

Western Australia

**Criminal Investigation (Identifying People)
Amendment Act 2013**

As at 12 Nov 2013

No. 22 of 2013

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Criminal Investigation (Identifying People) Amendment Act 2013

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Western Australia

Criminal Investigation (Identifying People) Amendment Act 2013

No. 22 of 2013

An Act to amend the *Criminal Investigation (Identifying People) Act 2002* and for related purposes.

[Assented to 12 November 2013]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Criminal Investigation (Identifying People) Amendment Act 2013*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent (*assent day*);
- (b) section 28 — on a day fixed by proclamation;
- (c) the rest of the Act — on the day after assent day.

**Part 2 — *Criminal Investigation (Identifying People)*
Act 2002 amended**

3. Act amended

This Part amends the *Criminal Investigation (Identifying People) Act 2002*.

4. Section 3 amended

- (1) In section 3(1) in the definition of *identifying feature* in the example delete “the face” and insert:

the face, iris or retina

- (2) In section 3(1) in the definition of *identifying information* delete “has, except in Schedule 1,” and insert:

has

- (3) In section 3(1) in the definition of *identifying particular* delete “61 or Schedule 1 clause 1,” and insert:

52A or 61,

- (4) In section 3(1) in the definition of *intimate identifying procedure*:

- (a) in paragraph (c) delete “blood;” and insert:

blood; or

(b) after paragraph (c) insert:

(d) the taking of a sample of any bodily material of the person, other than the person's blood, by means of a procedure that is prescribed by the regulations to be an intimate identifying procedure;

5. Section 7A inserted

After section 6 insert:

7A. Requesting or informing people under this Act

Unless expressly provided otherwise, if this Act permits a person to make a request to another person or requires a person to inform another person, the request or information may be given to the other person orally or in writing.

6. Section 7 amended

In section 7 after paragraph (a) insert:

(ba) does not comply with any reasonable request made to him or her in order to enable the procedure to be done; or

7. Section 8 amended

(1) In section 8(2) after "body tissue" insert:

(including bone or teeth)

- (2) After section 8(3) insert:
- (4) The regulations, in relation to any specific identifying particular of a person prescribed under section 17, 23, 34, 47 or 52A —
- (a) may specify one or more identifying procedures that may be done on the person to obtain bodily material for the purpose of obtaining that identifying particular of the person; and
 - (b) in relation to an identifying procedure so specified, may provide that the procedure must not be used to obtain bodily material from the person unless it is impracticable to use another specified procedure.

Note: The heading to amended section 8 is to read:

Procedures for obtaining material from which to obtain specific identifying particulars

8. Section 9 amended

In section 9(1) delete the definition of *sample* and insert:

sample means a sample of bodily material taken from a person under this Act for the purpose of obtaining —

- (a) the DNA profile of the person; or
- (b) any identifying particular prescribed for the purposes of this definition.

9. Section 11 amended

In section 11(1) in the definition of *identifying particular* after paragraph (e) insert:

- (f) an identifying particular of the person that is prescribed under section 17, 23, 34, 47 or 52A;

10. Section 16 amended

- (1) In section 16(1) insert in alphabetical order:

face covering means an item of clothing, hat, helmet, mask or sunglasses, or any other thing worn by a person, that totally or partially covers the person's face;

- (2) After section 16(3) insert:

(4A) If —

- (a) an officer makes a request to a person under subsection (2); or
- (b) a police officer requests or requires a person to give the police officer, under another written law and for a forensic purpose, any or all of the person's personal details,

the officer may request the person —

- (c) to remove or adjust any face covering worn by the person; or
- (d) to do any other thing reasonably necessary,

to enable the officer to see the person's face or verify the correctness of any personal detail, or any evidence of any personal detail, given by the person.

- (4B) It is sufficient compliance with a request made under subsection (4A)(c) if only so much of the person's face covering that totally or partially covers the person's face is removed or adjusted.
- (4C) If an officer makes a request to a person under this section, the officer may detain the person for a reasonable period for the purpose of the person's compliance with the request or to verify the correctness of any personal detail, or any evidence of any personal detail, given by the person.

- (3) In section 16(4) delete "subsection (2) or (3)" and insert:

subsection (2), (3) or (4A)

- (4) In section 16(6) delete "subsection (2) or (3)" and insert:

subsection (2), (3) or (4A)

11. Section 17 amended

In section 17 in the definition of *identifying particular* after paragraph (e) insert:

- (f) an identifying particular of the person that is prescribed for the purposes of this definition;

12. Section 19 amended

Delete section 19(3).

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13. Section 23 amended

In section 23 in the definition of *identifying particular* after paragraph (e) insert:

- (f) an identifying particular of the person that is prescribed for the purposes of this definition;

14. Section 34 amended

In section 34 in the definition of *identifying particular*:

- (a) after paragraph (b) insert:

- (ca) a measurement of any identifying feature of the person;

- (b) after paragraph (e) insert:

- (f) an identifying particular of the person that is prescribed for the purposes of this definition;

15. Section 38 amended

In section 38(2)(a) delete “an offence” and insert:

a serious offence

16. Section 40 amended

After section 40(3) insert:

- (4) If a suspect is a protected person and, after making reasonable enquiries to find a responsible person, an officer reasonably suspects that —
 - (a) there is no responsible person; or

- (b) a responsible person cannot be found within a reasonable time; or
- (c) it is impracticable to request the consent of a responsible person,

an identifying procedure may only be done on the suspect if a magistrate issues an IP warrant (suspect) that authorises it.

17. Section 42 amended

In section 42(2)(b) delete “section 40(2) or (3)” and insert:

section 40(2), (3) or (4)

18. Section 47 amended

- (1) In section 47 in the definition of *identifying particular*, in relation to a charged suspect charged with a serious offence:
 - (a) after paragraph (c) insert:
 - (da) an impression of an identifying feature of the suspect (including a dental impression);
 - (db) a sample of the suspect’s hair taken for purposes other than obtaining the suspect’s DNA profile;
 - (b) after paragraph (d) insert:
 - (e) an identifying particular of the suspect that is prescribed for the purposes of this definition;

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- (2) In section 47 in the definition of *identifying particular*, in relation to a charged suspect charged with an offence other than a serious offence:
- (a) in paragraph (c) delete “suspect.” and insert:

suspect;
 - (b) after paragraph (c) insert:

 - (d) an identifying particular of the suspect that is prescribed for the purposes of this definition, which cannot include an identifying particular listed in paragraph (da), (db) or (d) of the definition of *identifying particular*, in relation to a charged suspect charged with a serious offence.

19. Section 49 amended

- (1) Delete section 49(1) and insert:
- (1) If it is practicable to do so, an officer may request a charged suspect to consent to an identifying procedure being done on the suspect for the purpose of obtaining one or more of a charged suspect’s identifying particulars.
- (2) Delete section 49(2)(f)(i) and (ii) and insert:
- (i) the suspect may be arrested; and
 - (ii) the procedure may be done on the suspect against the suspect’s will.

20. Section 50 amended

(1) In section 50(1):

(a) delete “A police officer” and insert:

An officer

(b) delete “the section and the charged suspect’s responses (if any).” and insert:

that section and whether the charged suspect consented to the request or not.

(2) After section 50(1) insert:

(2A) If an officer does not make a request to a charged suspect under section 49 because it is not practicable to do so, the officer must ensure that a record is made of the reasons why it was not practicable to make the request.

(3) In section 50(2) delete “The record” and insert:

A record under this section

21. Section 51 amended

(1) In section 51(1)(b) delete “in accordance with” and insert:

under

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(2) Delete section 51(2) and (3) and insert:

(2) If —

(a) subsection (1)(a) and (b) apply but the charged suspect does not consent or withdraws consent to the identifying procedure; or

(b) it is not practicable to make a request to a charged suspect under section 49,

an officer may —

(c) if the charged suspect is not in custody — without a warrant arrest the suspect and detain him or her for a reasonable period in order to do the identifying procedure; and

(d) do the identifying procedure on the charged suspect against the suspect's will.

22. Part 8A inserted

After section 51 insert:

Part 8A — Identifying particulars of serious offenders

52A. Terms used

In this Part —

identifying particular, in relation to a serious offender, means —

(a) a print of the offender's hands (including fingers), feet (including toes) or ears;

(b) a photograph of the offender (including of an identifying feature of the offender);

- (c) the offender's DNA profile;
- (d) an identifying particular of the offender that is prescribed for the purposes of this definition;

serious offender means a person who is —

- (a) found guilty of a serious offence (whether or not a spent conviction order is made in respect of the finding of guilt or a conviction is recorded); or
- (b) found not guilty of a serious offence on account of unsoundness of mind.

52B. How identifying procedures are to be done

An identifying procedure that under this Part may be done on a person must be done in accordance with Part 8.

52C. Identifying particulars may be taken

- (1) If a police officer reasonably suspects a person is a serious offender and his or her identifying particulars —

- (a) are not held or may not be held by the WA Police; or
- (b) are or may be needed to verify the person's identity by comparison with identifying particulars already held by the WA Police,

the police officer may, within 6 months after the date on which the person became a serious offender, request the offender, if it is practicable to do so, to consent to a non-intimate identifying procedure being done on the offender for the purpose of obtaining one or more of the offender's identifying particulars.

- (2) A police officer who requests a serious offender to consent to a non-intimate identifying procedure being done on the offender must at the time inform the offender of these matters —

- (a) the purpose of the procedure;
- (b) how the procedure will be done;
- (c) that information derived from the procedure may be compared with or put in a forensic database;
- (d) the circumstances in which destruction may be requested under section 69;
- (e) that the procedure may provide evidence that could be used in a court against the offender;
- (f) that if the offender does not consent or withdraws consent to the procedure —
 - (i) the offender may be arrested; and
 - (ii) the procedure may be done on the offender against the offender's will.

52D. Request and giving of information to be recorded

- (1) A police officer who makes a request under section 52C must ensure that a record is made of the request, of the information given under that section and whether the serious offender consented to the request or not.
- (2) If a police officer does not make a request to a serious offender under section 52C because it is not practicable to do so, the police officer must ensure that a record is made of the reasons why it was not practicable to make the request.
- (3) A record under this section must be an audiovisual record or in writing.

52E. When identifying procedure may be done

- (1) If —
 - (a) under section 52C a request is made to a serious offender; and

- (b) the offender is informed under that section; and
- (c) the offender consents to the identifying procedure being done,

then the non-intimate identifying procedure may be done on the offender.

- (2) If —
 - (a) subsection (1)(a) and (b) apply but the serious offender does not consent or withdraws consent to the identifying procedure; or
 - (b) it is not practicable to make a request to a serious offender under section 52C,an officer may —
 - (c) if the offender is not in custody — without a warrant arrest the offender and detain him or her for a reasonable period in order to do the non-intimate identifying procedure; and
 - (d) do the non-intimate identifying procedure on the offender against the offender's will.

23. Section 56 amended

- (1) In section 56 delete “When” and insert:
 - (1) When
- (2) At the end of section 56 insert:
 - (2) If the regulations, for the purpose of the definition of ***identifying particular*** in section 17, 23, 34, 47 or 52A, prescribe an identifying particular, the regulations may —

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- (a) for each identifying procedure needed to obtain the identifying particular, prescribe powers that may be exercised to do the procedure; and
- (b) for each power, prescribe the person, or class of persons, who may exercise it.

24. Section 59 amended

(1) Before section 59(1) insert:

(1A) This section applies if, under other provisions of this Act, a person may be requested or required to undergo an identifying procedure.

(2) In section 59(1) delete “requested —” and insert:

requested or required —

(3) In section 59(2) after “requested” insert:

or required

(4) In section 59(3) after “request” insert:

or requirement

25. Section 63 amended

After section 63(1)(b) insert:

- (ca) may be used to obtain any identifying particular of the deceased person in accordance with the direction of a coroner; and

26. Section 67 amended

- (1) After section 67(1)(b) insert:

- (ca) may be used to obtain any identifying particular of the suspect; and

- (2) In section 67(2) delete “Part 7.” and insert:

Part 7 as if the references in subsection (1)(a) and (b) to “as soon as it is obtained” were deleted.

27. Section 68A inserted

After section 67 insert:

68A. Identifying information of serious offenders

- (1) In this section —
former Schedule 1 clause 6 means Schedule 1 clause 6 as in effect under the former section 95;
former section 95 means section 95 as in effect before it was repealed by the *Criminal Investigation (Consequential Provisions) Act 2006* section 40.
- (2) Identifying information of a serious offender obtained under Part 8A —

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- (a) may be compared with other information, whether or not in a forensic database, as soon as it is obtained; and
 - (b) may be put in a forensic database as soon as it is obtained; and
 - (c) may be used to obtain any identifying particular of the offender; and
 - (d) must be destroyed if the serious offender ceases to be a serious offender and destruction is requested under section 69 by or on behalf of the offender.
- (3) Subsection (2) applies in relation to identifying information of a serious offender obtained under the former Schedule 1 clause 6 as if the references in subsection (2)(a) and (b) to “as soon as it is obtained” were deleted.

28. Section 76 amended

- (1) In section 76 delete the definitions of:
- crime scene index*
 - DNA database index*
 - missing persons index*
 - offenders index*
 - suspects index*
 - unknown deceased persons index*
 - volunteers (limited purposes) index*
 - volunteers (unlimited purposes) index*
- (2) In section 76 in the definition of *DNA database*:
- (a) delete paragraph (a);
 - (b) delete paragraph (c) and insert:

- (c) any index prescribed by the regulations for the purposes of this definition;

- (3) In section 76 in the definition of *statistical index* delete “Part;” and insert:

Part.

Part 3 — Amendments to other Acts

29. *Criminal Investigation Act 2006* amended

- (1) This section amends the *Criminal Investigation Act 2006*.
- (2) In section 102(4) delete “identifying” and insert:

forensic

- (3) In section 132(1)(f) delete “under a warrant issued”.

30. *Criminal Organisations Control Act 2012* amended

- (1) This section amends the *Criminal Organisations Control Act 2012*.
- (2) In section 88(1)(a) delete “section 67(1)(a) and (b),” and insert:

section 67(1)(a), (b) and (ca),

