

# **Criminal Investigation (Identifying People) Amendment Bill 2011**

## **EXPLANATORY MEMORANDUM**

### **Clause 1. Short Title**

Cites the short title of the Act as the *Criminal Investigation (Identifying People) Amendment Act 2011*.

### **Clause 2. Commencement**

Clauses 1 and 2 come into operation on Assent. The remaining provisions in the Bill come into operation on a day fixed by proclamation.

### **Clause 3. Act amended**

Clause 3 specifies that the amendments contained in the Bill are amendments to the *Criminal Investigation (Identifying People) Act 2002*.

### **Clauses 4 – 10 Generally**

Clauses 4 to 10 make various amendments to achieve matching rules consistent with the national model. The model rules are depicted in the following table –

Table showing permissible comparisons								
	A	B	C	D	E	F	G	
	DNA profile to be compared with information in DNA database	Crime Scene Index	Suspects Index	Volunteer (Limited Purposes) index	Volunteer (Unlimited Purposes) Index	Offenders index	Missing Persons index	Unknown Deceased Persons index
1	<b>From Crime Scene</b>	Yes	Yes	If within limit	Yes	Yes	Yes	Yes
2	<b>Of Suspect(s)</b>	Yes	Yes	If within Limit	Yes	Yes	Yes	Yes
3	<b>Of Volunteer or involved person (Limited Purpose(s))</b>	If within limit	If within Limit	If within Limit	If within limit	If within Limit	If within limit	If within limit
4	<b>Of Volunteer or involved person (Unlimited Purpose(s))</b>	Yes	Yes	If within Limit	Yes	Yes	Yes	Yes
5	<b>Of Offender(s)</b>	Yes	Yes	If within Limit	Yes	Yes	Yes	Yes
6	<b>Of Missing Person(s)</b>	Yes	Yes	If within limit	Yes	Yes	Yes	Yes
7	<b>Of Unknown Deceased Person(s)</b>	Yes	Yes	If within limit	Yes	Yes	Yes	Yes

In drafting these amendments, the matching table in section 78 has been repealed in clause 10 as it is considered unnecessary to retain in light of the fact that the table only contains two rules. One rule that provides that in the case of a volunteer who has limited the purposes for which their DNA profile may be used and one rule for all other DNA profiles that are obtained under the legislation.

For the limited purpose volunteer, the rule is simply that the DNA profile may only be compared in accordance with the decisions of that volunteer. For example, the volunteer may provide their DNA profile on the basis that it only be compared with other DNA profiles that have been obtained in a particular investigation. If this is decision of the volunteer, the matching rule in the national model dictates that the decision of the volunteer must be followed.

The rule in respect to all other DNA profiles obtained under the legislation is that there may be unrestricted matching with all other DNA profiles and indexes except for limited purpose volunteers.

Clauses 4 – 9 make amendments to the respective sections that control the use and destruction of DNA information obtained under the various provisions of the Act. The amendments give effect to the national rules and delete references in these sections to section 78 and instead provide the relevant rule within the section. See below for further explanation on the amendments provided for in each clause of the Bill.

#### **Clause 4. Section 62 amended**

Clause 4 removes the reference to section 78 in section 62 of the *Criminal Investigation (Identifying People) Act 2002* relating to the use and destruction of ‘identifying information’ obtained from ‘volunteers’ under the Act. It then provides a general rule for the comparison of ‘identifying information’ (which includes DNA) that is consistent with the national matching rules for DNA profiles of ‘volunteers’. The rule provides that DNA profiles of ‘volunteers’ may only be compared with other information in accordance with the decision of the ‘volunteer’.

#### **Clause 5. Section 63 amended**

Clause 5 removes the reference to section 78 in section 63 of the *Criminal Investigation (Identifying People) Act 2002* relating to the use and destruction of ‘identifying information’ obtained from a ‘deceased person’ under the Act. It then provides a general rule for the comparison of ‘identifying information’ (which includes DNA) that provides quite clearly that ‘identifying information’ of deceased persons may only be compared in accordance with the direction of the Coroner.

#### **Clause 6. Section 64 amended**

Clause 6 amends section 64 relating to the use and destruction of ‘identifying information’ obtained from police officers under the Act. This clause does not

change the matching rules relevant to police officers, it just makes amendments to accommodate the removal of section 78.

### **Clause 7. Section 65 amended**

Clause 7 amends section 65 relating to the use and destruction of ‘identifying information’ obtained from ‘involved persons’ under the Act. This clause removes the reference to section 78 and then provides a general rule for the comparison of ‘identifying information’ (which includes DNA) that is consistent with the national matching rules for DNA profiles of ‘involved persons’. The rule provides that DNA profiles of ‘involved persons’ may only be compared with other information in accordance with the decision of the ‘involved person’ or the responsible person on behalf of a protected person (child or incapable person).

The rule also makes provision for ‘identifying information’ that is obtained via warrant. The rule for ‘identifying information’ obtained via a warrant is as provided for in the warrant when issued by the judicial officer under section 33.

### **Clause 8. Section 66 amended**

Clause 8 removes the reference to section 78 in section 66 of the *Criminal Investigation (Identifying People) Act 2002* relating to the use and destruction of ‘identifying information’ obtained from ‘uncharged suspects’ under the Act. It then provides a general rule for the comparison of ‘identifying information’ (which includes DNA) that is consistent with the national matching rules for DNA profiles of ‘uncharged suspects’. The rule provides that DNA profiles of ‘uncharged suspects’ may be compared with other information whether or not in a forensic database as soon as it is obtained.

### **Clause 9. Section 67 amended**

Clause 9 removes the reference to section 78 in section 67 of the *Criminal Investigation (Identifying People) Act 2002* relating to the use and destruction of ‘identifying information’ obtained from ‘charged suspects’ under the Act. It then provides a general rule for the comparison of ‘identifying information’ (which includes DNA) that is consistent with the national matching rules for DNA profiles of ‘charged suspects’. The rule provides that DNA profiles of ‘charged suspects’ may be compared with other information whether or not in a forensic database as soon as it is obtained.

### **Clause 10. Section 78 deleted**

Clause 10 repeals section 78 of the *Criminal Investigation (Identifying People) Act 2002*.

### **Clause 11. Section 94 replaced**

Clause 11 repeals the review section of the Act that is now of no effect given the review has been completed.

It replaces section 94 with a transitional provision that ensures that the matching rules provided by the amendments contained in this Bill will apply to DNA profiles currently stored within the DNA database or otherwise lawfully obtained before or after the commencement of the legislation.

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