



Western Australia

# **Criminal Investigation (Identifying People) Act 2002**

Compare between:

[06 Sep 2014, 04-d0-04] and [19 Apr 2018, 04-e0-03]



Western Australia

## **Criminal Investigation (Identifying People) Act 2002**

**An Act to enable personal details and identifying particulars of people to be obtained by police and other officers for forensic purposes, and for related purposes.**

## **Part 1 — Preliminary**

### **1. Short title**

This Act may be cited as the *Criminal Investigation (Identifying People) Act 2002*<sup>1</sup>.

### **2. Commencement**

- (1) This Act comes into operation on a day fixed by proclamation<sup>1</sup>.
- (2) Different days may be fixed under subsection (1) for different provisions.

### **3. Terms used**

- (1) In this Act, unless the contrary intention appears —

***adult*** means a person who has reached 18 years of age and in respect of whom there are no reasonable grounds to suspect that he or she is an incapable person;

***child*** means a person who is under 18 years of age and in respect of whom there are no reasonable grounds to suspect that he or she is an incapable person;

***corresponding law*** has the meaning given by section 87;

***DNA database*** has the meaning given by section 76;

***forensic database*** has the meaning given by section 61;

***forensic purpose*** means —

- (a) investigating an offence or a suspected offence or offences generally; or
- (b) investigating the death of a person or identifying a deceased person; or
- (c) investigating the whereabouts of or identifying a missing person;

***identifying feature***, in relation to a person, means a permanent or semi-permanent physical feature of the person that helps to identify the person;

Example for this definition:

The face, iris or retina of a person or a birthmark, scar or tattoo on a person.

**identifying information** has the meaning given by section 61;

**identifying particular** has the meaning given by section 11(1), 17, 23, 34, 47, 52A or 61, as the case requires;

**identifying procedure** means a procedure in the course of which —

- (a) one or more identifying particulars of a person are obtained from the person; and
- (b) if practicable, the person's personal details are obtained;

**impression** includes a cast;

**incapable person** means a person of any age —

- (a) who is unable by reason of a mental disability (which term includes intellectual disability, a psychiatric condition, an acquired brain injury and dementia) to understand the general nature and effect of, and the reason for and the consequences of undergoing, an identifying procedure; or
- (b) who is unconscious or otherwise unable to understand a request made or information given under this Act or to communicate whether or not he or she consents to an identifying procedure being done on him or her;

**intimate identifying procedure**, in relation to a person, means —

- (a) an identifying procedure that is done on the person's private parts; or
- (b) the taking of a dental impression of the person; or
- (c) the taking of a sample of the person's blood; or
- (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;

**IP warrant (involved protected person)** means a warrant issued under section 33;

**IP warrant (suspect)** means a warrant issued under section 46;

**JP** means Justice of the Peace;

**non-intimate identifying procedure**, in relation to a person, means an identifying procedure that is done on the person that is not an intimate identifying procedure, and includes the taking of a buccal swab from the person;

**offence** means an offence under a written law but does not include a contempt of court;

**officer** means a police officer or a public officer or both, as the case requires;

**official details** means —

- (a) in respect of a police officer — the officer's surname and rank and includes, in relation to an application by the officer under this Act for a warrant, the officer's registered number;
- (b) in respect of a public officer — the officer's full name and official title;

**participating jurisdiction** has the meaning given by section 87;

**personal details**, in relation to a person, has the meaning given by section 16(1);

**photograph** includes a video recording and a digital image;

**private parts**, in relation to a person, means the person's genital area, anal area and buttocks and, in the case of —

- (a) a female; or
- (b) a male undergoing a reassignment procedure within the meaning of the *Gender Reassignment Act 2000*,

includes the person's breasts;

**protected person** means a person who is a child or an incapable person;

**Public Advocate** has the meaning given by the *Guardianship and Administration Act 1990*;

**public officer** means a person, other than a police officer, appointed under a written law to an office that is prescribed under section 5(1);

**reasonably suspects** has the meaning given by section 4;

**remote communication** means any way of communicating at a distance including by telephone, fax, email and radio;

**responsible person**, in relation to a child, means —

- (a) a parent of the child; or
- (b) a guardian of the child; or
- (c) another person who has responsibility for the day-to-day care of the child; or
- (d) if no person mentioned in another paragraph of this definition is available — a person, or a person in a class of persons, prescribed by the regulations;

**responsible person**, in relation to an incapable person, means —

- (a) the spouse or de facto partner of the incapable person; or
- (b) a parent of the incapable person; or
- (c) if the incapable person is under 18 years of age — a guardian of the incapable person; or
- (d) if the incapable person has reached 18 years of age — the Public Advocate or a guardian of the incapable person appointed under the *Guardianship and Administration Act 1990*; or
- (e) another person who has responsibility for the day-to-day care of the incapable person; or
- (f) if no person mentioned in another paragraph of this definition is available — a person, or a person in a class of persons, prescribed by the regulations;

**senior officer** means —

- (a) a police officer who is, or is acting as, a sergeant or an officer of a rank more senior than a sergeant;

- (b) a public officer who is prescribed by the regulations to be a senior officer for the purpose of this Act;

**serious offence** means an offence the statutory penalty for which is or includes life imprisonment or imprisonment for 12 months or more;

**statutory penalty**, in relation to an offence, means the penalty specified by a written law for the offence;

**volunteer** has the meaning given by section 17;

**WA Police** means the Police Force of Western Australia provided for by the *Police Act 1892*.

- (2) For the purposes of this Act a person is charged with an offence when —
- (a) the officer investigating the offence informs the person that he or she will be charged with the offence, whether or not at that time the officer has commenced a prosecution of the offence; or
- (b) a prosecution of the offence is commenced against the person,

whichever happens first.

- (3) Examples prefaced by “*For example:*” in this Act do not form part of it and are provided to assist understanding.

*[Section 3 amended by No. 28 of 2003 s. 38; No. 84 of 2004 s. 80; No. 29 of 2008 s. 28; No. 42 of 2009 s. 16(2); No. 22 of 2013 s. 4; No. 17 of 2014 s. 6.]*

*[Section 3. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]*

#### **4. Term used: reasonably suspects**

For the purposes of this Act, a person reasonably suspects something at a relevant time if he or she personally has grounds at the time for suspecting the thing and those grounds (even if



they are subsequently found to be false or non-existent), when judged objectively, are reasonable.

*[Section 4 amended by No. 59 of 2006 s. 36.]*

**5. Public officers may be authorised to exercise powers**

- (1) For the purposes of this Act and in particular the definition of **public officer** in section 3, another Act or the regulations made under this Act may —
  - (a) prescribe an office to which people are appointed under a written law for a public purpose and a function of which is the investigation of offences; and
  - (b) in respect of that office, specify those of the powers in this Act that a holder of that office may exercise, being powers that this Act provides may be exercised by a public officer.
- (2) A public officer may only exercise a power under this Act in relation to an offence if —
  - (a) the office held by the public officer has been prescribed under subsection (1)(a); and
  - (b) the power is one that has been specified under subsection (1)(b) as one that the officer may exercise; and
  - (c) the offence is one that the officer, by virtue of being such an officer, is authorised to investigate or prosecute.

**6. Officer's duty to identify himself or herself**

- (1) If under this Act an officer is required to identify himself or herself to a person the officer must —
  - (a) if the officer is a police officer —
    - (i) give the person the officer's official details; and
    - (ii) if the officer is not in uniform, show the person evidence that the officer is a police officer;

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- (b) if the officer is a public officer —
  - (i) give the person the officer's official details; and
  - (ii) show the person evidence that the officer is a public officer.
- (2) If an officer cannot comply with subsection (1)(a)(ii) or (1)(b)(ii) immediately, the officer must comply with it as soon as practicable.

**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.

*[Section 7A inserted by No. 22 of 2013 s. 5.]*

**7. Non-consent to be assumed in some cases**

A person who, having been requested under this Act to undergo an identifying procedure —

- (a) does not reply; or
- (ba) does not comply with any reasonable request made to him or her in order to enable the procedure to be done; or
- (b) having consented to it resists the carrying out of it,

is taken not to have consented to undergoing it.

*[Section 7 amended by No. 22 of 2013 s. 6.]*

**8. Procedures for obtaining material from which to obtain specific identifying particulars**

- (1) Material from which to obtain the DNA profile of a person may be obtained by doing one or, subject to section 59, more than one of the following procedures in the following order —

- (a) by doing one or both of these non-intimate identifying procedures —
    - (i) taking a buccal swab from the person;
    - (ii) taking a sample of the person's hair (including the roots), other than pubic hair;
  - (b) by doing one or both of these intimate identifying procedures —
    - (i) taking a sample of the person's blood;
    - (ii) taking a sample of the person's pubic hair (including the roots).
- (2) Without limiting subsection (1) material from which to obtain the DNA profile of a deceased person may be obtained by taking any body tissue (including bone or teeth) from the person.
- (3) A person must not use a procedure in subsection (1) to obtain material from a person unless it is impracticable to use a procedure listed before that procedure.
- (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.

*[Section 8 amended by No. 22 of 2013 s. 7.]*

**9. Samples for DNA profile of person to be provided to person on request**

- (1) In this section —

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**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.
- (2) This section applies to a sample if —
- (a) there is enough of the sample to be analysed for the purposes of this Act and also by or on behalf of the person from whom the sample was taken; and
  - (b) the person requests a part of the sample.
- (3) The officer responsible for a sample being taken must ensure that —
- (a) a part of the sample that is enough for analysis is made available, without charge, to the person from whom it was taken; and
  - (b) reasonable care is taken to ensure that the person's part of the sample is protected and preserved until the person is given it; and
  - (c) reasonable assistance is given to the person to ensure that the sample is protected and preserved until it is analysed.
- (4) A person from whom a sample is taken must be informed that, subject to the matter referred to in subsection (2)(a), a part of the sample will be made available to him or her if requested.

*[Section 9 amended by No. 22 of 2013 s. 8.]*

**10. How charge is finalised without finding of guilt**

For the purposes of this Act, a charge is finalised without a finding of guilt if —

- (a) the charge is withdrawn; or
- (b) the charge is dismissed without a finding as to whether the person charged is guilty or not guilty; or

- (c) the person charged is found not guilty of the charge and is not found guilty of any other offence of which the person could have been found guilty as a result of the charge and —
  - (i) no appeal is commenced against the finding; or
  - (ii) an appeal is commenced against the finding and the appeal is withdrawn or the finding is confirmed.

## **Part 2 — General**

### **11. Application of this Act**

(1) In this section —

**identifying particular**, in relation to a person, means —

- (a) a print of the person's hands (including fingers), feet (including toes) or ears;
- (b) a photograph of the person (including of an identifying feature of the person);
- (c) an impression of an identifying feature of the person (including a dental impression);
- (d) a sample of the person's hair taken for purposes other than obtaining the person's DNA profile;
- (e) the person's DNA profile;
- (f) an identifying particular of the person that is prescribed under section 17, 23, 34, 47 or 52A;

**law enforcement officer** means a police officer or a person appointed under a written law for a public purpose.

(2) This Act does not apply —

- (a) to a person who, not being a law enforcement officer acting in the course of duty, obtains an identifying particular from, or a personal detail of, another person; or
- (b) to an identifying particular, or a personal detail, obtained by such a person.

(3) This Act does not apply to or in respect of an identifying particular, or a personal detail, obtained in accordance with another written law.

*[Section 11 amended by No. 22 of 2013 s. 9.]*

**12A. Authority required for some investigations**

This Act is subject to the *Criminal Appeals Act 2004* section 46C.

*[Section 12A inserted by No. 9 of 2012 s. 9.]*

**12. Information and forensic material from another State, a Territory or the Commonwealth**

Subject to section 91(2), forensic material, or information obtained from it, that is taken in accordance with the law of another State, a Territory or the Commonwealth may be retained or used in this State for investigative, statistical or evidentiary purposes even if its retention or use would, but for this section, constitute a breach of, or failure to comply with, any provision of this Act relating to the carrying out of identifying procedures.

**13. Assistance when exercising powers**

- (1) A person who may exercise a power in this Act may authorise as many other persons to assist in exercising the power as are reasonably necessary in the circumstances.
- (2) A person so authorised may exercise the power or assist the other person in exercising the power, as the case requires.
- (3) Whether authorised to do so or not, a person may assist another person in exercising a power in this Act if the person believes, on reasonable grounds, that the other person —
  - (a) is lawfully entitled to exercise the power; and
  - (b) needs assistance for the purpose of doing so.
- (4) A person who under subsection (2) or (3) may exercise a power, or assist in exercising a power, must obey any lawful and reasonable directions of the person who gave the authorisation or who is being assisted.

**14. Use of force when exercising powers**

When exercising a power in this Act, a person may use any force that is reasonably necessary in the circumstances —

- (a) to exercise the power; and

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- (b) to overcome any resistance to exercising the power that is offered, or that the person exercising the power reasonably suspects will be offered, by any person.

**15. Warrants, applying for**

- (1) In this section —  
*judicial officer* means a JP or a magistrate, as the case requires.
- (2) A reference in this section to making an application includes a reference to giving information in support of the application.
- (3) This section applies to and in respect of an application to a judicial officer for a warrant if another section of this Act requires the application to be made under this section.
- (4) The application must be made in person before the judicial officer unless —
  - (a) the warrant is needed urgently; and
  - (b) the applicant reasonably suspects that a judicial officer is not available within a reasonable distance of the applicant,in which case —
  - (c) it may be made to a judicial officer by remote communication; and
  - (d) the judicial officer must not grant it unless satisfied about the matters in paragraphs (a) and (b).
- (5) The application must be made in writing unless —
  - (a) the application is made by remote communication; and
  - (b) it is not practicable to send the judicial officer written material,in which case —
  - (c) it may be made orally; and
  - (d) the judicial officer must make a written record of the application and any information given in support of it.



- (6) The application must be made on oath unless —
- (a) the application is made by remote communication; and
  - (b) it is not practicable for the judicial officer to administer an oath to the applicant,
- in which case —
- (c) it may be made in an unsworn form; and
  - (d) if the judicial officer issues a warrant, the applicant must as soon as practicable send the judicial officer an affidavit verifying the application and any information given in support of it.
- (7) If on an application made by remote communication a judicial officer issues a warrant, the judicial officer must, if practicable, send a copy of the original warrant to the applicant by remote communication, but otherwise —
- (a) the judicial officer must give the applicant by remote communication any information that must be set out in the warrant; and
  - (b) the applicant must complete a form of a warrant with the information received and give the judicial officer a copy of the form as soon as practicable after doing so; and
  - (c) the judicial officer must attach the copy of the form to the original warrant and any affidavit received from the applicant and make them available for collection by the applicant.
- (8) The copy of the original warrant sent, or the form of the warrant completed, as the case may be, under subsection (7) has the same force and effect as the original warrant.

*[Section 15 inserted by No. 59 of 2006 s. 37.]*

### **Part 3 — Personal details of people**

**16. Name, address etc., duty to give to police etc.**

(1) In this section —

**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;

**personal details**, in relation to a person, means —

- (a) the person's full name;
- (b) the person's date of birth;
- (c) the address of where the person is living;
- (d) the address of where the person usually lives.

(2) If an officer reasonably suspects that a person whose personal details are unknown to the officer —

- (a) has committed or is committing or is about to commit an offence; or
- (b) may be able to assist in the investigation of an offence or a suspected offence,

the officer may request the person to give the officer any or all of the person's personal details.

(3) If an officer reasonably suspects that a personal detail given by a person in response to a request is false, the officer may request the person to produce evidence of the correctness of the detail.

(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.
- (4) A person to whom a request is made under subsection (2), (3) or (4A) may request the officer making the request to identify himself or herself.
- (5) An officer who is requested by a person to identify himself or herself must do so.
- (6) A person who, without reasonable excuse, does not comply with a request made under subsection (2), (3) or (4A) commits an offence.  
Penalty: Imprisonment for 12 months.
- (7) For the purposes of subsection (6), the fact that an officer did not comply with subsection (5) as soon as practicable is a reasonable excuse.
- (8) A person who, in response to a request made under subsection (2), gives any false personal details commits an offence.

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Penalty: Imprisonment for 12 months.

- (9) A person who, in response to a request made under subsection (3), produces any false evidence commits an offence.

Penalty: Imprisonment for 12 months.

*[Section 16 amended by No. 22 of 2013 s. 10.]*

## **Part 4 — Identifying particulars of volunteers and others**

### **Division 1 — Preliminary**

#### **17. Terms used**

In this Part —

***identifying particular***, in relation to a person, means —

- (a) a print of the person's hands (including fingers), feet (including toes) or ears;
- (b) a photograph of the person (including of an identifying feature of the person);
- (c) an impression of an identifying feature of the person (including a dental impression);
- (d) a sample of the person's hair taken for purposes other than obtaining the person's DNA profile;
- (e) the person's DNA profile;
- (f) an identifying particular of the person that is prescribed for the purposes of this definition;

***volunteer*** means a person who is —

- (a) an adult to whom section 19(1)(a) applies; or
- (b) an incapable person to whom section 19(1)(b) applies; or
- (c) a child to whom section 19(1)(c) applies.

*[Section 17 amended by No. 22 of 2013 s. 11.]*

#### **18. How identifying procedures are to be done**

An identifying procedure that under Division 2 or 4 may be done on a person must be done in accordance with Part 8.

### **Division 2 — Volunteers**

#### **19. Volunteer for an identifying procedure to be informed**

- (1) If —
  - (a) in the case of a person who is an adult, the person volunteers to a police officer to undergo an identifying

procedure for or in connection with a forensic purpose;  
or

- (b) in the case of a protected person who is an incapable person, a responsible person wants the incapable person to undergo an identifying procedure for or in connection with a forensic purpose and informs a police officer accordingly; or
- (c) in the case of a protected person who is a child —
  - (i) the child is willing to undergo an identifying procedure for or in connection with a forensic purpose; and
  - (ii) a responsible person wants the child to undergo the procedure and informs a police officer accordingly,

the officer must inform the volunteer and, if the case requires, the responsible person, in accordance with subsection (2).

- (2) The volunteer and, if the case requires, the responsible person, must be informed of these matters —
  - (a) which identifying particulars of the volunteer are sought to be obtained by means of the identifying procedure; and
  - (b) how the procedure will be carried out; and
  - (c) that subject to his or her decision, the volunteer's identifying information may be compared with or put in a forensic database; and
  - (d) that the procedure may provide evidence that could be used in court against the volunteer; and
  - (e) that he or she may decide whether —
    - (i) to limit the forensic purposes for which the volunteer's identifying information may be used;or

- (ii) to allow the identifying information to be used for unlimited forensic purposes;
- and
- (f) that he or she may decide whether the identifying information can be kept by the WA Police —
  - (i) for a limited period; or
  - (ii) indefinitely;
- and
- (g) that, if the procedure is done, he or she may subsequently change the decision on the matters in paragraphs (e) and (f) by notifying the Commissioner of Police; and
- (h) that the volunteer is not obliged to undergo the procedure; and
- (i) that he or she may get legal advice before deciding whether or not to consent to the procedure; and
- (j) that, if deciding to consent to the procedure, he or she may withdraw consent at any time before the procedure has been completed; and
- (k) any matter prescribed by the regulations.

*[Section 19 amended by No. 22 of 2013 s. 12.]*

**20. Volunteer may consent to identifying procedure**

- (1) If section 19(2) has been complied with —
  - (a) a volunteer who is an adult —
    - (i) may consent to the identifying procedure that he or she was informed about; and
    - (ii) if he or she consents, must decide the matters in section 19(2)(e) and (f);
  - (b) a responsible person —
    - (i) may consent to a protected person undergoing the identifying procedure that the responsible person was informed about; and

- (ii) if he or she consents, must decide the matters in section 19(2)(e) and (f).
- (2) The consent and decisions of a person must be recorded in writing on a form approved by the Commissioner of Police and signed by the person in the presence of a police officer.
- (3) A copy of the person's signed form must be given to the person.
- (4) When the consent of a person has been given and recorded in accordance with this section, the identifying procedure may be done on the volunteer unless, before it has been completed —
  - (a) if the volunteer is an adult, the volunteer withdraws his or her consent; or
  - (b) if the volunteer is a protected person —
    - (i) the volunteer objects to or resists the carrying out of the procedure; or
    - (ii) the responsible person withdraws his or her consent to the volunteer undergoing the procedure.
- (5) If an identifying procedure has been done under this Division on an adult, the adult may subsequently change his or her decision on the matters in section 19(2)(e) and (f) by notifying the Commissioner of Police.
- (6) If an identifying procedure has been done under this Division on a protected person —
  - (a) a responsible person; or
  - (b) if the protected person was a child at the time the identifying procedure was done who has since then reached 18 years of age, that person,may subsequently change the decision on the matters in section 19(2)(e) and (f) by notifying the Commissioner of Police.



### **Division 3 — Deceased people**

**21. Identifying particulars of deceased people, taking of**

- (1) The State Coroner may authorise the taking of identifying particulars from deceased people, whether or not their deaths are reportable deaths within the meaning of the *Coroners Act 1996*, for or in connection with forensic purposes.
- (2) An authorisation given under subsection (1) may apply —
  - (a) generally to all deceased people or identifying particulars; or
  - (b) to a specific class of deceased people or identifying particulars; or
  - (c) conditionally or unconditionally.
- (3) A coroner, on his or her own initiative or on the application of a person with a proper interest, may —
  - (a) authorise a person to obtain an identifying particular from a deceased person for or in connection with a forensic purpose; and
  - (b) make any orders necessary to enable the identifying particular to be obtained, including orders relating to the temporary custody of the body of the deceased person.
- (4) An authorisation given under this section must be in writing.
- (5) If an authorisation is given under this section the person giving it must give directions for the purpose of section 63.

### **Division 4 — Police officers**

**22. Identifying particulars of police officers, taking of**

- (1) The Commissioner of Police may require a person who at the time is appointed under Part I, III, IIIA or IIIB of the *Police Act 1892* to undergo an identifying procedure for or in connection with the forensic purposes prescribed by the regulations for the purposes of this subsection.

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- (2) The powers in this section may be exercised as often as the Commissioner of Police thinks is necessary.

*[Section 22 amended by No. 42 of 2009 s. 16(3).]*

## Part 5 — Identifying particulars of victims and witnesses

### 23. Terms used

In this Part —

*identifying particular*, in relation to a person, means —

- (a) a print of the person's hands (including fingers), feet (including toes) or ears;
- (b) a photograph of the person (including of an identifying feature of the person);
- (c) an impression of an identifying feature of the person (but not including a dental impression);
- (d) a sample of the person's hair taken for purposes other than obtaining the person's DNA profile;
- (e) the person's DNA profile;
- (f) an identifying particular of the person that is prescribed for the purposes of this definition;

*involved person* means a person who is not a suspect for an offence but who is reasonably suspected to have been the victim of or to have witnessed the commission of the offence.

*[Section 23 amended by No. 22 of 2013 s. 13.]*

### 24. How identifying procedures to be done

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

### 25. Request to adult to undergo identifying procedure

- (1) In this section —  
*involved person* means an involved person who is an adult.
- (2) If an officer reasonably suspects —
  - (a) that an offence has been committed; and

- (b) that an identifying particular of an involved person, obtainable by means of a non-intimate identifying procedure, will afford evidence of the commission of the offence or of who committed the offence,

the officer may request the person to consent to undergoing the non-intimate identifying procedure to obtain the identifying particular.

- (3) An officer who requests an involved person to consent to an identifying procedure must at the time inform the person of these matters —
  - (a) the offence that is suspected of having been committed and to which the procedure relates; and
  - (b) the purpose of the procedure; and
  - (c) how the procedure will be done; and
  - (d) that, subject to the person's decision, information derived from the procedure may be compared with or put in a forensic database; and
  - (e) the circumstances in which destruction may be requested under section 69; and
  - (f) that if the person should become a suspect for the offence, evidence provided by the procedure could be used in a court against the person; and
  - (g) that the person may decide whether —
    - (i) to limit the forensic purposes for which information derived from the procedure may be used; or
    - (ii) to allow the information to be used for unlimited forensic purposes;

and

- (h) that, if the procedure is done, the person may subsequently change the decision on the matters in paragraph (g) by notifying the Commissioner of Police; and

- (i) that the person may consent or refuse to consent to the procedure; and
- (j) that, if the person consents to the procedure, he or she may withdraw consent at any time before the procedure has been completed.

**26. Request for protected person to undergo identifying procedure**

- (1) In this section —

*involved person* means an involved person who is a protected person.

- (2) If an officer reasonably suspects —

- (a) that an offence has been committed; and
- (b) that an identifying particular of an involved person, obtainable by means of a non-intimate identifying procedure, will afford evidence of the commission of the offence or of who committed the offence,

the officer may request a responsible person to consent to the non-intimate identifying procedure being done on the involved person to obtain the identifying particular.

- (3) An officer who requests a responsible person to consent to a procedure being done on an involved person must at the time inform the responsible person of these matters —

- (a) the offence that is suspected of having been committed and to which the procedure relates; and
- (b) the purpose of the procedure; and
- (c) how the procedure will be done; and
- (d) that, subject to the responsible person's decision, information derived from the procedure may be compared with or put in a forensic database; and
- (e) the circumstances in which destruction may be requested under section 69; and

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- (f) that if the involved person should become a suspect for the offence, evidence provided by the procedure could be used in a court against the involved person; and
- (g) that the responsible person may decide whether —
  - (i) to limit the forensic purposes for which information derived from the procedure may be used; or
  - (ii) to allow the information to be used for unlimited forensic purposes;and
- (h) that, if the procedure is done, the responsible person may subsequently change the decision on the matters in paragraph (g) by notifying the Commissioner of Police; and
- (i) that the responsible person may consent or refuse to consent to the procedure being done on the involved person; and
- (j) that, if the responsible person consents to the procedure, he or she may withdraw consent at any time before the procedure has been completed; and
- (k) that if the responsible person does not consent or withdraws consent —
  - (i) an application may be made for authority to do the procedure against the responsible person's will; and
  - (ii) if authority is given the procedure may be done against the responsible person's will.

**27. Request and giving of information to be recorded**

- (1) An officer who makes a request under section 25 or 26 must ensure that a record is made of the request, of the information given under the section and of the involved person's or responsible person's responses (if any).
- (2) The record must be an audiovisual record or in writing.

**28. When identifying procedure may be done**

- (1) If —
- (a) under section 25 a request is made to an involved person or under section 26 to a responsible person; and
  - (b) the person is informed in accordance with section 25 or 26, as the case requires; and
  - (c) as the case requires, either —
    - (i) the involved person who is an adult consents to the procedure and decides the matters in section 25(3)(g); or
    - (ii) the responsible person consents to the procedure being done on the involved person who is a protected person and decides the matters in section 26(3)(g),

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

- (2) If an involved person who is an adult, having been —
- (a) requested under section 25 to consent to an identifying procedure; and
  - (b) informed under that section,

does not consent or withdraws consent to the procedure being done, the procedure cannot be done or continue to be done on the involved person.

- (3) If a responsible person, having been —
- (a) requested under section 26 to consent to an identifying procedure being done on an involved person who is a protected person; and
  - (b) informed under that section,

does not consent or withdraws consent to the procedure being done, the procedure may only be done on the involved person if

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a magistrate issues an IP warrant (involved protected person) that authorises it.

**29. Consent may be withdrawn**

- (1) This section applies to and in respect of an involved person if an identifying procedure may be done on the involved person under section 28(1).
- (2) An adult involved person who has consented to undergoing the identifying procedure may withdraw his or her consent at any time before the procedure has been completed.
- (3) A responsible person who has consented to an identifying procedure being done on an involved person who is a protected person may withdraw his or her consent at any time before the procedure on the involved person has been completed.
- (4) If consent is withdrawn under this section, section 28(2) or (3) applies, as the case requires.

**30. Decision may be changed**

- (1) If an identifying procedure has been done under section 28(1) on an involved person who is an adult, the involved person may subsequently change his or her decision on the matters in section 25(3)(g) by notifying the Commissioner of Police.
- (2) If an identifying procedure has been done under section 28(1) on an involved person who is a protected person —
  - (a) a responsible person; or
  - (b) if the protected person was a child at the time the identifying procedure was done who has since then reached 18 years of age, that person,

may subsequently change the decision on the matters in section 26(3)(g) by notifying the Commissioner of Police.



**31. IP warrant (involved protected person), officer may apply for**

An officer may apply for an IP warrant (involved protected person) to do an identifying procedure on an involved person who is a protected person —

- (a) if the officer reasonably suspects that, if a request were made under section 26, the investigation of the offence concerned would be prejudiced; or
- (b) if under section 28 an IP warrant (involved protected person) is needed in order to do it.

**32. IP warrant (involved protected person), application for**

- (1) Only an officer may apply for an IP warrant (involved protected person).
- (2) An application for an IP warrant (involved protected person) must be made to a magistrate in accordance with section 15.
- (3) An application for an IP warrant (involved protected person) must —
  - (a) name the person in respect of whom the warrant is wanted; and
  - (b) state the offence in respect of which the involved person is suspected to have been an involved person; and
  - (c) state the grounds on which the applicant suspects that the person is an involved person in respect of the offence; and
  - (d) specify the identifying particular that is sought and the non-intimate identifying procedure by means of which it is to be obtained; and
  - (e) state the grounds on which the applicant suspects that the identifying particular will afford evidence of whether or not another person committed the offence; and
  - (f) if the application is made under section 31(a) — state the grounds on which the applicant suspects that the

investigation of the offence concerned would be prejudiced if a request were made under section 26; and

(g) comply with the relevant provisions of subsection (4).

(4) An application for an IP warrant (involved protected person) must also state the applicant's grounds for suspecting —

(a) if the application is made under section 31(b) — either that it is not reasonably practicable to obtain a responsible person's consent to the involved person undergoing the procedure or —

(i) that a responsible person has refused to or will not consent, or has withdrawn consent, to the involved person undergoing the procedure; and

(ii) that the responsible person is a suspect in relation to a serious offence; and

(iii) that the procedure will afford evidence of whether or not the responsible person committed the offence;

and

(b) in the case of a child, that the child —

(i) is willing to undergo the non-intimate identifying procedure; and

(ii) is sufficiently mature and capable of understanding the general nature and effect of, and the reason for and the consequences of, undergoing the procedure.

**33. IP warrant (involved protected person), issue and effect of**

(1) On an application made under section 32 a magistrate may issue an IP warrant (involved protected person) if the magistrate is satisfied —

(a) that, in respect of the matters in section 32(3) and (4) on which the applicant is required to have a suspicion, there are reasonable grounds for the applicant to have that suspicion; and

- (b) that the interests of justice justify obtaining the identifying particular specified in the application.
- (2) In determining whether to make and, if so, the terms of an IP warrant (involved protected person), the magistrate is to take into account —
- (a) the seriousness of the offence in respect of which the involved person is suspected to have been a victim or witness; and
  - (b) in the case of a child — the maturity of the child and his or her capacity to make decisions and whether he or she is willing to undergo the procedure, to the extent that those matters can be determined by the magistrate; and
  - (c) the best interests of the protected person.
- (3) For the purposes of this section, a magistrate may inform himself or herself in any way he or she thinks fit.
- (4) In the case of an application for an IP warrant (involved protected person) in respect of an incapable person, the magistrate may, on his or her own initiative —
- (a) give a copy of the application to the Public Advocate; or
  - (b) seek information or submissions from the Public Advocate; or
  - (c) if the warrant is issued, give a copy of it to the Public Advocate,
- and may use remote communication to do so.
- (5) An IP warrant (involved protected person) must contain this information —
- (a) the official details of the applicant; and
  - (b) the name of the involved person to whom it relates; and
  - (c) the offence to which it relates; and
  - (d) the identifying particular to be obtained and the non-intimate identifying procedure by means of which it is to be obtained; and

- (e) either —
    - (i) the limited forensic purposes for or in connection with which the involved person's identifying information may be used; or
    - (ii) a statement that the information may be used for or in connection with unlimited forensic purposes;and
  - (f) whether that identifying information may be put in a forensic database; and
  - (g) the period, not exceeding 14 days, during which it may be executed; and
  - (h) the name of the magistrate who issued it; and
  - (i) the date and time when it was issued.
- (6) An IP warrant (involved protected person) must be in the prescribed form.
- (7) An IP warrant (involved protected person) authorises —
- (a) an officer authorised by subsection (8) —
    - (i) to arrest the involved person to whom it relates; and
    - (ii) to detain him or her for a reasonable period in order to do the procedure specified in it;and
  - (b) if applicable, the doing of the procedure on the involved person against the responsible person's will.
- (8) The powers in subsection (7)(a) may be exercised by —
- (a) if a police officer applied for the warrant, any police officer; or
  - (b) if a public officer applied for the warrant, any public officer who has the same functions as the applicant, or any police officer.

## Part 6 — Identifying particulars of uncharged suspects

### 34. Terms used

In this Part —

*identifying particular*, in relation to a person, means —

- (a) a print of the person's hands (including fingers), feet (including toes) or ears;
- (b) a photograph of the person (including of an identifying feature of the person);
- (ca) a measurement of any identifying feature of the person;
- (c) an impression of an identifying feature of the person (including a dental impression);
- (d) a sample of the person's hair taken for purposes other than obtaining the person's DNA profile;
- (e) the person's DNA profile;
- (f) an identifying particular of the person that is prescribed for the purposes of this definition;

*suspect* means a person who is reasonably suspected of having committed a serious offence but who has not been charged with the offence, and, for the purposes of this definition, it does not matter whether or not the person is in lawful custody.

*[Section 34 amended by No. 22 of 2013 s. 14.]*

### 35. Purpose of identifying procedure

This Part does not authorise an identifying procedure to be done on a suspect except for the purpose of obtaining an identifying particular of the suspect that is reasonably suspected will afford evidence of whether or not the suspect committed a serious offence that he or she is reasonably suspected of having committed.

### 36. How identifying procedures to be done

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

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**37. Request to adult to undergo identifying procedure**

- (1) In this section —  
*suspect* means a suspect who is an adult.
- (2) If an officer reasonably suspects —
- (a) that a serious offence has been committed; and
  - (b) that an identifying particular of a suspect for the offence will afford evidence of whether or not the suspect committed the offence,

the officer may request the suspect to consent to an identifying procedure being done on the suspect to obtain the identifying particular.

- (3) An officer who requests a suspect to consent to an identifying procedure being done on the suspect must at the time inform the suspect of these matters —
- (a) the serious offence that the suspect is suspected of having committed and to which the procedure relates; and
  - (b) the purpose of the procedure; and
  - (c) how the procedure will be done; and
  - (d) that information derived from the procedure may be compared with or put in a forensic database; and
  - (e) the circumstances in which destruction may be requested under section 69; and
  - (f) that the procedure may provide evidence that could be used in a court against the suspect; and
  - (g) that the suspect may consent or refuse to consent to the procedure; and
  - (h) that, if the suspect consents to the procedure, he or she may withdraw consent at any time before the procedure has been completed; and

- (i) that if the suspect does not consent or withdraws consent —
  - (i) an application may be made for authority to do the procedure against the suspect's will; and
  - (ii) if authority is given the procedure may be done against the suspect's will.

**38. Request for protected person to undergo identifying procedure**

- (1) In this section —  
*suspect* means a suspect who is a protected person.
- (2) If an officer reasonably suspects —
  - (a) that a serious offence has been committed; and
  - (b) that an identifying particular of a suspect for the offence will afford evidence of whether or not the suspect committed the offence,

the officer may request a responsible person to consent to an identifying procedure being done on the suspect to obtain the identifying particular.

- (3) An officer who requests a responsible person to consent to an identifying procedure being done on a suspect must at the time inform the responsible person of these matters —
  - (a) the offence that the suspect is suspected of having committed and to which the procedure relates; and
  - (b) the purpose of the procedure; and
  - (c) how the procedure will be done; and
  - (d) that information derived from the procedure may be compared with or put in a forensic database; and
  - (e) the circumstances in which destruction may be requested under section 69; and
  - (f) that the procedure may provide evidence that could be used in a court against the suspect; and

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- (g) that the responsible person may consent or refuse to consent to the procedure being done on the suspect; and
  - (h) that, if the responsible person consents to the procedure, he or she may withdraw consent at any time before the procedure has been completed; and
  - (i) that if the responsible person does not consent or withdraws consent —
    - (i) an application may be made for authority to do the procedure against the responsible person's will; and
    - (ii) if authority is given the procedure may be done against the responsible person's will.
- (4) If the suspect is a child, the making of a request, and the giving of information, under this section must be done in the presence of the suspect.

*[Section 38 amended by No. 22 of 2013 s. 15.]*

**39. Request and giving of information to be recorded**

- (1) An officer who makes a request under section 37 or 38 must ensure that a record is made of the request, of the information given under the section and of the suspect's or responsible person's responses (if any).
- (2) The record must be an audiovisual record or in writing.

**40. When identifying procedure may be done**

- (1) If —
  - (a) under section 37 a request is made to a suspect or under section 38 to a responsible person; and
  - (b) the suspect or responsible person is informed in accordance with section 37 or 38, as the case requires; and



- (c) as the case requires, either —
  - (i) the suspect, if an adult, consents to the identifying procedure; or
  - (ii) the responsible person consents to the identifying procedure being done on the suspect who is a protected person,

then the identifying procedure may be done on the suspect.

- (2) If a suspect who is an adult, having been —
  - (a) requested under section 37 to consent to an identifying procedure; and
  - (b) informed under that section,

does not consent or withdraws consent to the procedure, the procedure may only be done on the suspect if —

- (c) in the case of a non-intimate identifying procedure — a senior officer approves it under section 44; or
- (d) in the case of an intimate identifying procedure — a JP issues an IP warrant (suspect) that authorises it.

- (3) If a responsible person, having been —
  - (a) requested under section 38 to consent to an identifying procedure being done on a suspect who is a protected person; and
  - (b) informed under that section,

does not consent or withdraws consent to the procedure, the procedure may only be done on the suspect if a magistrate issues an IP warrant (suspect) that authorises it.

- (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

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- (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.

*[Section 40 amended by No. 22 of 2013 s. 16.]*

**41. Consent may be withdrawn**

- (1) This section applies to and in respect of a suspect if an identifying procedure may be done on the suspect under section 40(1).
- (2) An adult suspect who has consented to undergoing the identifying procedure may withdraw his or her consent at any time before the procedure has been completed.
- (3) A responsible person who has consented to an identifying procedure being done on a suspect who is a protected person may withdraw his or her consent at any time before the procedure on the suspect has been completed.
- (4) If consent is withdrawn under this section, section 40(2) or (3) applies, as the case requires.

**42. Approval or IP warrant (suspect), officer may apply for**

- (1) An officer may apply for the approval of a senior officer to do a non-intimate identifying procedure on a suspect who is an adult if under section 40(2) the approval of a senior officer is needed in order to do it.
- (2) An officer may apply for an IP warrant (suspect) to do an identifying procedure on a suspect —
  - (a) if the officer reasonably suspects that, if a request were made under section 37 or 38, the investigation of the offence concerned would be prejudiced; or
  - (b) if under section 40(2), (3) or (4) an IP warrant (suspect) is needed in order to do it.

*[Section 42 amended by No. 22 of 2013 s. 17.]*

**43. Approval to do non-intimate identifying procedure on adult, application for**

- (1) In this section —  
*suspect* means a suspect who is an adult.
- (2) An application for an approval under this section to do a non-intimate identifying procedure on a suspect must be made to another officer who is a senior officer and not involved in the investigation of the offence to which the proposed non-intimate identifying procedure relates.
- (3) The application may be made by remote communication.
- (4) The application must —
  - (a) if practicable be in writing;
  - (b) name the suspect to whom it relates;
  - (c) state the offence that the suspect is suspected of having committed;
  - (d) specify the identifying particular that is sought and the non-intimate identifying procedure by means of which it is to be obtained;
  - (e) state the grounds on which the applicant suspects —
    - (i) that the suspect has committed the offence; and
    - (ii) that the identifying particular sought will afford evidence of whether or not the suspect committed the offence.

**44. Senior officer may approve non-intimate identifying procedure to be done on adult**

- (1) On an application made under section 43 a senior officer may approve a non-intimate identifying procedure being done on a suspect against the suspect's will.
- (2) A senior officer must not give approval unless he or she is satisfied —
  - (a) that the suspect is an adult; and

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- (b) that the suspect has been informed in accordance with section 37; and
  - (c) that, in respect of the matters in section 43(4) about which the applicant is required to have a suspicion, there are reasonable grounds for the applicant to have that suspicion; and
  - (d) that the interests of justice justify obtaining the identifying particular specified in the application.
- (3) As soon as practicable after giving approval a senior officer must make a record of —
- (a) the date and time when it was given; and
  - (b) the reasons for giving it.
- (4) An approval may be given by remote communication.
- (5) An approval given under this section authorises —
- (a) an officer —
    - (i) to arrest the suspect to whom it relates; and
    - (ii) to detain him or her for a reasonable period in order to do the non-intimate identifying procedure approved;
- and
- (b) the doing of the non-intimate identifying procedure on the suspect against his or her will.

**45. IP warrant (suspect), application for**

- (1) Only an officer may apply for an IP warrant (suspect).
- (2) An application for an IP warrant (suspect) must be made in accordance with section 15 —
  - (a) to a JP if the application is in respect of an adult; or
  - (b) to a magistrate if the application is in respect of a protected person.

- (3) An application for an IP warrant (suspect) must —
- (a) name the suspect in respect of whom the warrant is wanted;
  - (b) state the offence that the suspect is suspected of having committed;
  - (c) specify the identifying particular that is sought and the identifying procedure by means of which it is to be obtained;
  - (d) state the grounds on which the applicant suspects —
    - (i) that the suspect has committed the offence; and
    - (ii) that the identifying particular sought will afford evidence of whether or not the suspect committed the offence.

**46. IP warrant (suspect), issue and effect of**

- (1) On an application made under section 45 a JP or magistrate, as the case requires, may issue an IP warrant (suspect) if he or she is satisfied —
- (a) that, in respect of the matters in section 45(3) on which the applicant is required to have a suspicion, there are reasonable grounds for the applicant to have that suspicion; and
  - (b) that the interests of justice justify obtaining the identifying particular specified in the application.
- (2) In the case of an application for an IP warrant (suspect) in respect of an incapable person, the magistrate may, on his or her own initiative —
- (a) give a copy of the application to the Public Advocate; or
  - (b) seek information or submissions from the Public Advocate; or
  - (c) if the warrant is issued, give a copy of it to the Public Advocate,
- and may use remote communication to do so.

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- (3) An IP warrant (suspect) must contain this information —
- (a) the official details of the applicant; and
  - (b) the name of the suspect to whom it relates; and
  - (c) the offence to which it relates; and
  - (d) the identifying particular to be obtained and the identifying procedure by means of which it is to be obtained; and
  - (e) the period, not exceeding 14 days, during which it may be executed; and
  - (f) the name of the JP or magistrate who issued it; and
  - (g) the date and time when it was issued.
- (4) An IP warrant (suspect) must be in the prescribed form.
- (5) An IP warrant (suspect) authorises —
- (a) an officer authorised by subsection (6) —
    - (i) to arrest the suspect to whom it relates; and
    - (ii) to detain him or her for a reasonable period in order to do the identifying procedure specified in it;
- and
- (b) the doing of the identifying procedure on the suspect against his or her will or against the responsible person's will, as the case requires.
- (6) The powers in subsection (5)(a) may be exercised by —
- (a) if a police officer applied for the warrant, any police officer; or
  - (b) if a public officer applied for the warrant, any public officer who has the same functions as the applicant, or any police officer.

## **Part 7 — Identifying particulars of charged suspects**

### **47. Terms used**

In this Part —

***charged suspect*** means a person who has been charged with, but not dealt with by a court for, an offence and, for the purposes of this definition, it does not matter whether or not the person is in lawful custody for the offence;

***identifying particular***, in relation to a charged suspect charged with a serious offence, means —

- (a) a print of the suspect's hands (including fingers), feet (including toes) or ears;
- (b) a photograph of the suspect (including of an identifying feature of the suspect);
- (c) a measurement of any identifying feature of the suspect;
- (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;
- (d) the suspect's DNA profile;
- (e) an identifying particular of the suspect that is prescribed for the purposes of this definition;

***identifying particular***, in relation to a charged suspect charged with an offence other than a serious offence, means —

- (a) a print of the suspect's hands (including fingers), feet (including toes) or ears;
- (b) a photograph of the suspect (including of an identifying feature of the suspect);
- (c) a measurement of any identifying feature of the suspect;
- (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

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(d) of the definition of *identifying particular*, in relation to a charged suspect charged with a serious offence.

*[Section 47 amended by No. 59 of 2006 s. 38; No. 22 of 2013 s. 18.]*

**48. How identifying procedures are to be done**

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

**49. Request for charged suspect to undergo identifying procedure**

- (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) An officer who requests a charged suspect to consent to an identifying procedure being done on the suspect must at the time inform the suspect 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 suspect;
  - (f) that if the suspect does not consent or withdraws consent to the procedure —
    - (i) the suspect may be arrested; and
    - (ii) the procedure may be done on the suspect against the suspect's will.

*[Section 49 amended by No. 22 of 2013 s. 19.]*



**50. Request and giving of information to be recorded**

- (1) An officer who makes a request under section 49 must ensure that a record is made of the request, of the information given under that section and whether the charged suspect consented to the request or not.
- (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.
- (2) A record under this section must be an audiovisual record or in writing.

*[Section 50 amended by No. 22 of 2013 s. 20.]*

**51. When identifying procedure may be done**

- (1) If —
  - (a) under section 49 a request is made to a charged suspect; and
  - (b) the suspect is informed under that section; and
  - (c) the suspect consents to the identifying procedure being done,

then the identifying procedure may be done on the suspect.

- (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

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reasonable period in order to do the identifying procedure; and

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

*[Section 51 amended by No. 22 of 2013 s. 21.]*

## **Part 8A — Identifying particulars of serious offenders**

*[Heading inserted by No. 22 of 2013 s. 22.]*

### **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.

*[Section 52A inserted by No. 22 of 2013 s. 22.]*

### **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.

*[Section 52B inserted by No. 22 of 2013 s. 22.]*

### **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

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- (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.

*[Section 52C inserted by No. 22 of 2013 s. 22.]*

**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.

*[Section 52D inserted by No. 22 of 2013 s. 22.]*

**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.

*[Section 52E inserted by No. 22 of 2013 s. 22.]*

## **Part 8 — How identifying procedures are to be done**

### **52. Terms used**

In this Part —

**dentist** means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the dental profession whose name is entered on the Dentists Division of the Register of Dental Practitioners kept under that Law;

**doctor** means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the medical profession;

**nurse** means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the nursing and midwifery profession;

**qualified person**, in relation to an identifying procedure, means a person who is qualified under the regulations to do the procedure.

*[Section 52 amended by No. 50 of 2006 Sch. 3 cl. 7; No. 22 of 2008 Sch. 3 cl. 15; No. 35 of 2010 s. 56.]*

*[Section 52. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section replaced 1 Nov 2009. See endnote 1M.]*

### **53. Application of Part**

This Part applies if, under another provision of this Act, an identifying procedure must be done in accordance with this Part.

### **54. General requirements**

- (1) Before doing an identifying procedure on a person the officer who is responsible for doing it must —
  - (a) identify himself or herself to the person; and

- (b) if it is being done against the person's will, tell the person that it is an offence to obstruct the carrying out of it.
- (2) An intimate identifying procedure on a person —
  - (a) must be done in circumstances giving reasonable privacy to the person; and
  - (b) must not involve the removal of more clothing than is necessary for doing the procedure.
- (3) A suspect must not be questioned in relation to an offence while he or she is undergoing an identifying procedure.
- (4) If an identifying procedure is to be done on an incapable person the officer who is responsible for doing it must arrange for the incapable person to have near him or her while the procedure is done a responsible person or another person who can provide him or her with support.
- (5) The number of people who are present while an identifying procedure is being done (excluding a person who is present under subsection (4)) must not exceed the number reasonably necessary to ensure the procedure is done effectively and to ensure the safety of all present.
- (6) If this Part requires a power to be exercised in relation to a person by a person with specific qualifications, the officer authorised to exercise the power may authorise a person with those qualifications to exercise the power.
- (7) A person so authorised may exercise the power.

**55. Sex of people doing procedures**

- (1) A person who does a non-intimate identifying procedure on a person may be of either sex.

- (2) A person who does an intimate identifying procedure on a person must be of the same sex as that person unless the person who does it is —
  - (a) a doctor; or
  - (b) a dentist; or
  - (c) a nurse; or
  - (d) if the intimate identifying procedure being done on that person is the taking of a sample of that person's blood — a qualified person.
- (3) A person who is present while an intimate identifying procedure is done by a person on another person (excluding a person who is present under section 54(4)) must, if practicable, be of the same sex as the person on whom the procedure is done.
- (4) Subsection (3) does not apply if the intimate identifying procedure is the taking of a sample of the person's blood.
- (5) If this Part requires a power to be exercised in relation to a person by a person of the same sex as the person, the officer authorised to exercise the power may authorise a person of that sex to exercise the power.
- (6) A person so authorised may exercise the power.
- (7) If it is necessary to ascertain the sex of a person before exercising a power under this Part on the person and the sex of the person is uncertain to the officer authorised to exercise the power —
  - (a) the officer must ask the person to indicate whether a male or a female should exercise the power on the person and must act in accordance with the answer; and
  - (b) in the absence of an answer, the person is to be treated as if of the sex that the person outwardly appears to the officer to be.



**56. Who may do identifying procedure**

- (1) When doing an identifying procedure on a person, a power in the Table to this section may only be exercised by a person specified opposite the power in the Table.

**Table**

	<b>Power</b>	<b>Who may exercise it</b>
A.	Non-intimate identifying procedure	
1.	Photographing a person, other than his or her private parts	Doctor, nurse or qualified person
2.	Obtaining a print of the person's hands (including fingers), feet (including toes) or ears	Qualified person
3.	Taking a buccal swab from the person	Doctor, dentist, nurse or qualified person
4.	Taking a sample of the person's hair other than pubic hair	Doctor, nurse or qualified person
B.	Intimate identifying procedure	
1.	Photographing an identifying feature of the person on his or her private parts	Doctor, nurse or qualified person
2.	Taking a sample of the person's pubic hair	Doctor or nurse
3.	Taking a sample of blood from the person	Doctor, nurse or qualified person
4.	Taking a dental impression of the person	Doctor or dentist

- (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 —
- (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.

*[Section 56 amended by No. 22 of 2013 s. 23.]*

**57. Personal details may be obtained as well**

An officer who is authorised under this Part to do an identifying procedure on a person may request the person to give the officer any or all of the person's personal details, and section 16(3) to (9), with any necessary changes, apply to and in relation to the request.

**58. How samples and impressions to be taken**

- (1) The taking under this Part of —
- (a) a sample from a person's body; or
  - (b) an impression from any part of a person's body (including a dental impression),

must be done by the least painful method that is known or available to the person taking the sample or impression.

- (2) The regulations may —
- (a) prohibit or regulate methods by which samples, photographs, prints or impressions are taken or procedures are done under this Part;
  - (b) prescribe the equipment to be used for taking samples, photographs, prints or impressions or doing procedures under this Part.

**59. Procedures may be repeated**

- (1A) This section applies if, under other provisions of this Act, a person may be requested or required to undergo an identifying procedure.
- (1) In relation to any one investigation, a person may be requested or required —
- (a) on more than one occasion to undergo an identifying procedure;
  - (b) to undergo more than one identifying procedure.
- (2) Without limiting subsection (1), a person may be requested or required to undergo the same identifying procedure on more than one occasion if, on a previous occasion, the procedure was unsuccessful and it is reasonable to repeat the procedure.
- (3) A request or requirement under this section must be made in accordance with the other provisions of this Act.

*[Section 59 amended by No. 22 of 2013 s. 24.]*

**60. People not obliged to do procedures**

Nothing in this Act requires a person —

- (a) to do an identifying procedure on another person; or
- (b) to take a photograph, print or impression of, or a sample from, another person's body.

## **Part 9 — Use and destruction of identifying information**

### **61. Terms used**

In this Part —

**forensic database** means a DNA database or another database (whether or not on a computer and however described) that contains —

- (a) information in relation to the commission of an offence that may identify the person who committed it; or
- (b) identifying information of people lawfully obtained before the commencement of this Act; or
- (c) identifying information of people (alive or deceased) obtained under this Act; or
- (d) identifying information of missing persons and their relatives by blood;

**identifying information**, in relation to a person, means —

- (a) any identifying particular obtained as a result of doing an identifying procedure on the person; or
- (b) anything used in obtaining the identifying particular such as an impression, negative, sample or swab; or
- (c) the personal details of the person obtained when the identifying particular was obtained,

and, for the purposes of this definition, it does not matter in what form the information is kept;

Example for this definition:

On paper or in an electronic or digitised form.

**identifying particular** has the same meaning as it has in section 11(1).

**62. Identifying information of volunteers**

- (1) Unless subsection (2) applies, identifying information of a volunteer obtained under Part 4 Division 2 —
- (a) must not —
    - (i) be compared with other information, whether or not in a forensic database; or
    - (ii) be put in a forensic database, except in accordance with the decision of the volunteer, or responsible person, made or changed under section 20; and
  - [(b) deleted]*
  - (c) must be destroyed in accordance with the decision of the volunteer, or responsible person, made or changed under section 20.
- (2) If a volunteer from whom identifying information is obtained under Part 4 Division 2 —
- (a) is subsequently reasonably suspected of having committed a serious offence, section 66 applies to the information; or
  - (b) is subsequently charged with a serious offence, section 67 applies to the information,

unless the information should have been destroyed.

*[Section 62 amended by No. 15 of 2011 s. 4.]*

**63. Identifying information of deceased people**

- (1) Identifying information of a deceased person obtained under Part 4 Division 3 —
- (a) may be compared with other information, whether or not in a forensic database, in accordance with the direction of a coroner; and
  - (b) may be put in a forensic database if a coroner has so directed; and

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- (ca) may be used to obtain any identifying particular of the deceased person in accordance with the direction of a coroner; and
- (c) must be destroyed in accordance with any direction for destruction made by a coroner.

*[(2) deleted]*

*[Section 63 amended by No. 15 of 2011 s. 5; No. 22 of 2013 s. 25.]*

**64. Identifying information of police officers**

- (1) Identifying information of a person obtained under Part 4 Division 4 —
  - (a) with the approval of the Commissioner of Police, may be compared with other information, whether or not in a forensic database, for or in connection with the forensic purposes prescribed for the purposes of section 22(1); and
  - (b) with the approval of the person, may be put in a forensic database; and
  - (c) must be destroyed if the person, having ceased to be a person who, under section 22, may be required to undergo an identifying procedure, requests the Commissioner of Police to destroy it.

*[(2) deleted]*

- (3) An approval for the purposes of subsection (1) may apply generally or in relation to a specific case or class of case.

*[Section 64 amended by No. 15 of 2011 s. 6.]*

**65. Identifying information of involved people**

- (1) Unless subsection (2) applies, identifying information of an involved person obtained under Part 5 —
  - (a) must not —
    - (i) be compared with any other information, whether or not in a forensic database; or

- (ii) be put in a forensic database,  
except in accordance with, as the case requires —
  - (iii) the decision of the involved person, or  
responsible person, made under section 28 or  
changed under section 30; or
  - (iv) an IP warrant (involved protected person);  
and
- [(b) deleted]*
- (c) must be destroyed if —
    - (i) within 2 years after the information is obtained  
no person is charged with the offence in respect  
of which the involved person is such a person; or
    - (ii) a person is so charged and criminal proceedings  
in respect of the charge, including proceedings  
on an appeal, are completed,  
and destruction is requested under section 69 by or on  
behalf of the involved person.
- (2) If an involved person from whom identifying information is  
obtained under Part 5 —
- (a) is subsequently reasonably suspected of having  
committed the offence in respect of which the person is  
an involved person and the offence is a serious offence,  
section 66 applies to the information; or
  - (b) is subsequently charged with the offence in respect of  
which the person is an involved person and the offence  
is a serious offence, section 67 applies to the  
information,

unless the information should have been destroyed.

*[Section 65 amended by No. 15 of 2011 s. 7.]*

**66. Identifying information of uncharged suspects**

(1) In this section —

*relevant offence*, in relation to a suspect, means —

- (a) the offence that the suspect is suspected of having committed and in relation to which identifying information is obtained under Part 6; or
- (b) an offence arising out of the same circumstances as that offence.

(2) Unless subsection (3) applies, identifying information of a suspect obtained under Part 6 —

- (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) must be destroyed if —
  - (i) within 2 years after the information is obtained the suspect is not charged with a relevant offence; or
  - (ii) the suspect is so charged but the charge is finalised without a finding of guilt,and destruction is requested under section 69 by or on behalf of the suspect.

(3) If a suspect from whom identifying information is obtained under Part 6 is subsequently charged with a relevant offence, section 67 applies to the information unless the information should have been destroyed.

*[Section 66 amended by No. 15 of 2011 s. 8.]*

**67. Identifying information of charged suspects**

(1) Identifying information of a suspect obtained under Part 7 —

- (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
  - (ca) may be used to obtain any identifying particular of the suspect; and
  - (c) subject to subsection (3), must be destroyed if the charge against the suspect is finalised without a finding of guilt and destruction is requested under section 69 by or on behalf of the suspect.
- (2) Subsection (1) also applies to and in respect of identifying information of a charged suspect (within the meaning of Part 7) lawfully obtained before the commencement of Part 7 as if the references in subsection (1)(a) and (b) to “as soon as it is obtained” were deleted.
- (3) Subsection (1)(c) does not apply to identifying information of a suspect if, in relation to the offence with which the suspect is charged —
- (a) the suspect is found to be not mentally fit to stand trial under the *Criminal Law (Mentally Impaired Accused) Act 1996*; or
  - (b) the suspect is found not guilty of the offence on account of unsoundness of mind.
- (4) If identifying information of a person is not destroyed because of the operation of subsection (3) and the person —
- (a) is subsequently reasonably suspected of having committed a serious offence, section 66 applies to the information; or
  - (b) is subsequently charged with a serious offence, this section applies to the information.

*[Section 67 amended by No. 84 of 2004 s. 82; No. 15 of 2011 s. 9; No. 22 of 2013 s. 26.]*

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**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 —

- (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.

*[Section 68A inserted by No. 22 of 2013 s. 27.]*

**68. Results of matched information to be made available to suspects**

(1) If —

- (a) identifying information is obtained under this Act from a person who, either then or subsequently, is reasonably suspected of having committed an offence; and
- (b) the information is compared with and found to match information, whether or not in a forensic database,

obtained otherwise in relation to the investigation of the offence,

the officer in charge of the investigation of the offence must ensure that the results of the comparison are made available to the person.

- (2) The results of the comparison must be made available to the suspect as soon as practicable after they are obtained unless to do so would prejudice the investigation of any offence.

**69. Request for destruction of identifying information**

If another provision of this Act refers to the destruction of identifying information being requested under this section, the request may be made —

- (a) if the identifying information is of a person who is an adult at the time the request may be made — by the adult; or
- (b) if the identifying information is of a person who is a child at the time the request may be made — by a responsible person; or
- (c) if the identifying information is of a person who is an incapable person at the time the request may be made — by a responsible person or the Public Advocate,

and must be made to the Commissioner of Police.

**70. Destroying identifying information**

- (1) If this Part requires identifying information to be destroyed on the occurrence of an event or on a request, it must be destroyed as soon as practicable after the event occurs or the request is made.
- (2) If this Part requires identifying information to be destroyed, all means of connecting the identifying information with the person whose identifying information it is must be destroyed.

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- (3) If this Part requires identifying information to be destroyed, identifying information that consists of a DNA profile of a person may be kept in a DNA database for statistical purposes if other identifying information that would enable the identity of the person to be discovered is destroyed.

**71. Responsibility for destroying identifying information**

- (1) If information or anything else that must be destroyed under this Act is in the possession of the WA Police, the Commissioner of Police must ensure it is destroyed.
- (2) If information or anything else that must be destroyed under this Act is in the possession of a person other than the WA Police, that person must ensure it is destroyed.
- (3) If information or anything else that must be destroyed under this Act is in a forensic database, the person who controls or manages the database must ensure it is destroyed.

**72. Supreme Court may order information not to be destroyed**

- (1) If the Supreme Court is satisfied that there is good reason to keep identifying information after the time when under this Part it must be destroyed —
  - (a) the court may order that it be kept for a period set by the court; and
  - (b) that order has effect according to its terms despite anything else in this Part.
- (2) The Supreme Court may at any time amend or cancel such an order.
- (3) A person whose identifying information is the subject of an application for an order under this section is entitled to be heard on the application.

**73. Disclosure of identifying information**

- (1) A person who has access, or has had access, to identifying information obtained under this Act, whether or not in a forensic

database, may only disclose the information in these circumstances —

- (a) if the person is the person to whom the information relates;
- (b) if the person to whom the information relates consents in writing to the disclosure;
- (c) for the purpose of the medical treatment of the person to whom the information relates;
- (d) if the information is already public;
- (e) for a forensic purpose where the investigation or identification is being done by the WA Police or by other law enforcement officers prescribed by the regulations;
- (f) for the purpose of a decision as to whether to prosecute an offence;
- (g) for the purpose of criminal proceedings for an offence;
- (h) for the purpose of the medical treatment of a victim of an offence that the suspect is reasonably suspected to have committed;
- (i) for the purpose of an investigation or inquest under the *Coroners Act 1996*;
- (j) for the purpose of civil or disciplinary proceedings that relate to the way in which the identifying procedure that resulted in the information was carried out;
- (k) for the purpose of an investigation under the *Parliamentary Commissioner Act 1971* into the exercise of any power under this Act;
- (l) in accordance with an arrangement entered into under section 91(1);
- (ma) for the purposes of the *Fines, Penalties and Infringement Notices Enforcement Act 1994*;

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- (m) in accordance with the *Mutual Assistance in Criminal Matters Act 1987*, or the *Extradition Act 1988*, of the Commonwealth;
  - (na) for the purposes of the *Prohibited Behaviour Orders Act 2010* section 34;
  - (nb) for the purposes of the *Liquor Control Act 1988* section 115AC or 152K;
  - (nc) for the purposes of the *Community Protection (Offender Reporting) Act 2004* section 85F or 85G;
  - (nd) for the purposes of the *Criminal Organisations Control Act 2012*;
  - (n) for a purpose prescribed by the regulations.
- (2) This section does not apply in relation to information that cannot be used to discover the identity of a person.
- (3) A person who has access, or has had access, to identifying information obtained under this Act, whether or not in a forensic database, must not disclose the information except as provided by this section.

Penalty: Imprisonment for 2 years.

[Section 73 amended by No. 56 of 2010 s. 71; No. 59 of 2010 s. 49; No. 1 of 2012 s. 8; No. 48 of 2012 s. 56; No. 49 of 2012 s. 175.]

**74. Use of illegal identifying information**

- (1) In this section —
- illegal identifying information*** means identifying information —
- (a) that has been obtained in contravention of this Act or a corresponding law of a participating jurisdiction; or
  - (b) that is required by this Act or a corresponding law of a participating jurisdiction to have been destroyed but has not been destroyed.

- (2) For the purposes of this section a person uses illegal identifying information if the person —
- (a) supplies the information to another person —
    - (i) to be analysed; or
    - (ii) to be put in a forensic database; or
    - (iii) to be compared with other information, whether or not in a forensic database;
  - or
  - (b) analyses the information; or
  - (c) compares the information with other information, whether or not in a forensic database; or
  - (d) puts the information in a forensic database; or
  - (e) leaves the information in a forensic database.
- (3) A person who knows or reasonably ought to know that identifying information is illegal identifying information must not use the information.

Penalty: Imprisonment for 2 years.

**75. Improper use of information obtained in accordance with Act**

A person who —

- (a) compares information obtained in accordance with this Act with other information, whether or not in a forensic database, otherwise than in accordance with this Part; or
- (b) puts information obtained in accordance with this Act in a forensic database otherwise than in accordance with this Part,

commits an offence.

Penalty: Imprisonment for 2 years.

## **Part 10 — DNA databases**

### **76. Terms used**

In this Part —

**DNA database** means a database (whether or not on a computer and however described) that contains —

- [(a) deleted]*
- (b) a statistical index; and
- (c) any index prescribed by the regulations for the purposes of this definition;

**statistical index** means an index of information —

- (a) that is obtained from the analysis of material obtained from people under this Act or under the corresponding laws of participating jurisdictions; and
- (b) that does not contain the personal details of any person whose DNA profile is in the index; and
- (c) that is compiled for statistical purposes; and
- (d) that cannot be used to discover the identity of people from whom the material was obtained,

and includes a statistical index lawfully compiled for statistical purposes before the commencement of this Part.

*[Section 76 amended by No. 22 of 2013 s. 28.]*

### **77. DNA profiles lawfully obtained before commencement of Part**

A DNA profile of a person lawfully obtained for a forensic purpose before the commencement of this Part and lawfully retained may be put in the statistical index for statistical purposes if the information put in the index does not include the personal details of that person.

*[78. Deleted by No. 15 of 2011 s. 10.]*



**79. Database managers, duties of**

(1) In this section —

*database manager* means a person who has the control and management of a DNA database.

(2) A database manager must ensure that the DNA database is used only for the following purposes —

- (a) to contain only the information that under this Act may be put in the database together with any information that is reasonably necessary to administer the database;
- (b) to compare the information in the database with other information, whether or not in the database, in accordance with this Act;
- (c) for the purposes of an arrangement entered into under section 91(1).

**80. Operators of DNA databases to be authorised**

(1) The Minister, in writing, may authorise a person, to create, keep, operate, control or manage a DNA database.

(2) The Minister may at any time cancel such an authorisation.

(3) The Minister is not to authorise a police officer under subsection (1).

(4) A person must not create, keep, operate, control or manage a DNA database except with the written authority of the Minister.

Penalty: \$250 000.

## **Part 11 — Admissibility of evidence**

### **81. Evidence of refusal of consent etc.**

- (1) Evidence that a person refused to or did not consent, or withdrew consent, to an identifying procedure being done on the person is not admissible in proceedings against the person except —
  - (a) in proceedings against him or her for an offence alleged to have been committed while the identifying procedure was being done on him or her; or
  - (b) to establish or rebut an allegation that an officer investigating the commission of an offence acted contrary to law in doing the investigation.
- (2) Evidence that a responsible person refused to or did not consent, or withdrew consent, to an identifying procedure being done on a protected person is not admissible in proceedings against the responsible person, or the protected person, except —
  - (a) in proceedings against him or her for an offence alleged to have been committed while the identifying procedure was being done on the protected person; or
  - (b) to establish or rebut an allegation that an officer investigating the commission of an offence acted contrary to law in doing the investigation.

### **82. Evidence of conduct of procedure**

Evidence of how an identifying procedure was done is admissible in proceedings in court against a person —

- (a) to establish or rebut an allegation that unreasonable force was used to do the procedure; or
- (b) in connection with deciding the admissibility of a confession or other evidence adverse to the person that the person alleges was induced or obtained by the use of unreasonable force; or

- (c) to establish or rebut an allegation that the procedure was not done in accordance with this Act.

**83. Evidence obtained illegally**

- (1) This section applies to the following evidence —
  - (a) anything taken (including a print, photograph, sample, impression or record) in the course of an identifying procedure; and
  - (b) any evidence derived from a thing referred to in paragraph (a) or the procedure.
- (2) This section does not apply to evidence to which section 84 applies.
- (3) If —
  - (a) an identifying procedure is done on a person; and
  - (b) any requirement of this Act in relation to doing the procedure, including a requirement that arises before or after the actual procedure, is contravened,

evidence to which this section applies is not admissible in any criminal proceedings against the person in a court unless —

- (c) the person does not object to the admission of the evidence; or
- (d) the court decides otherwise under section 86; or
- (e) the court is of the opinion that the contravention arose out of a mistaken but reasonable belief as to whether a person was a protected person.

*[Section 83 amended by No. 59 of 2006 s. 39.]*

**84. Evidence kept illegally**

If under Part 9 identifying information must be destroyed at a certain time, evidence of that information —

- (a) is not admissible in a court after that time if it is adduced by the prosecution against a person; but
- (b) may be admitted if it is adduced by that person.

**85. Evidence from illegal use of information**

Any information obtained as a result of —

- (a) identifying information being put in a DNA database otherwise than in accordance with this Act; or
- (b) identifying information being compared with other identifying information, whether or not in a DNA database, otherwise than in accordance with this Act,

is not admissible in criminal proceedings against a person in a court unless the court decides otherwise under section 86.

**86. Court may admit inadmissible evidence**

- (1) This section applies if under another section a court may make a decision under this section in relation to evidence that is not admissible in proceedings in the court.
- (2) The court may decide to admit the evidence if it is satisfied that the desirability of admitting the evidence outweighs the undesirability of admitting the evidence.
- (3) In making a decision under subsection (2) the court is to take into account —
  - (a) any objection to the evidence being admitted by the person against whom the evidence may be given;
  - (b) the seriousness of the offence in respect of which the evidence is relevant;
  - (c) the seriousness of any contravention of this Act in obtaining the evidence;
  - (d) whether any contravention of this Act in obtaining the evidence was intentional or reckless;
  - (e) whether any contravention of this Act in obtaining the evidence arose from an honest and reasonable mistake of fact;
  - (f) the probative value of the evidence;

- (g) any other matter the court thinks fit.
- (4) The probative value of the evidence does not by itself justify its admission.

## Part 12 — Enforcement elsewhere in Australia

### 87. Terms used

In this Part —

*authorised officer*, in relation to a participating jurisdiction, means a person holding an office in that jurisdiction that is prescribed under section 88;

*corresponding law* means a law prescribed under section 88 to be a corresponding law;

*forensic order* means an order or warrant, made or issued under a corresponding law in respect of a person, that authorises the examination of, and the obtaining of material from, the person's body for forensic purposes;

*participating jurisdiction* means another State, a Territory or the Commonwealth in which a corresponding law is in force;

*Registrar* means a person prescribed under section 88 to be the Registrar.

### 88. Corresponding laws etc., prescribing

The regulations may —

- (a) prescribe a law of another State, a Territory or the Commonwealth that relates to the examination of, and the obtaining of material from, people's bodies for forensic purposes to be a corresponding law for the purposes of this Act; and
- (b) prescribe an office in a participating jurisdiction the holder of which is an authorised officer for the purposes of this Part; and
- (c) prescribe an office in this State, or in a participating jurisdiction, the holder of which is the Registrar for the purposes of this Part; and
- (d) prescribe any matters that are necessary or convenient to be prescribed in relation to the registration and carrying out of forensic orders.

**89. Forensic orders, registration of**

- (1) An authorised officer in a participating jurisdiction may request the Registrar to register, for the purposes of this Part, a forensic order that has been made under a corresponding law of that jurisdiction.
- (2) A request for the registration of a forensic order must be in writing and be accompanied by a copy of the order, certified by the person who issued it.
- (3) The Registrar must accede to a request made under this section for the registration of a forensic order if satisfied that the order was made in accordance with the corresponding law concerned.
- (4) On the request of an authorised officer in a participating jurisdiction the Registrar may at any time cancel the registration of a forensic order.

**90. Forensic orders registered in WA may be executed in WA**

- (1) In this section —  
*registered forensic order* means a forensic order that is registered under section 89 for the purposes of this Part.
- (2) A registered forensic order has effect in this State according to its terms and, subject to this section, may be carried out accordingly.
- (3) A police officer may carry out a registered forensic order in this State.
- (4) If a registered forensic order authorises the carrying out of an identifying procedure on a person, the procedure must be done in accordance with Part 8.
- (5) If a registered forensic order authorises the carrying out of acts on a person other than acts that may be done in the course of an identifying procedure under this Act, the order must be carried out in accordance with the corresponding law under which it was made.

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**91. Arrangements for sharing information**

- (1) The Minister may, with a Minister of a participating jurisdiction who is responsible for the administration of a corresponding law, enter into arrangements under which —
  - (a) information from the DNA database of this State is transmitted to the authorised officer of that jurisdiction; or
  - (b) information from the DNA database of that jurisdiction is transmitted to the Commissioner of Police; or
  - (c) for the purposes of law enforcement in that jurisdiction, law enforcement officers of that jurisdiction are entitled to have access to identifying and other information, whether or not in a forensic database, held by the WA Police; or
  - (d) for the purposes of law enforcement in this State, law enforcement officers in this State are permitted to have access to identifying and other information, whether or not in a forensic database, held by law enforcement officers in that jurisdiction.
- (2) Information that is transmitted under an arrangement made under this section must not be recorded or maintained in any database of information that may be used to discover the identity of a person, or to obtain information about an identifiable person, at any time after this Act or a corresponding law requires the information or the forensic material to which it relates to be destroyed.



## Part 13 — Miscellaneous

### 92. Protection from personal liability

- (1) This section does not apply to a person to whom section 137 of the *Police Act 1892* applies.
- (2) In this section a reference to the doing of anything includes a reference to an omission to do anything.
- (3) An action in tort does not lie against a person for anything that the person has done, in good faith, in the exercise or purported exercise of a power under this Act.
- (4) The protection given by this section applies even though the thing done as described in subsection (3) may have been capable of being done whether or not this Act had been enacted.

### 93. Regulations

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.
- (2) Without limiting subsection (1), regulations may —
  - (a) provide for the procedure to be followed in and in relation to doing an identifying procedure;
  - (b) create offences with statutory penalties not exceeding \$5 000.

### 94. *Criminal Investigation (Identifying People) Amendment Act 2011*, transitional provision for

Identifying information may be compared with other information in accordance with Part 9 whether that identifying information or the information to which it is being compared was obtained or lawfully put in a forensic database before or

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after the commencement of the *Criminal Investigation (Identifying People) Amendment Act 2011* section 11.

*[Section 94 inserted by No. 15 of 2011 s. 11.]*

*[Part 14 (s. 95<sup>2</sup>, 96) deleted by No. 59 of 2006 s. 40.]*

*[Schedules 1 and 2 deleted by No. 59 of 2006 s. 40.]*

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**Notes**

<sup>1</sup> This is a compilation of the *Criminal Investigation (Identifying People) Act 2002* and includes the amendments made by the other written laws referred to in the following table <sup>IM.1a</sup>. The table also contains information about any reprint.

**Compilation table**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Criminal Investigation (Identifying People) Act 2002</i>	6 of 2002	4 Jun 2002	s. 1 and 2: 4 Jun 2002; Act other than s. 1 and 2, Pt. 4-7 and Sch. 2 cl. 1, 3 and 5(2): 29 Jun 2002 (see s. 2 and <i>Gazette</i> 28 Jun 2002 p. 3037); Pt. 4-7 and Sch. 2 cl. 1, 3 and 5(2): 20 Nov 2002 (see s. 2 and <i>Gazette</i> 19 Nov 2002 p. 5505)
<i>Acts Amendment (Equality of Status) Act 2003 Pt. 14</i>	28 of 2003	22 May 2003	1 Jul 2003 (see s. 2 and <i>Gazette</i> 30 Jun 2003 p. 2579)
<i>Sentencing Legislation Amendment Act 2004 s. 15</i>	27 of 2004	14 Oct 2004	31 May 2006 (see s. 2 and <i>Gazette</i> 30 May 2006 p. 1965)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 80 and 82</i>	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
<i>Nurses and Midwives Act 2006 Sch. 3 cl. 7</i>	50 of 2006	6 Oct 2006	19 Sep 2007 (see s. 2 and <i>Gazette</i> 18 Sep 2007 p. 4711)
<b>Reprint 1: The Criminal Investigation (Identifying People) Act 2002 as at 10 Nov 2006</b> (includes amendments listed above except those in the <i>Nurses and Midwives Act 2006</i> )			
<i>Criminal Investigation (Consequential Provisions) Act 2006 Pt. 7</i>	59 of 2006	16 Nov 2006	1 Jul 2007 (see s. 2 and <i>Gazette</i> 22 Jun 2007 p. 2838)
<i>Medical Practitioners Act 2008 Sch. 3 cl. 15</i>	22 of 2008	27 May 2008	1 Dec 2008 (see s. 2 and <i>Gazette</i> 25 Nov 2008 p. 4989)
<i>Criminal Law Amendment (Homicide) Act 2008 s. 28</i>	29 of 2008	27 Jun 2008	1 Aug 2008 (see s. 2(d) and <i>Gazette</i> 22 Jul 2008 p. 3353)
<b>Reprint 2: The Criminal Investigation (Identifying People) Act 2002 as at 18 Sep 2009</b> (includes amendments listed above)			
<i>Police Amendment Act 2009 s. 16</i>	42 of 2009	3 Dec 2009	13 Mar 2010 (see s. 2(b) and <i>Gazette</i> 12 Mar 2010 p. 941)
<i>Health Practitioner Regulation National Law</i>	35 of 2010	30 Aug 2010	18 Oct 2010 (see s. 2(b) and <i>Gazette</i> 18 Oct 2010 p. 4711)

## Criminal Investigation (Identifying People) Act 2002

Short title	Number and year	Assent	Commencement
<i>(WA) Act 2010 Pt. 5 Div. 16</i>			<i>Gazette</i> 1 Oct 2010 p. 5075-6)
<i>Liquor Control Amendment Act 2010 Pt. 6</i>	56 of 2010	8 Dec 2010	17 Jan 2011 (see s. 2(b) and <i>Gazette</i> 31 Dec 2010 p. 6887)
<i>Prohibited Behaviour Orders Act 2010 Pt. 5 Div. 3</i>	59 of 2010	8 Dec 2010	23 Feb 2011 (see s. 2(b) and <i>Gazette</i> 23 Feb 2011 p. 633)
<i>Criminal Investigation (Identifying People) Amendment Act 2011</i>	15 of 2011	25 May 2011	s. 1 and 2: 25 May 2011 (see s. 2(a)); Act other than s. 1 and 2: 26 May 2011 (see s. 2(b))
<b>Reprint 3: The Criminal Investigation (Identifying People) Act 2002 as at 27 Jan 2012</b> (includes amendments listed above)			
<i>Community Protection (Offender Reporting) Amendment Act 2012 Pt. 3 Div. 1</i>	1 of 2012	15 Mar 2012	1 Jul 2012 (see s. 2(b) and <i>Gazette</i> 22 Jun 2012 p. 2777)
<i>Criminal Appeals Amendment (Double Jeopardy) Act 2012 s. 9</i>	9 of 2012	21 May 2012	26 Sep 2012 (see s. 2(b) and <i>Gazette</i> 25 Sep 2012 p. 4499)
<i>Fines, Penalties and Infringement Notices Enforcement Amendment Act 2012 Pt. 4 Div. 1</i>	48 of 2012	29 Nov 2012	21 Aug 2013 (see s. 2(b) and <i>Gazette</i> 20 Aug 2013 p. 3815)
<i>Criminal Organisations Control Act 2012 s. 175</i>	49 of 2012	29 Nov 2012	2 Nov 2013 (see s. 2(b) and <i>Gazette</i> 1 Nov 2013 p. 4891)
<i>Criminal Investigation (Identifying People) Amendment Act 2013 Pt. 2</i>	22 of 2013	12 Nov 2013	s. 3-27:13 Nov 2013 (see s. 2(c)); s. 28: 16 Apr 2014 (see s. 2(b) and <i>Gazette</i> 15 Apr 2014 p. 1053)
<b>Reprint 4: The Criminal Investigation (Identifying People) Act 2002 as at 14 Mar 2014</b> (includes amendments listed above except those in the <i>Criminal Investigation (Identifying People) Amendment Act 2013 s. 28</i> )			
<i>Statutes (Repeals and Minor Amendments) Act 2014 s. 6</i>	17 of 2014	2 Jul 2014	6 Sep 2014 (see s. 2(b) and <i>Gazette</i> 5 Sep 2014 p. 3213)

<sup>1M</sup> Under the *Cross-border Justice Act 2008* section 14, in order to give effect to that Act, this Act must be applied with the modifications prescribed by the *Cross-border Justice Regulations 2009* Part 3 Division 8 as if this Act had been altered in that way. If a modification is to replace or insert a numbered provision,

the new provision is identified by the superscript 1M appearing after the provision number. If a modification is to replace or insert a definition, the new definition is identified by the superscript 1M appearing after the defined term.

<sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

**Provisions that have not come into operation**

<u>Short title</u>	<u>Number and year</u>	<u>Assent</u>	<u>Commencement</u>
<u>Health Practitioner Regulation National Law (WA) Amendment Act 2018 s. 107<sup>2</sup></u>	<u>4 of 2018</u>	<u>19 Apr 2018</u>	<u>1 Dec 2018 (see s. 2(d) and Gazette 13 Nov 2018 p. 4427-8)</u>

<sup>2</sup> On the date as at which this compilation was prepared, the *Health Practitioner Regulation National Law (WA) Amendment Act 2018 s. 107* had not come into operation. It reads as follows:

**107. Criminal Investigation (Identifying People) Act 2002 amended**

- (1) This section amends the *Criminal Investigation (Identifying People) Act 2002*.
- (2) In section 52 in the definition of *nurse* delete “and midwifery”.