





# **Crimes Act Amendment (Forensic Procedures) Act (No. 1) 2006**

**No. 130, 2006**

**An Act to amend the *Crimes Act 1914*, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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## An Act to amend the *Crimes Act 1914*, and for related purposes

[Assented to 4 November 2006]

The Parliament of Australia enacts:

### 1 Short title

This Act may be cited as the *Crimes Act Amendment (Forensic Procedures) Act (No. 1) 2006*.

### 2 Commencement

This Act commences on the day after it receives the Royal Assent.

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### **3 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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## Schedule 1—Amendments

### *Crimes Act 1914*

#### **1 Part 1D (simplified outline)**

Omit:

This Part also provides for:

- the establishing of a DNA database system (Division 8A); and
- offences in relation to the DNA database system (Division 8A); and
- the protection of information stored in the DNA database system (Division 11); and
- the destruction of forensic material (Division 8A).

substitute:

This Part also:

- contains offences in relation to the Commonwealth DNA database system and the National Criminal Investigation DNA Database (*NCIDD*) (Division 8A); and
- provides for the whole or a part of the Commonwealth DNA database system to be integrated with the whole or a part of one or more State/Territory DNA database systems to form part of *NCIDD* (Division 8A); and
- provides for the exchange of information in the Commonwealth DNA database system or a State/Territory DNA database system and the protection of the information that is exchanged (Division 11); and
- provides for the destruction of forensic material (Division 8).

#### **2 Subsection 23WA(1)**

Insert:

*Commonwealth DNA database system* is defined in section 23YDAC.

**3 Subsection 23WA(1) (definition of *DNA database system*)**

Repeal the definition.

**4 Subsection 23WA(1)**

Insert:

*National Criminal Investigation DNA Database* or *NCIDD* is defined in section 23YDAC.

**5 Subsection 23WA(1) (definition of *responsible person*)**

Omit “DNA database system”, substitute “Commonwealth DNA database system”.

**6 Paragraph 23WJ(1)(k)**

Omit “DNA database system”, substitute “Commonwealth DNA database system”.

**7 At the end of Subdivision D of Division 6 of Part ID**

Add:

**23XSA Presence of prison officers**

If:

- (a) a particular suspect is being detained in prison; and
- (b) a forensic procedure is to be carried out on the suspect (whether or not the forensic procedure is to be carried out in prison);

one or more prison officers may be present while the forensic procedure is carried out.

**8 Paragraph 23XWJ(1)(j)**

Omit “DNA database system” (wherever occurring), substitute “Commonwealth DNA database system”.

**9 Paragraphs 23XWR(2)(a), (c) and (d)**

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Omit “DNA database system”, substitute “Commonwealth DNA database system”.

**10 Subparagraph 23XX(1)(b)(ii)**

Omit “DNA database system”, substitute “Commonwealth DNA database system”.

**11 Subsection 23YD(8)**

Omit “DNA database system”, substitute “Commonwealth DNA database system”.

**12 Division 8A of Part ID (heading)**

Repeal the heading, substitute:

**Division 8A—Commonwealth and State/Territory DNA database systems**

**13 Section 23YDAC**

Insert:

*Commonwealth agency* means:

- (a) the Commonwealth; or
- (b) an authority of the Commonwealth.

**14 Section 23YDAC**

Insert:

*Commonwealth DNA database system* means a database (whether in computerised or other form and however described) containing:

- (a) the following indexes of DNA profiles (in so far as they relate to material taken or obtained by a Commonwealth agency):
  - (i) a crime scene index;
  - (ii) a missing persons index;
  - (iii) an unknown deceased persons index;
  - (iv) a serious offenders index;
  - (v) a volunteers (unlimited purposes) index;
  - (vi) a volunteers (limited purposes) index;
  - (vii) a suspects index;

and, if the material is forensic material, information that may be used to identify the person from whose forensic material each DNA profile was derived; and

- (b) a statistical index (in so far as it relates to forensic material taken in accordance with this Part); and
- (c) any other index prescribed by the regulations for the purposes of this definition.

**15 Section 23YDAC (definition of *DNA database system*)**

Repeal the definition.

**16 Section 23YDAC**

Insert:

*National Criminal Investigation DNA Database* or *NCIDD* means the database that is known as the National Criminal Investigation DNA Database and that is managed by the Commonwealth.

**17 Section 23YDAC**

Insert:

*NCIDD*: see *National Criminal Investigation DNA Database*.

**18 Section 23YDAC**

Insert:

*State/Territory DNA database system* means a database (whether in computerised or other form and however described) held by, or on behalf of, a participating jurisdiction for the purposes of a corresponding law.

**19 Section 23YDAC (paragraph (a) of the definition of *volunteers (unlimited purposes) index*)**

Omit “DNA database system”, substitute “Commonwealth DNA database system”.

**20 After section 23YDAC**

Insert:

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**23YDACA Integration of Commonwealth DNA database system and State/Territory DNA database systems**

- (1) The whole or a part of the Commonwealth DNA database system, or information obtained from the Commonwealth DNA database system, may be integrated (whether electronically or otherwise) with:
  - (a) the whole or a part of one or more State/Territory DNA database systems; or
  - (b) information obtained from one or more State/Territory DNA database systems;to form part of NCIDD.
- (2) A participating jurisdiction, or an authority of a participating jurisdiction, may access NCIDD to the extent that it consists of:
  - (a) the whole or a part of the State/Territory DNA database system of the participating jurisdiction; or
  - (b) information obtained from the State/Territory DNA database system of the participating jurisdiction;but only if the participating jurisdiction, or the authority of the participating jurisdiction, is required or authorised by or under a law of the participating jurisdiction to access the State/Territory DNA database system of the participating jurisdiction.
- (3) No part of a State/Territory DNA database system, and no information obtained from a State/Territory DNA database system, forms part of the Commonwealth DNA database system by reason only of any integration referred to in subsection (1).
- (4) No part of the Commonwealth DNA database system, and no information obtained from the Commonwealth DNA database system, forms part of a State/Territory DNA database system by reason only of any integration referred to in subsection (1).
- (5) The existence of the Commonwealth DNA database system or a State/Territory DNA database system is not affected by reason only of any integration referred to in subsection (1).

**21 Paragraphs 23YDAD(1)(d) and (2)(d)**

Omit “DNA database system”, substitute “Commonwealth DNA database system”.

**22 Subsection 23YDAE(1)**

Omit “DNA database system”, substitute “Commonwealth DNA database system or NCIDD”.

Note: The heading to section 23YDAE is altered by omitting “DNA database system” and substituting “Commonwealth DNA database system or NCIDD”.

**23 Subsection 23YDAE(2)**

Omit “stored on the DNA database system”, substitute “stored on the Commonwealth DNA database system or NCIDD”.

**24 Paragraph 23YDAE(2)(c)**

Omit “DNA database system”, substitute “Commonwealth DNA database system, NCIDD or a State/Territory DNA database system”.

**25 Paragraph 23YDAE(2)(d)**

After “arrangement”, insert “mentioned in subsection 23YUD(1) or (1A)”.

**26 Paragraph 23YDAE(2)(d)**

Omit “DNA database system”, substitute “Commonwealth DNA database system or a State/Territory DNA database system”.

**26A After subsection 23YDAE(2)**

Insert:

(2A) A person may access information stored on NCIDD in the circumstances permitted by subsection 23YDACA(2).

**27 Subsection 23YDAF(1)**

Omit “DNA database system”, substitute “Commonwealth DNA database system”.

**27A Subsection 23YDAF(1) (cell at table item 2, column 3)**

Repeal the cell, substitute:

yes

**27B Subsection 23YDAF(1) (cell at table item 2, column 5)**

Repeal the cell, substitute:

yes

**28 Subsection 23YDAF(1) (cell at table item 2, column 7)**

Repeal the cell, substitute:

yes

**28A Subsection 23YDAF(1) (cell at table item 4, column 3)**

Repeal the cell, substitute:

yes

**28B Subsection 23YDAF(1) (cell at table item 4, column 5)**

Repeal the cell, substitute:

yes

**29 Subsection 23YDAF(1) (cell at table item 5, column 5)**

Repeal the cell, substitute:

yes

**30 Paragraph 23YDAF(2)(a)**

Omit “DNA database system” (wherever occurring), substitute “Commonwealth DNA database system”.

**31 Subsection 23YDAF(3)**

Omit “DNA database system”, substitute “Commonwealth DNA database system”.

**32 Paragraph 23YDAG(1)(a)**

Omit “a DNA database system”, substitute “the Commonwealth DNA database system”.

Note: The heading to section 23YDAG is altered by omitting “DNA database system” and substituting “Commonwealth DNA database system”.

**33 Subsections 23YDAG(2) and (3)**

Omit “DNA database system”, substitute “Commonwealth DNA database system”.

**34 Subsection 23YDAG(4) (paragraphs (a) and (b) of the definition of *identifying period*)**

Omit “DNA database system”, substitute “Commonwealth DNA database system”.

**35 Paragraph 23YO(1)(a)**

Omit “DNA database system”, substitute “Commonwealth DNA database system or NCIDD”.

**35A After subsection 23YO(1)**

Insert:

(1A) Paragraph (1)(a) does not apply to access to information stored on NCIDD in the circumstances permitted by subsection 23YDACA(2).

**36 Subsection 23YO(2)**

Omit “stored on the DNA database system”, substitute “stored on the Commonwealth DNA database system or NCIDD”.

**37 Paragraph 23YO(2)(c)**

Omit “DNA database system”, substitute “Commonwealth DNA database system, NCIDD or a State/Territory DNA database system”.

**38 Paragraph 23YO(2)(d)**

After “arrangement”, insert “mentioned in subsection 23YUD(1) or (1A)”.

**39 Paragraph 23YO(2)(d)**

Omit “DNA database system”, substitute “Commonwealth DNA database system or a State/Territory DNA database system”.

**40 Paragraph 23YUD(1)(a)**

Omit “DNA database system of the Commonwealth”, substitute “Commonwealth DNA database system”.

**41 Paragraph 23YUD(1)(b)**

Omit “a DNA database system of the participating jurisdiction”, substitute “the State/Territory DNA database system of the participating jurisdiction”.

**41A At the end of subsection 23YUD(1)**

Add “Subject to subsection (1B), these arrangements may also deal with using such information.”.

**42 Subsection 23YUD(1A)**

Omit “For the avoidance of doubt, this section does not preclude CrimTrac from entering into a memorandum of understanding or other arrangement, on behalf of the Commonwealth,”, substitute “CrimTrac may, on behalf of the Commonwealth, enter into an arrangement”.

**43 Paragraph 23YUD(1A)(a)**

Omit “DNA database system of the Commonwealth, or a DNA database system of any participating jurisdiction”, substitute “Commonwealth DNA database system, or any State/Territory DNA database system”.

**43A At the end of subsection 23YUD(1A)**

Add:

; or (c) subject to subsection (1B), using such information.

**43B After subsection 23YUD(1A)**

Insert:

(1AA) Subject to subsection (1B), an arrangement with a participating jurisdiction under subsection (1A) may deal with:

- (a) CrimTrac comparing information transmitted in accordance with that arrangement with other information on NCIDD; and
- (b) CrimTrac identifying matches that are found because of such comparisons and CrimTrac transmitting information arising from such matches to that participating jurisdiction.

(1AB) Subsection (1AA) does not limit subsection (1A).

**44 Subsection 23YUG(1)**

Omit “DNA database system”, substitute “Commonwealth DNA database system or NCIDD”.

Note: The heading to section 23YUG is altered by omitting “system” and substituting “systems”.

**45 Subsections 23YUG(2) and (3)**

Omit “a DNA database system”, substitute “the Commonwealth DNA database system, NCIDD or a State/Territory DNA database system”.

**46 Subsection 23YUH(1)**

Omit “DNA database system”, substitute “Commonwealth DNA database system”.

**47 Subsection 23YUH(2)**

Omit “DNA database system with another DNA profile on that index”, substitute “State/Territory DNA database system with another DNA profile on that index, or with another DNA profile on the unknown deceased persons index of the Commonwealth DNA database system”.

**48 Subsections 23YUI(1) and (2)**

Omit “a DNA database system”, substitute “the Commonwealth DNA database system, NCIDD or a State/Territory DNA database system”.

**49 Paragraph 23YUJ(a)**

Omit “a DNA database system”, substitute “the Commonwealth DNA database system, NCIDD or a State/Territory DNA database system”.

**50 Paragraph 23YUJ(b)**

Omit “a DNA database system”, substitute “the Commonwealth DNA database system or a State/Territory DNA database system”.

**51 Paragraph 23YUJ(c)**

Omit “a DNA database system”, substitute “the Commonwealth DNA database system, NCIDD or a State/Territory DNA database system”.

**52 Transitional**

For the purposes of the application of Part ID of the *Crimes Act 1914* after the commencement of this item, a reference to the Commonwealth DNA database system is taken, in relation to a thing that happened before that commencement, to include a reference to the DNA database system (within the meaning of that Act as in force immediately before that commencement).

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[Minister’s second reading speech made in—  
Senate on 21 June 2006  
House of Representatives on 18 October 2006]

(99/06)

