon as practicable after the day the match is made.

59 New part 2.8A

insert

Part 2.8A Analysis of forensic material**84B Who may analyse forensic material?**

The Minister may enter into an agreement with 1 or more forensic laboratories accredited with the National Association of Testing Authorities Australia to analyse forensic material for the Territory.

1 **60 Inadmissibility of evidence from improper forensic**
2 **procedures etc**
3 **Section 85 (1) (b) (ii)**

4 *omit*
5 DNA database system
6 *substitute*
7 ACT DNA database

8 **61 Section 85 (2)**

9 *substitute*
10 (2) This section does not apply if—
11 (a) this Act or a court order requires forensic material to be
12 destroyed; and
13 (b) the forensic material has not been destroyed.
14 *Note* Section 86 applies if this Act or a court order requires forensic material
15 to be destroyed.

16 **62 Inadmissibility of evidence if forensic material required to**
17 **be destroyed**
18 **Section 86 (1)**

19 *omit everything before paragraph (a), substitute*
20 (1) If this Act or a court order requires forensic material taken from a
21 person by a forensic procedure to be destroyed, subsection (2)
22 applies to—

1 **63 Destruction of certain forensic material obtained by court**
2 **order**
3 **Section 90 (1)**

4 *omit*
5 the investigating police officer
6 *substitute*
7 an investigating police officer

8 **64 Section 90 (2)**

9 *omit*
10 section 84 (Retention of forensic material by order of magistrate
11 after parent or guardian of child or incapable person withdraws
12 consent)
13 *substitute*
14 section 84 (Retention of forensic material etc by order of magistrate)

15 **65 Section 92**

16 *substitute*

17 **92 Application for destruction of forensic material after**
18 **1 year**

19 (1) If forensic material has been taken from a suspect by a forensic
20 procedure carried out under part 2.3 (Forensic procedures by
21 consent of suspect), part 2.4 (Non-intimate forensic procedures on
22 suspect by order of police officer) or part 2.5 (Forensic procedures
23 on suspect by order of magistrate), the suspect may apply to a court
24 for an order that the forensic material be destroyed.

- 1 (2) However, the suspect may not make an application under this
2 section—
- 3 (a) if a proceeding against the suspect for an offence to which the
4 forensic material relates has begun and not been finally
5 decided (including any appeal); or
- 6 (b) if—
- 7 (i) the suspect is convicted of an offence to which the
8 forensic material relates; and
- 9 (ii) the suspect—
- 10 (A) does not appeal against the conviction in the appeal
11 period; or
- 12 (B) appeals against the conviction and the appeal is
13 unsuccessful.
- 14 (3) An application under this section may only be made 1 year or later
15 after—
- 16 (a) the day the forensic material was taken; or
- 17 (b) if an application for destruction of the forensic material has
18 previously been refused under this section—the day an
19 application was last refused.
- 20 (4) On application, the court must order that the forensic material be
21 destroyed unless satisfied that—
- 22 (a) there are reasonable grounds to believe that the forensic
23 material is likely to be of probative value in relation to the
24 investigation of, or a proceeding for, an offence (including the
25 offence in relation to which the forensic material was taken
26 from the suspect but, for that offence, not in relation to the
27 suspect); and
- 28 (b) the destruction of the forensic material is not justified in all the
29 circumstances.

- 1 (5) The court may order when the forensic material must be destroyed.
- 2 (6) If the court orders that forensic material be destroyed, the court must
- 3 ensure that the responsible person for the ACT DNA database is told
- 4 about the order.

5 **66 Part 2.11 heading**

6 *substitute*

7 **Part 2.11 ACT DNA database**

8 **67 Section 94 heading**

9 *substitute*

10 **94 Definitions—Act**

11 **68 Section 94, new definition of ACT DNA database**

12 *insert*

13 *ACT DNA database*—see section 94A.

14 **69 Section 94, definition of volunteers (limited purposes)**
 15 **index, paragraph (a)**

16 *omit*

17 DNA system

18 *substitute*

19 ACT DNA database

- 1 **70 Section 94, definition of *volunteers (unlimited purposes)***
2 ***index, paragraph (a) (i)***
- 3 *substitute*
- 4 (i) under part 2.8 (Carrying out of forensic procedures on
5 volunteers and certain other people) from volunteers who
6 (or whose parents or guardians) have been informed
7 under section 80 (3) (c) (Informed consent of volunteer or
8 parent or guardian of volunteer) that information obtained
9 may be used for a criminal investigation or any other
10 purpose for which the ACT DNA database may be used;
11 or

12 **71 New section 94A**

13 *insert*

14 **94A ACT DNA database**

- 15 (1) The Minister must ensure a DNA database system (the ***ACT DNA***
16 ***database***) is kept.
- 17 (2) The Minister may enter into an agreement (a ***database agreement***)
18 with 1 or more entities to keep the ACT DNA database, or part of
19 the database, on behalf of the Territory.
- 20 (3) To remove any doubt, if the Minister enters into a database
21 agreement, it does not affect the Territory's powers in relation to the
22 ACT DNA database.
- 23 (4) If the Minister enters into a database agreement, the Minister may
24 access the ACT DNA database to review and audit it.

25 *Note* The Legislation Act, s 254A provides that the Minister may delegate the
26 Minister's functions under an Act to 'anyone else'. A reference to
27 'anyone else' is a reference to a person generally (see Legislation Act,
28 s 160).

- 1 **72 Section 95 heading**
- 2 *substitute*
- 3 **95 Supply of forensic material for prohibited analysis etc**
- 4 **73 Section 95 (2) (a)**
- 5 *omit*
- 6 DNA database system
- 7 *substitute*
- 8 ACT DNA database
- 9 **74 Section 95 (3), definition of *prohibited analysis***
- 10 *substitute*
- 11 *prohibited analysis*, of forensic material, means analysis for the
- 12 purpose of deriving a DNA profile for inclusion on an index of the
- 13 ACT DNA database if—
- 14 (a) this Act or a law of another jurisdiction prescribed by
- 15 regulation requires the material to be destroyed; or
- 16 (b) a court orders that the material be destroyed.
- 17 **75 Section 96 heading**
- 18 *substitute*
- 19 **96 Use of information on ACT DNA database**

- 1 **76 Section 96 (1)**
- 2 *substitute*
- 3 (1) A person commits an offence if—
- 4 (a) the person accesses information on the ACT DNA database;
- 5 and
- 6 (b) the access is not authorised under this section.
- 7 Maximum penalty: 200 penalty units, imprisonment for 2 years or
- 8 both.
- 9 **77 Section 96 (2)**
- 10 *omit*
- 11 DNA database system
- 12 *substitute*
- 13 ACT DNA database
- 14 **78 Section 96 (2) (d)**
- 15 *substitute*
- 16 (d) the purpose of, and in accordance with, an arrangement entered
- 17 into under section 102 (Database information) for the provision
- 18 of access to information on the ACT DNA database by law
- 19 enforcement officers or anyone else prescribed by regulation;
- 20 **79 New section 96 (2A)**
- 21 *insert*
- 22 (2A) The following entities may access information on the ACT DNA
- 23 database for the purpose of reviewing or auditing the database:
- 24 (a) the auditor-general;
- 25 (b) the human rights commissioner;

- 1 (c) the ombudsman;
2 (d) the privacy commissioner;
3 (e) an entity of another participating jurisdiction prescribed by
4 regulation;
5 (f) any other entity prescribed by regulation.

6 **80 Section 97**

7 *substitute*

8 **97 Permissible matching of DNA profiles**

- 9 (1) A matching of a DNA profile on an index of the ACT DNA
10 database mentioned in table 97, column 1 with a DNA profile on
11 another index of the database mentioned in column 2, 3, 4, 5, 6, 7 or
12 8 is not permitted by this Act if—
13 (a) ‘only if within purpose’ is shown in relation to the index
14 mentioned in column 2, 3, 4, 5, 6, 7 or 8 opposite the
15 volunteers (limited purposes) index mentioned in column 1;
16 and
17 (b) the matching is carried out for a purpose other than a purpose
18 for which the DNA profile placed on the volunteers (limited
19 purposes) index mentioned in column 1 was so placed.
20 (2) A matching of a DNA profile on an index of the ACT DNA
21 database mentioned in table 97, column 1 with a DNA profile on
22 another index of the database mentioned in column 2, 3, 4, 5, 6, 7 or
23 8 is permitted by this Act if—
24 (a) ‘yes’ is shown in relation to the index mentioned in column 2,
25 3, 4, 5, 6, 7 or 8 opposite the index mentioned in column 1; or

- 1 (b) 'only if within purpose' is shown in relation to the index
2 mentioned in column 2, 3, 4, 5, 6, 7 or 8 opposite the
3 volunteers (limited purposes) index mentioned in column 1 and
4 the matching is carried out for a purpose for which the DNA
5 profile placed on the volunteers (limited purposes) index
6 mentioned in column 1 was so placed.
- 7 (3) A person commits an offence if—
- 8 (a) the person's conduct causes the matching that is not permitted
9 by this Act of a DNA profile on an index of the ACT DNA
10 database with a DNA profile on the same or another index of
11 the ACT DNA database; and
- 12 (b) the person intends, or is reckless about, the matching.
- 13 Maximum penalty: 200 penalty units, imprisonment for 2 years or
14 both.
- 15 (4) This section does not make it an offence for conduct to cause a
16 matching that is not permitted by this Act if the matching is solely
17 for the purpose of administering the ACT DNA database.

Table 97 Table of permissible matching of DNA profiles

profile to be matched	is matching permitted?						
column 1	column 2 crime scene	column 3 suspects	column 4 volunteers (limited purposes)	column 5 volunteers (unlimited purposes)	column 6 serious offenders	column 7 missing persons	column 8 unknown deceased persons
crime scene	yes	yes	only if within purpose	yes	yes	yes	yes
suspects	yes	yes	only if within purpose	yes	yes	yes	yes
volunteers (limited purposes)	only if within purpose	only if within purpose	only if within purpose	only if within purpose	only if within purpose	only if within purpose	only if within purpose

Part 2

Crimes (Forensic Procedures) Act 2000

Section 80

profile to be matched	is matching permitted?						
column 1	column 2 crime scene	column 3 suspects	column 4 volunteers (limited purposes)	column 5 volunteers (unlimited purposes)	column 6 serious offenders	column 7 missing persons	column 8 unknown deceased persons
volunteers (unlimited purposes)	yes	yes	only if within purpose	yes	yes	yes	yes
serious offenders	yes	yes	only if within purpose	yes	yes	yes	yes
missing persons	yes	yes	only if within purpose	yes	yes	yes	yes

profile to be matched	is matching permitted?						
column 1	column 2 crime scene	column 3 suspects	column 4 volunteers (limited purposes)	column 5 volunteers (unlimited purposes)	column 6 serious offenders	column 7 missing persons	column 8 unknown deceased persons
unknown deceased persons	yes	yes	only if within purpose	yes	yes	yes	yes

1 **81 Section 98**

2 *substitute*

3 **98 Recording, retention and removal of identifying**
4 **information on ACT DNA database**

- 5 (1) A person commits an offence if—
- 6 (a) this Act requires that forensic material taken from someone
7 else (the *relevant person*) under this Act be destroyed; and
 - 8 (b) the person's conduct causes any identifying information about
9 the relevant person obtained from the forensic material to be
10 recorded or retained on the ACT DNA database at any time
11 after the material is required to be destroyed under this Act;
12 and
 - 13 (c) the person intends, or is reckless about, the recording or
14 retention.

15 Maximum penalty: 200 penalty units, imprisonment for 2 years or
16 both.

- 17 (2) A person commits an offence if—
- 18 (a) a court orders that forensic material taken from someone else
19 (the *relevant person*) under this Act be destroyed; and
 - 20 (b) the person's conduct causes any identifying information about
21 the relevant person obtained from the forensic material to be
22 recorded or retained on the ACT DNA database—
 - 23 (i) if no appeal against the order is made during the appeal
24 period—at any time after the appeal period; or
 - 25 (ii) if an appeal against the order is made during the appeal
26 period—at any time after the appeal is finally decided, if
27 the result is that the order is confirmed (however
28 described); and

1 (c) the person intends, or is reckless about, the recording or
2 retention.

3 Maximum penalty: 200 penalty units, imprisonment for 2 years or
4 both.

5 (3) The responsible person for the ACT DNA database must ensure that
6 any identifying information relating to a person from whose forensic
7 material a DNA profile on the volunteers (unlimited purposes) index
8 or volunteers (limited purposes) index of the ACT DNA database
9 was derived is removed from the database as soon as practicable
10 after—

11 (a) the end of the identifying period for the profile; or

12 (b) if an application is made under section 84 (Retention of
13 forensic material etc by order of magistrate) for retention of the
14 information—a magistrate does not order the retention; or

15 (c) if a magistrate orders retention under section 84—the end of
16 the period stated in the order for which the information may be
17 retained.

18 Maximum penalty: 200 penalty units, imprisonment for 2 years or
19 both.

20 (4) The responsible person for the ACT DNA database must ensure that
21 any identifying information relating to a DNA profile of a serious
22 offender on the serious offenders index of the ACT DNA database is
23 removed from the database as soon as practicable after becoming
24 aware that the serious offender has been pardoned or acquitted of
25 the serious offence concerned or that the serious offender's
26 conviction for the serious offence concerned has been quashed.

27 Maximum penalty: 200 penalty units, imprisonment for 2 years or
28 both.

- 1 (5) The responsible person for the ACT DNA database must ensure that
2 any identifying information relating to a DNA profile of a suspect
3 on the suspects index of the ACT DNA database is removed from
4 the database as soon as practicable after the information is required
5 to be removed under section 98A.
- 6 Maximum penalty: 200 penalty units, imprisonment for 2 years or
7 both.
- 8 (6) In this section:
- 9 ***agreed retention period***—see section 80A (3).
- 10 ***identifying information*** means any information in electronic form
11 that could be used—
- 12 (a) to discover the identity of the person from whose forensic
13 material the DNA profile was derived; or
- 14 (b) to get information about an identifiable person.
- 15 ***identifying period***, for a DNA profile, means—
- 16 (a) the period of 1 year after the DNA profile is placed on the
17 ACT DNA database; or
- 18 (b) if the DNA profile is derived from forensic material taken from
19 a volunteer—the agreed retention period; or
- 20 (c) if the DNA profile is derived from forensic material taken from
21 a dead person (other than a person who was a volunteer) whose
22 identity is known—the period the chief police officer orders
23 the responsible person for the ACT DNA database to retain
24 identifying information relating to the profile.

- 1 **98A** **Removal of identifying information about suspects after**
2 **1 year**
- 3 (1) This section applies if—
- 4 (a) forensic material has been taken from a suspect by a forensic
5 procedure carried out under part 2.3 (Forensic procedures by
6 consent of suspect), part 2.4 (Non-intimate forensic procedures
7 on suspect by order of police officer) or part 2.5 (Forensic
8 procedures on suspect by order of magistrate); and
- 9 (b) identifying information about the suspect obtained from the
10 material is included on the ACT DNA database.
- 11 (2) If—
- 12 (a) 1 year has elapsed since the forensic material was taken; and
- 13 (b) a proceeding for an offence to which the forensic material
14 relates has not been begun or has been discontinued;
- 15 the identifying information must be removed from the ACT DNA
16 database unless a warrant for the apprehension of the suspect has
17 been issued.
- 18 (3) If a warrant for the apprehension of the suspect is issued within
19 1 year after the forensic material is taken, the identifying
20 information must be removed from the ACT DNA database after—
- 21 (a) the warrant lapses; or
- 22 (b) 1 year elapses after the suspect is apprehended.
- 23 (4) If—
- 24 (a) the suspect is found guilty of an offence to which the forensic
25 material relates but no conviction is recorded; or
- 26 (b) the suspect is acquitted of an offence to which the forensic
27 material relates and—
- 28 (i) no appeal is made against the acquittal; or

- 1 (ii) an appeal is made against the acquittal and the acquittal is
2 confirmed or the appeal is withdrawn;
- 3 the identifying information must be removed from the ACT DNA
4 database unless an investigation into, or a proceeding against the
5 suspect for, another offence to which the forensic material relates is
6 pending.
- 7 (5) A magistrate may, on application by the director of public
8 prosecutions, extend for not longer than 1 year the period for which
9 identifying information may be retained under this section, if the
10 magistrate is satisfied there are special reasons for doing so.
- 11 (6) A magistrate to whom an application is made under subsection (5)
12 may extend the period only if—
- 13 (a) the person from whom the forensic material was taken has
14 been notified by the director of public prosecutions that the
15 application has been made; and
- 16 (b) the person or his or her lawyer or interview friend (if any) has
17 been given an opportunity to speak to or make a submission to
18 the magistrate about the extension.
- 19 (7) An extension in relation to particular identifying information may be
20 given more than once.
- 21 (8) The magistrate must ensure that the responsible person for the ACT
22 DNA database is told about any extension given under this section.
- 23 (9) In this section:
- 24 *identifying information*—see section 98 (6).

1 **82** **Definitions relating to interstate enforcement**
2 **Section 100, definition of *DNA database***

3 *substitute*

4 *DNA database* means—

- 5 (a) the ACT DNA database; or
6 (b) NCIDD; or
7 (c) for a participating jurisdiction—a database (whether in
8 computerised or other form and however described) held by, or
9 on behalf of, the participating jurisdiction for the purposes of a
10 corresponding law of the participating jurisdiction.

11 **83** **Section 100, new definition of *NCIDD***

12 *insert*

13 *NCIDD* means the database known as the National Criminal
14 Investigation DNA Database and managed by the Commonwealth.

15 **84** **Section 102**

16 *substitute*

17 **102** **Database information**

- 18 (1) The Minister may enter into arrangements with the responsible
19 Minister of another participating jurisdiction under which—
20 (a) information from the ACT DNA database is to be provided to
21 the appropriate authority for the jurisdiction for either or both
22 of the following purposes:
23 (i) the investigation of, or the conduct of a proceeding for,
24 an offence against a law of the Territory or the
25 participating jurisdiction;
26 (ii) the identification of missing or dead people; and

- 1 (b) information from a DNA database of the participating
2 jurisdiction is to be provided to the appropriate authority for
3 the Territory for either or both of the following purposes:
- 4 (i) the investigation of, or the conduct of a proceeding for,
5 an offence against a law of the Territory or the
6 participating jurisdiction;
- 7 (ii) the identification of missing or dead people.
- 8 (2) Without limiting subsection (1), the Minister may enter into
9 arrangements with the responsible Minister of the Commonwealth
10 under which information from the ACT DNA database (the
11 ***Territory's information***) is to be provided to the appropriate
12 authority for the Commonwealth for the purpose of the authority—
- 13 (a) comparing the information with information provided to the
14 authority from a DNA database of another participating
15 jurisdiction (the ***participating jurisdiction's information***); and
- 16 (b) identifying to the appropriate authority for the Territory any
17 matches that are found as a result of the comparison; and
- 18 (c) providing the Territory's information in relation to those
19 matches to the appropriate authority for the Commonwealth or
20 the appropriate authority of the participating jurisdiction; and
- 21 (d) providing the participating jurisdiction's information in
22 relation to those matches to the appropriate authority for the
23 Territory.
- 24 (3) An arrangement mentioned in this section may not authorise the
25 comparison of information to match DNA profiles in a way that
26 would contravene section 97 (Permissible matching of DNA
27 profiles) were the information contained wholly on the ACT DNA
28 database.

- 1 (4) Information that is provided under this section must not be recorded
2 or maintained on any database of information that may be used to
3 discover the identity of a person or to obtain information about an
4 identifiable person—
- 5 (a) at any time after this Act or a corresponding law of another
6 participating jurisdiction requires the forensic material to
7 which it relates to be destroyed; or
- 8 (b) if a court orders that the forensic material to which it relates be
9 destroyed—
- 10 (i) if no appeal against the order is made during the appeal
11 period—at any time after the appeal period; or
- 12 (ii) if an appeal against the order is made during the appeal
13 period—at any time after the appeal is finally decided, if
14 the result is that the order is confirmed (however
15 described).

16 **85 Section 103**

17 *substitute*

18 **103 Powers of lawyers and interview friends**

- 19 (1) A request that may be made by a suspect, serious offender or
20 volunteer under this Act may be made, for the person, by—
- 21 (a) the person's lawyer; or
- 22 (b) if the person is a child or incapable person—the person's
23 interview friend.
- 24 *Note* The interview friend may be a lawyer (see s 16).
- 25 (2) Subsection (3) applies if—
- 26 (a) this Act requires a suspect, serious offender or volunteer to be
27 informed about a matter; and

- 1 (b) the person's interview friend or lawyer is present when the
2 person is informed about the matter; and
- 3 (c) the person is informed in a language (including sign language
4 or braille) in which the person's interview friend or lawyer
5 cannot communicate with reasonable fluency.
- 6 (3) The person's interview friend or lawyer must also be informed
7 about the matter in a language in which the interview friend or
8 lawyer can communicate with reasonable fluency.

9 **86** **Obligation of investigating police officers relating to**
10 **electronic recordings**
11 **Section 104 (1)**

12 *omit*

13 the investigating police officer

14 *substitute*

15 an investigating police officer

16 **87** **Material required to be made available to suspect, serious**
17 **offender or volunteer**
18 **Section 105 (1) (b)**

19 *omit*

20 the investigating police officer

21 *substitute*

22 an investigating police officer

1 **88 Section 105, note**

2 *omit*

3 60 (2) (a)

4 *substitute*

5 60 (4) (a)

6 **89 Disclosure of information**
7 **Section 111 (1) (a) and (2)**

8 *omit*

9 DNA database system

10 *substitute*

11 ACT DNA database

12 **90 Section 111 (2) (a)**

13 *substitute*

14 (a) the purpose of forensic comparison, by a police officer or
15 anyone else prescribed by regulation, in the course of a
16 criminal investigation or an investigation by a police officer
17 relating to a missing or dead person;

18 **91 Section 111 (2) (c)**

19 *omit*

20 DNA database system

21 *substitute*

22 ACT DNA database

1 **92 New section 111 (2) (ca)**

2 *insert*

3 (ca) the purpose of reviewing or auditing the ACT DNA database;

4 **93 Section 111 (2) (d)**

5 *substitute*

6 (d) for the purpose of, and in accordance with, an arrangement
7 entered into under section 102 (Database information) for the
8 provision of access to information on the ACT DNA database
9 by law enforcement officers or anyone else prescribed by
10 regulation;

11 **94 Forensic procedures under pt 2.7**
12 **New section 116 (2)**

13 *insert*

14 (2) A person is authorised to carry out a forensic procedure under
15 part 2.7 on a serious offender whether the serious offender was
16 convicted of the serious offence concerned before, or is convicted of
17 the serious offence concerned after, the commencement of this
18 subsection.

19 **95 New section 118**

20 *insert*

21 **118 Existing arrangements—s 102**

22 (1) This section applies if the Minister entered into an arrangement with
23 a responsible Minister of a participating jurisdiction mentioned in
24 section 102 (Database information) before the commencement of
25 this section.

1 (2) To remove any doubt, the arrangement is not ended only because of
2 the enactment of the *Crimes (Forensic Procedures) Amendment*
3 *Act 2008*.

4 (3) This section expires 1 year after the day it commences.

5 **96 Dictionary, note 2, new dot points**

6 *insert*

- 7 • auditor-general
- 8 • correctional centre
- 9 • entity (see s 184A)
- 10 • human rights commissioner
- 11 • ombudsman
- 12 • privacy commissioner

13 **97 Dictionary, new definitions**

14 *insert*

15 *ACT DNA database*—see section 94A.

16 *appeal period*, for an appeal to a court against an order, means the
17 period stated by a territory law during which an appeal against the
18 order may be made without the court's leave.

19 *corrections health professional*, for a correctional centre, means a
20 health professional appointed under the *Corrections Management*
21 *Act 2007*, section 22 (Health professionals—non-therapeutic
22 functions) for the centre.

23 **98 Dictionary, definition of DNA database system**

24 *substitute*

25 *DNA database system*, for part 2.11 (ACT DNA database)—see
26 section 94.

1 **99 Dictionary, definition of *medical officer***

2 *omit*

3 **100 Dictionary, new definition of *relevant person***

4 *insert*

5 *relevant person*, for part 2.6 (Carrying out forensic procedures)—
6 see section 48A.

7 **101 Dictionary, definition of *responsible person***

8 *substitute*

9 *responsible person*, for the ACT DNA database, means the person
10 responsible for the care, control and management of the database.

1 **Part 3** **Crimes (Forensic Procedures)**
2 **Regulation 2000**

3 **102** **Legislation amended—pt 3**

4 This part amends the *Crimes (Forensic Procedures)*
5 *Regulation 2000*.

6 **103** **Section 5**

7 *substitute*

8 **5** **Use or disclosure of information on DNA databases—Act,**
9 **s 96 (2) (d), s 111 (2) (a) and (d)**

- 10 (1) A person may access information on the ACT DNA database for the
11 purpose of, and in accordance with, an arrangement entered into
12 under the Act, section 102 (Database information) for the provision
13 of access to information on the database by an authorised person.
- 14 (2) A person may disclose information on the ACT DNA database—
- 15 (a) for the purpose of forensic comparison by an authorised person
16 in the course of—
- 17 (i) a criminal investigation; or
- 18 (ii) an investigation by a police officer relating to a missing
19 or dead person; or
- 20 (b) for the purpose of, and in accordance with, an arrangement
21 entered into under the Act, section 102 for the provision of
22 access to information on the database by an authorised person.

- 1 (3) In this section:
- 2 *authorised person* means a person who—
- 3 (a) is engaged or employed by a forensic laboratory that is
- 4 accredited with the National Association of Testing Authorities
- 5 of Australia; and
- 6 (b) in that capacity, provides forensic services to law enforcement
- 7 officers of the Territory, the Commonwealth or a State.

8 **104 Corresponding law—Act, s 100, def of *corresponding law***

9 **Section 6 (1) (f)**

10 *substitute*

11 (f) the *Criminal Law (Forensic Procedures) Act 2007* (SA);

12 **105 Schedule 1, item 1, column 2**

13 *after*

14 transgender

15 *insert*

16 or intersex

17 **106 Schedule 1, item 3, column 2**

18 *substitute*

19 taking photograph or video recording of, or impression or cast of,

20 wound from—

- 21 • genital or anal area
- 22 • buttocks
- 23 • breasts of female or transgender or intersex person who
- 24 identifies as female

107 Schedule 1, items 4, 7 and 8, column 2

1
2 *after*
3 transgender
4 *insert*
5 or intersex

108 Schedule 1, item 10, column 2

6
7 *substitute*
8 taking photograph or video recording of, or impression or cast of
9 wound from, external part of body (other than—
10 • genital or anal area
11 • buttocks
12 • breasts of female or transgender or intersex person who
13 identifies as female)

109 Schedule 1, notes 1 and 2

14
15 *substitute*
16 *Note* People mentioned in col 3 as appropriately qualified for the applicable
17 procedure are additional to those mentioned in the Act, s 53.

110 Schedule 2, item 9, column 2

18
19 *omit*
20 DNA database system
21 *substitute*
22 ACT DNA database

1 **111 Schedule 2, item 11, column 2**

2 *omit*

3 section 80 (2) (c)

4 *substitute*

5 section 80 (3) (c)

6 **112 Dictionary, notes 2 and 3**

7 *substitute*

8 *Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

- 9 • Commonwealth
- 10 • doctor
- 11 • intersex person (see s 169B)
- 12 • police officer
- 13 • State
- 14 • the Territory
- 15 • transgender person (see s 169A (1) and (2)).

16 *Note 3* Terms used in this regulation have the same meaning that they have in
17 the *Crimes (Forensic Procedures) Act 2000* (see Legislation Act,
18 s 148). For example, the following terms are defined in the *Crimes*
19 *(Forensic Procedures) Act 2000*, dict:

- 20 • ACT DNA database (see s 94A)
- 21 • appropriately qualified person (see s 13)
- 22 • forensic procedure (see s 5).

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2008.

2 Notification

Notified under the Legislation Act on 2008.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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