



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

No. 130, 2006

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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Crimes Act 1914

1 Part ID (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)

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:

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).

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

(99/06)

