

**Criminal Investigation (Identifying People)
Bill 2000**

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Defined Terms

Western Australia

LEGISLATIVE ASSEMBLY

**Criminal Investigation (Identifying People)
Bill 2000**

A Bill for

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.**

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Criminal Investigation (Identifying People) Act 2000*.

5 **2. Commencement**

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

3. Interpretation

- 10 (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;

15 “**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 82;

“**DNA database**” has the meaning given by section 73;

“**forensic database**” has the meaning given by section 56;

20 “**forensic purpose**” means —

- (a) investigating an offence or a suspected offence or offences generally;
- (b) investigating the death of a person or identifying a deceased person; or
- 25 (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;

5

For example: the face of a person or a birthmark, scar or tattoo on a person.

“identifying particular” has the meaning given by section 10(1), 15, 22, 31, 44 or 46(1) or Schedule 1 clause 1, as the case requires;

10

“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;

15

“impression” includes a cast;

“incapable person” means a person of any age —

20

- (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

25

- (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;

30

“intimate identifying procedure”, in relation to a person, means —

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

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“**IP warrant (involved person)**” means a warrant issued under section 30;

“**IP warrant (suspect)**” means a warrant issued under section 43;

5 “**IP warrant (uninvolved person)**” means a warrant issued under section 19;

“**JP**” stands for Justice of the Peace;

10 “**non-intimate identifying procedure**”, in relation to a person, means an identifying procedure that is done on the person, other than on his or her private parts, 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;

15 “**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, rank and registered number;

20 (b) in respect of a public officer — the officer’s full name and official title;

“**participating jurisdiction**” has the meaning given by section 82;

“**personal details**”, in relation to a person, has the meaning given by section 14(1);

25 “**photograph**” includes a video recording and a digital image;

“**police officer**” means a person appointed under Part I of the *Police Act 1892* to be a member of the Police Force of Western Australia;

30 “**private parts**”, in relation to a person, means the person’s genital area, anal area, 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*, breasts;

5 “**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*;

10 “**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 —

- 15 (a) a parent of the child;
(b) a guardian of the child; or
(c) another person who has responsibility for the day-to-day care of the child;

“**senior officer**” means —

- 20 (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;

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

“**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 the officer investigating the offence —

- 30 (a) informs the person that he or she will be charged with the offence, whether or not at that time the officer has made or sworn a complaint in respect of the offence; or

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(b) makes or swears a complaint in respect of the offence, whichever happens first.

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

5 **4. “Reasonably suspects”, meaning of**

For the purposes of this Act, a person reasonably suspects something at a relevant time if he or she, acting in good faith, personally has grounds at the time for suspecting the thing and those grounds (even if they are subsequently found to be false or
10 non-existent), when judged objectively, are reasonable.

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 —

- 15 (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
20 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 —

- 25 (a) the office held by the public officer has been prescribed under subsection (1)(a);
- (b) the power is one that has been specified under subsection (1)(b) as one that the officer may exercise; and
- 30 (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 —

- 5 (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;

(b) if the officer is a public officer —

- 10 (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.

15 **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

(b) having consented to it resists the carrying out of it,

20 is to be taken to have not consented to undergoing it.

8. DNA profile, procedure for obtaining

(1) Material from which to obtain the DNA profile of a person may be obtained by doing one or, subject to section 54, more than one of the following procedures in the following order —

25 (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;

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- 5
- (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) 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.

9. When a charge is finalised without a finding of guilt

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

- 15
- (a) the charge is withdrawn;
 - (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.
- 20

Part 2 — General

10. Application of this Act

(1) In this section —

“identifying particular”, in relation to a person, means —

- 5 (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);
- 10 (c) an impression of an identifying feature of the person
(including a dental impression);
- (d) a sample of the person’s hair for purposes other than
obtaining the person’s DNA profile;
- (e) the person’s DNA profile;

15 **“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;
20 or
- (b) to an identifying particular, or a personal detail, obtained
by such a person.

25 (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.

11. 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.

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- (2) A person so authorised may exercise the power or assist the other 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 —
- 5 (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.
- 10

12. 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 —

- 15 (a) to exercise the power; and
- (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.

13. Applying for warrants

- 20 (1) In this section —
- “judicial officer”** means a JP or a magistrate, as the case requires.
- (2) 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.
- 25
- (3) The application must be made in writing in the prescribed form.
- (4) The application must be made, and any information in support of it must be given, on oath.

- (5) 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 known to be available within a reasonable distance of the applicant,
- in which case it may be made to a judicial officer by remote communication.
- (6) If an application for a warrant is not made in person before a judicial officer —
- (a) the applicant must prepare a written application and if practicable send it to the judicial officer;
 - (b) if it is not practicable to send the written application to the judicial officer, the applicant may make the application orally;
 - (c) if it is not practicable to make the application on oath, it may be made in an unsworn form;
 - (d) the applicant may send the judicial officer information in support of the application in an unsworn form;
 - (e) the judicial officer must not grant the application unless satisfied there are grounds under subsection (5) for the application not to be made in person.
- (7) If an application is made orally to a judicial officer, the judicial officer must complete the prescribed form of application.
- (8) If information in support of an application is given orally to a judicial officer, the judicial officer must make a record of it.
- (9) If —
- (a) an applicant makes an unsworn application or sends a judicial officer unsworn information; and

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- (b) the judicial officer issues a warrant,
the applicant must send the judicial officer an affidavit
containing all that information as soon as practicable after the
warrant is issued.
- 5 (10) If an application is not made in person before a judicial officer
and the judicial officer issues the warrant, then —
- (a) if it is reasonably practical to send a copy of the warrant
 to the applicant by remote communication, the judicial
 officer must immediately do so;
- 10 (b) if it is not reasonably practical to so send the warrant —
- (i) the judicial officer must immediately give the
 applicant by remote communication any
 information that is required to be set out in it;
- (ii) the applicant must complete a form of the
15 warrant with the information given by the
 judicial officer;
- (iii) the applicant must give the judicial officer a copy
 of the completed form as soon as practicable
 after the warrant is issued; and
- 20 (iv) the judicial officer must attach the copy of the
 completed form to the original warrant issued by
 the judicial officer and any affidavit received
 from the applicant in support of the application
 and make them available for collection by the
25 applicant.
- (11) If a copy of a warrant is received by remote communication
under subsection (10)(a) or a form of warrant is completed in
accordance with subsection (10)(b)(ii) it has the same effect as
the original warrant issued by the judicial officer.
- 30 (12) If an applicant contravenes subsection (9) or (10) any evidence
obtained under the warrant is not admissible in proceedings in a
court unless the court decides otherwise under section 88.

Part 3 — Personal details of people

14. Officer may ask for name, address, etc.

- (1) In this section —
“personal details”, in relation to a person, means —
- 5 (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
10 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,
- 15 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.
- 20 (4) A person to whom a request is made under subsection (2) or (3)
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.
- 25 (6) A person who, without reasonable excuse, does not comply with
a request made under subsection (2) or (3) commits an offence.
Penalty: Imprisonment for 12 months.
- (7) For the purposes of subsection (6) the fact that an officer did not
30 comply with subsection (5) as soon as practicable is a
reasonable excuse.

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- (8) A person who in response to a request made under subsection (2) gives any false personal details commits an offence.

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.

5

Penalty: Imprisonment for 12 months.

Part 4 — Identifying particulars of uninvolved and deceased people

Division 1 — Preliminary

15. Interpretation

5 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;
- 10 (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 for purposes other than obtaining the person’s DNA profile;
- 15 (e) the person’s DNA profile.

Division 2 — Volunteers

16. Volunteer for an identifying procedure to be informed

(1) If —

- 20 (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 person who is a child —
 - 25 (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 of that fact,

the officer must inform the person (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;

- (b) how the procedure will be carried out;

- (c) that subject to his or her decision, the volunteer’s identifying information may be compared with or put in a forensic database;

- (d) that the procedure may provide evidence that could be used in court against the volunteer;

- (e) that he or she may decide whether —

- (i) to limit the forensic purposes for which the volunteer’s identifying information (as defined in section 56) may be used; or

- (ii) to allow the identifying information to be used for unlimited forensic purposes;

- (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;

- (g) that the volunteer is not obliged to undergo the procedure;

- (h) that he or she may get legal advice before deciding whether or not to consent to the procedure; and

- (i) any matter prescribed by the regulations.

- (3) The information in subsection (2) may be provided in writing.

17. Volunteer may consent

- (1) If section 16(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 paragraphs (e) and (f) of section 16(2);
 - (b) a responsible person —
 - (i) may consent to a child undergoing the identifying procedure that the responsible person was informed about; and
 - (ii) if he or she consents, must decide the matters in paragraphs (e) and (f) of section 16(2).
- (2) The consent and decisions of a person must be recorded in writing on a form prescribed by the regulations 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 is completed —
- (a) if the volunteer is an adult, the volunteer withdraws his or her consent; or
 - (b) if the volunteer is a child —
 - (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 under this section an identifying procedure may be done on a person, it must be done in accordance with Part 9.

(6) 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 paragraphs (e) and (f) of section 16(2) by notifying the Commissioner of Police.

5 (7) If an identifying procedure has been done under this Division on a child, a responsible person, or the child if he or she has reached the age of 18 years, may subsequently change the decision on the matters in paragraphs (e) and (f) of section 16(2) by notifying the Commissioner of Police.

10 **Division 3 — Protected people**

18. IP warrant (uninvolved person), application for

(1) Only a police officer may apply for an IP warrant (uninvolved person).

15 (2) An application for an IP warrant (uninvolved person) must be made to a magistrate in accordance with section 13.

(3) An application for an IP warrant (uninvolved person) must —

(a) name the protected person in respect of whom the warrant is wanted;

20 (b) state that the protected person is neither a suspect for an offence, nor an involved person for the purposes of Part 5;

(c) specify the identifying particular that is sought and the non-intimate identifying procedure by means of which it is to be obtained;

25 (d) state the reason for seeking the identifying particular; and

(e) comply with subsection (4) if necessary.

(4) An application for an IP warrant (uninvolved person) in respect of a child must also state the applicant's grounds for suspecting —

30 (a) that the child is willing to undergo the non-intimate identifying procedure;

- 5 (b) that the child is sufficiently mature and capable of understanding the general nature and effect of and the reason for and the consequences of undergoing the procedure; and
- 5 (c) either that it is not reasonably practicable to obtain a responsible person's consent to the child undergoing the procedure or —
- 10 (i) that a responsible person has refused to, or will not, or has withdrawn, consent to the child undergoing the procedure;
- (ii) that the responsible person is a suspect in relation to an offence the statutory penalty for which is or includes imprisonment; and
- 15 (iii) that the procedure will afford evidence of whether or not the responsible person committed the offence.

19. IP warrant (uninvolved person), issue and effect of

- (1) On an application made under section 18 a magistrate may issue an IP warrant (uninvolved person) if he or she is satisfied —
- 20 (a) that the identifying particular is needed for or in connection with a forensic purpose;
- (b) that the protected person to whom it relates is neither a suspect for an offence, nor an involved person for the purposes of Part 5;
- 25 (c) in the case of a child, that in respect of the matters in section 18(4) on which the applicant is required to have a reasonable suspicion there are reasonable grounds for the applicant to have that suspicion; and
- 30 (d) that the interests of justice justify obtaining the identifying particular specified in the application.

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- (2) In determining whether to make and if so the terms of an IP warrant (uninvolved person) the magistrate is to take into account —
- 5 (a) if the procedure is to be done for the purpose of obtaining information in connection with the investigation of an offence, the seriousness of the offence;
- 10 (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; 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.
- 15 (4) In the case of an application for an IP warrant (uninvolved 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;
- (b) seek information or submissions from the Public Advocate; or
- 20 (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 (uninvolved person) must contain this information —
- 25 (a) the official details of the applicant;
- (b) the name of the protected person to whom it relates;
- (c) the identifying particular to be obtained and the identifying procedure by means of which it is to be obtained;

- (d) either —
- (i) the limited forensic purposes for or in connection with which the protected person's identifying information (as defined in section 56) may be used; or
 - (ii) a statement that the information may be used for or in connection with any forensic purpose;
- (e) the period (including indefinitely) for which that identifying information can be kept by the WA Police before it must be destroyed;
- (f) whether that identifying information may be put in a forensic database;
- (g) the period, not exceeding 14 days, during which it may be executed;
- (h) the name of the magistrate who issued it; and
- (i) the date and time when it was issued.
- (6) An IP warrant (uninvolved person) authorises the doing of the non-intimate identifying procedure on the protected person unless, before it is completed, the protected person objects to or resists the carrying out of the procedure.
- (7) If under an IP warrant (uninvolved person) an identifying procedure may be done on a person, it must be done in accordance with Part 9.

Division 4 — Deceased people

20. Deceased people, identifying particulars 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;
 - (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 59.

Division 5 — Officers and others

21. Officers and others, identifying particulars of

- (1) The Commissioner of Police may require a person who at the time is appointed under Part I, III or IIIA of the *Police Act 1892* to undergo an identifying procedure for or in connection with forensic purposes.
- (2) The employing authority (as defined in the *Public Sector Management Act 1994*) of a person who is a public officer and who is empowered to exercise a power in this Act, other than the powers in Part 3, may require the person to undergo an identifying procedure for or in connection with forensic purposes.
- (3) The powers in this section may be exercised as often as the Commissioner or employing authority thinks is necessary.

Part 5 — Identifying particulars of involved people

22. Interpretation

In this Part —

“identifying particular”, in relation to a person, means —

- 5 (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);
- 10 (c) an impression of an identifying feature of the person
(including a dental impression);
- (d) a sample of the person’s hair for purposes other than
obtaining the person’s DNA profile;
- (e) the person’s DNA profile;

15 **“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.

23. Identifying procedure, request to adult to undergo

(1) In this section —

20 **“involved person”** means an involved person who is an adult.

(2) If an officer reasonably suspects —

- (a) that an offence has been committed; and
- 25 (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.

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- (3) An officer who requests an involved person to consent to an identifying procedure must at the time inform the person of these matters —
- 5 (a) the offence that is suspected of having been committed and in relation to which the procedure relates;
 - (b) the purpose of the procedure;
 - (c) how the procedure will be done;
 - (d) that information derived from the procedure may be compared with or put in a forensic database;
 - 10 (e) 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;
 - (f) that the person may consent or refuse to consent to the procedure;
 - 15 (g) that if the person does not consent —
 - (i) an application may be made for authority to do the procedure against the person’s will; and
 - (ii) if authority is given the procedure will be done against the person’s will.

20 **24. Identifying procedure, request for child to undergo**

- (1) In this section —
“involved person” means an involved person who is a child.
- (2) If an officer reasonably suspects —
- 25 (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
30 non-intimate identifying procedure being done on the involved person.

- (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 person of these matters —
- 5 (a) the offence that is suspected of having been committed and in relation to which the procedure relates;
 - (b) the purpose of the procedure;
 - (c) how the procedure will be done;
 - (d) that information derived from the procedure may be compared with or put in a forensic database;
 - 10 (e) 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;
 - (f) that the responsible person may consent or refuse to consent to the procedure being done on the involved person;
 - 15 (g) that if the responsible person does not consent —
 - (i) an application may be made for authority to do the procedure against the responsible person's will; and
 - 20 (ii) if authority is given the procedure will be done against the responsible person's will.

25. Request and giving of information to be recorded

- 25 (1) An officer who makes a request under section 23 or 24 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, if that is not practicable, in writing.

26. Identifying procedure, when may be done

(1) If —

- (a) under section 23 a request is made to an involved person or under section 24 to a responsible person;
- 5 (b) the person is informed in accordance with section 23 or 24, as the case requires; and
- (c) as the case requires, either —
 - 10 (i) the involved person who is an adult consents to the procedure; or
 - (ii) the responsible person consents to the procedure being done on the involved person who is a child,

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

- 15 (2) If an involved person who is an adult, having been requested under section 23 to consent to a procedure, does not consent to the procedure, the procedure may only be done on the involved person if a magistrate issues an IP warrant (involved person) that authorises it.
- 20 (3) If a responsible person, having been requested under section 24 to consent to a procedure being done on an involved person who is a child, does not consent to the procedure being done, the procedure may only be done on the involved person if a magistrate issues an IP warrant (involved person) that authorises it.
- 25

27. Consent may be withdrawn

- (1) This section applies if section 26(1) provides that a procedure may be done on an involved person.
- 30 (2) The involved person who is an adult and who has consented may withdraw his or her consent to undergoing the procedure at any time before the procedure has been completed.

(3) A responsible person who has consented to a procedure being done on an involved person who is a child may withdraw his or her consent at any time before the procedure on the involved person has been completed.

5 (4) If consent is withdrawn under this section, section 26(2) or (3) applies, as the case requires.

28. IP warrant (involved person), officer may apply for

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

- 10 (a) if the officer reasonably suspects that if a request were made under section 23 or 24 the investigation of the offence concerned would be prejudiced;
- (b) if under section 26 an IP warrant (involved person) is needed in order to do it; or
- 15 (c) if the involved person is an incapable person.

29. IP warrant (involved person), application for

(1) Only an officer may apply for an IP warrant (involved person).

(2) An application for an IP warrant (involved person) must be made to a magistrate in accordance with section 13.

- 20 (3) An application for an IP warrant (involved person) must —
- (a) name the person in respect of whom the warrant is wanted;
- (b) state the offence with which the involved person is suspected to have been involved;
- 25 (c) state the grounds on which the applicant suspects that the person is an involved person in respect of the offence;
- (d) specify the identifying particular that is sought and the non-intimate identifying procedure by means of which it is to be obtained;
- 30

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- (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
 - 5 (f) if the application is made under section 28(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 23 or 24.
- 10 **30. IP warrant (involved person), issue and effect of**
- (1) On an application made under section 29 a magistrate may issue an IP warrant (involved person) if the magistrate is satisfied —
 - 15 (a) that in respect of the matters in section 29(3) on which the applicant is required to have a reasonable 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 (involved person)
20 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;
 - (b) seek information or submissions from the Public Advocate; or
 - 25 (c) if the warrant is issued, give a copy of it to the Public Advocate,and may use remote communication to do so.
 - (3) An IP warrant (involved person) must contain this information —
 - 30 (a) the official details of the applicant;
 - (b) the name of the involved person to whom it relates;
 - (c) the offence to which it relates;

- 5
- (d) the identifying particular to be obtained and the non-intimate identifying procedure by means of which it is to be obtained;
 - (e) the period, not exceeding 14 days, during which it may be executed;
 - (f) the name of the magistrate who issued it; and
 - (g) the date and time when it was issued.
- (4) An IP warrant (involved person) authorises —
- 10
- (a) an officer authorised by subsection (5) —
 - (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) the doing of the procedure on the involved person against his or her will.
- 15
- (5) The powers in subsection (4)(a) may be exercised by —
- 20
- (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.
- (6) A procedure authorised by an IP warrant (involved person) must be done in accordance with Part 9.

Part 6 — Identifying particulars of uncharged suspects

31. Interpretation

In this Part —

“identifying particular”, in relation to a person, means —

- 5 (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
10 (including a dental impression);
- (d) a sample of the person’s hair for purposes other than obtaining the person’s DNA profile;
- (e) the person’s DNA profile;

15 **“serious offence”** means an offence the statutory penalty for which is or includes imprisonment;

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

20 **32. Identifying procedure, purpose of**

An identifying procedure must not be done under this Part on a suspect except for the purpose of obtaining an identifying particular of the suspect that is reasonably suspected will afford
25 evidence of whether or not the suspect committed a serious offence that he or she is reasonably suspected of having committed.

33. Identifying procedures, doing of

An identifying procedure that under this Part may be done on a suspect must be done in accordance with Part 9.

34. Identifying procedure, request to adult to undergo

(1) In this section —
“**suspect**” means a suspect who is an adult.

(2) If an officer reasonably suspects —

- 5 (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,

10 the officer may request the suspect to consent to an identifying
 procedure to obtain the identifying particular.

(3) An officer who requests a suspect to consent to an identifying
procedure must at the time inform the suspect of these
matters —

- 15 (a) the serious offence that the suspect is suspected of
 having committed and in relation to which the procedure
 relates;
- (b) the purpose of the procedure;
- (c) how the procedure will be done;
- 20 (d) that information derived from the procedure may be
 compared with or put in a forensic database;
- (e) that the procedure may provide evidence that could be
 used in a court against the suspect;
- (f) that the suspect may consent or refuse to consent to the
 procedure;
- 25 (g) that if the suspect does not 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.

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35. Identifying procedure, request for child to undergo

(1) In this section —

“**suspect**” means a suspect who is a child.

(2) If an officer reasonably suspects —

- 5 (a) that an 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,

10 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 person of these matters —

- 15 (a) the offence that the suspect is suspected of having committed and in relation to which the procedure relates;
(b) the purpose of the procedure;
(c) how the procedure will be done;
20 (d) that information derived from the procedure may be compared with or put in a forensic database;
(e) that the procedure may provide evidence that could be used in a court against the suspect;
(f) that the responsible person may consent or refuse to
25 consent to the procedure being done on the suspect;
(g) that if the responsible person does not consent —
(i) an application may be made for authority to do the procedure against the person’s will; and
(ii) if authority is given the procedure may be done
30 against the person’s will.

(4) The making of a request, and the giving of information, under this section must be done in the presence of the suspect.

36. Request and giving of information to be recorded

- 5 (1) An officer who makes a request under section 34 or 35 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, if that is not practicable, in writing.

37. Identifying procedure, when may be done

- 10 (1) If —
- (a) under section 34 a request is made to a suspect or under section 35 to a responsible person;
- (b) the suspect or responsible person is informed in accordance with section 34 or 35, as the case requires; and
- 15 (c) as the case requires, either —
- (i) the suspect who is 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 child,
- 20

then the identifying procedure may be done on the suspect.

- (2) If a suspect who is an adult, having been —
- (a) requested under section 34 to consent to an identifying procedure; and
- 25 (b) informed under that section,
- does not 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 41; or

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(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 35 to consent to an identifying procedure being done on a suspect who is a child; and

(b) informed under that section,

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

10 **38. Consent may be withdrawn**

(1) This section applies if section 37(1) provides that an identifying procedure may be done on a suspect.

(2) The suspect who is an adult and who has consented may withdraw his or her consent to undergoing the identifying procedure 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 child 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 37(2) or (3) applies, as the case requires.

39. 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 if under section 37(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 34 or 35 the investigation of the offence concerned would be prejudiced;

- (b) if under section 37(2) or (3) an IP warrant (suspect) is needed in order to do it; or
- (c) if the suspect is an incapable person.

5 **40. Non-intimate identifying procedure on adult, application to senior officer for approval**

- 10 (1) In this section —
 “suspect” means a suspect who is an adult.
- (2) An application for an approval under this section must be made to another officer who is a senior officer and who is 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 —
- 15 (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;
- 20 (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
- 25 committed the offence.

41. Non-intimate identifying procedure on adult, senior officer may approve

- 30 (1) On an application made under section 40 a senior officer may approve a non-intimate identifying procedure being done on a suspect against the suspect’s will.

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- (2) A senior officer must not give approval unless he or she is satisfied —
- (a) that the suspect is an adult;
 - (b) that the suspect has been informed in accordance with section 34;
 - (c) that in respect of the matters in section 40(4) about which the applicant is required to have a reasonable 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.

42. 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 13 —
 - (a) to a JP if the application is in respect of an adult or a child; or

- (b) to a magistrate if the application is in respect of an incapable 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;
 - (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 serious offence.

43. IP warrant (suspect), issue and effect of

- (1) On an application made under section 42 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 42(3) on which the applicant is required to have a reasonable 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;
 - (b) seek information or submissions from the Public Advocate; or

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- (c) if the warrant is issued, give a copy of it to the Public Advocate,

and may use remote communication to do so.

- (3) An IP warrant (suspect) must contain this information —

- 5 (a) the official details of the applicant;
- (b) the name of the suspect to whom it relates;
- (c) the offence to which it relates;
- (d) the identifying particular to be obtained;
- 10 (e) the period, not exceeding 14 days, during which it may be executed;
- (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 —

- 15 (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 procedure specified in it;
- and
- 20 (b) the doing of the procedure on the suspect against his or her will.

- (6) The powers in subsection (5)(a) may be exercised by —

- (a) if a police officer applied for the warrant, any police officer; or
- 25 (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

44. Interpretation

In this Part —

5 “**charged suspect**” means a person who has been charged with,
but not dealt with by a court for, a serious offence and it
does not matter whether or not the person is in lawful
custody for the offence;

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

- 10 (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) the person’s DNA profile;

“**serious offence**” means —

- 15 (a) an offence the statutory penalty for which is or
includes imprisonment; or
- (b) an offence under section 49, 63, 64 or 64AA of the
Road Traffic Act 1974.

45. Identifying particulars may be taken

- 20 (1) If an officer reasonably suspects that any or all of a charged
suspect’s identifying particulars —
- (a) are not or may not be held by the WA Police; or
- (b) are or may be needed to verify the person’s identity with
identification particulars already held by the WA Police,

25 the officer may order the suspect to undergo an identifying
procedure in order to obtain the particulars.

- (2) If a charged suspect does not obey an order made under
subsection (1) an officer may —

- 30 (a) if the suspect is not in custody — arrest the suspect and
detain him or her for a reasonable time in order to do the
identifying procedure; and

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- (b) do the identifying procedure on the suspect against the suspect's will.
- (3) The identifying procedure must be done in accordance with Part 9.

Part 8 — Identifying information of prescribed prisoners

46. Prescribed prisoners may be ordered to undergo identifying procedure

- 5 (1) In this section —
“**identifying particular**” has the meaning given by section 44;
“**prescribed prisoner**” means a person who is in lawful
custody in —
- 10 (a) a detention centre (as defined in section 3 of the
Young Offenders Act 1994); or
(b) a prison (as defined in the *Prisons Act 1981*),
other than a person who is on remand for, or serving a
sentence for, a serious offence;
- “**serious offence**” has the meaning given by section 44.
- 15 (2) For the purposes of this section, the superintendent of the
detention centre or prison in which a prescribed prisoner is in
custody is to inform the Commissioner of Police as soon as
practicable of the arrival of the prisoner.
- 20 (3) A police officer may order a prescribed prisoner to undergo an
identifying procedure for the purpose of obtaining one or more
of the prisoner’s identifying particulars.
- (4) A police officer must not make an order under subsection (3)
unless the officer reasonably suspects that any or all of the
prescribed prisoner’s identifying particulars —
- 25 (a) are not or may not be held by the WA Police; or
(b) are or may be needed in order to verify the prisoner’s
identity with identifying particulars already held by the
WA Police.

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- 5
- (5) If a prescribed prisoner does not obey an order made under subsection (3) a police officer may do the identifying procedure on the prisoner against the prisoner's will.
 - (6) An identifying procedure authorised by this section must be done in accordance with Part 9.

Part 9 — Doing identifying procedures

47. Interpretation

In this Part —

- 5 **“dentist”** means an individual who is registered under the
 Dental Act 1939;
- “doctor”** means an individual who is a medical practitioner
 within the meaning of the *Medical Act 1894*;
- “nurse”** means an individual who is registered under Part 3 of
 the *Nurses Act 1992*;
- 10 **“qualified”**, in relation to a person, means qualified under the
 regulations.

48. Application of this Part

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

49. General requirements

- 15 (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
20 person that it is an offence to obstruct the doing of it.
- (2) An intimate identifying procedure on a person —
- (a) must be done in circumstances affording reasonable
 privacy to the person; and
- (b) must not involve the removal of more clothing than is
25 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.

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- (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 person who can provide him or her with support.
- 5 (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 that which is reasonably necessary to ensure the procedure is done effectively and to ensure the safety of all present.
- 10 (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.
- 15 **50. People doing procedures, sex of**
- (1) A person who takes a photograph of a person, other than of the person's private parts, may be of either sex.
- (2) If practicable, the person who takes a print of a person's hands (including fingers) or feet (including toes) must be of the same
20 sex as that person.
- (3) Except as provided in subsections (1) and (2), the person who does an identifying procedure on a person must be of the same sex as that person unless the person who does it is —
- (a) a doctor;
- 25 (b) a dentist; or
- (c) a nurse.
- (4) A person who is present while an identifying procedure is done by a person on another person must, if practicable, be of the same sex as the person on whom the procedure is done.
- 30 (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.

51. Who may do an identifying procedure

When doing an identifying procedure on a person, a power in the Table to this section may only be done by a person specified opposite the power in the Table.

Table

	Power	Who may exercise it
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, nurse or qualified person
4.	Taking a sample of the person's hair other than pubic hair	Doctor, nurse or qualified person

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	Power	Who may exercise it
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

52. Personal details may be obtained as well

5 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 14(3) to (9), with any necessary changes, apply to and in relation to the request.

53. Samples etc., how to be taken

- 10 (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.
- 15 (2) The regulations may —
- (a) prohibit or regulate methods by which samples or impressions are taken or procedures are done under this Part;
 - (b) prescribe the equipment to be used for taking samples or impressions or doing procedures under this Part.

54. Procedures may be repeated

- (1) In relation to any one investigation, a person may be requested —
- 5 (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 to undergo the same identifying procedure on more than one occasion if on a previous occasion the procedure was
- 10 unsuccessful and it is reasonable to repeat the procedure.
- (3) A request under this section must be made in accordance with the other provisions of this Act.

55. People not obliged to do procedures

- Nothing in this Act requires a person —
- 15 (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 10 — Use and destruction of identifying information

56. Interpretation

In this Part —

- 5 **“forensic database”** means a database (whether or not on a
computer and however described), including a DNA
database, that contains —
- 10 (a) information in relation to the commission of an
offence that may identify the person who committed
it;
- (b) identifying information of people lawfully obtained
before the commencement of this Act;
- (c) identifying information of people (alive or deceased)
obtained under this Act; or
- 15 (d) identifying information of missing persons and their
relatives by blood;

“identifying information”, in relation to a person, means —

- 20 (a) any identifying particular obtained as a result of
doing an identifying procedure on the person;
- (b) any thing connected with 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,

25 and it does not matter in what form the information is kept.

For example: on paper or in an electronic or digitised form.

57. Volunteers, identifying information of

- (1) Unless subsection (2) applies, identifying information of a volunteer obtained under Part 4 Division 2 —
- (a) must not —
 - 5 (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 the decision of the volunteer, or responsible person, made or changed under
 - 10 section 17;
 - (b) if it is a DNA profile and may be compared with information in a DNA database, may only be compared in accordance with section 74; and
 - (c) must be destroyed in accordance with the decision of the
 - 15 volunteer, or responsible person, made or changed under section 17.
- (2) If a volunteer from whom identifying information is obtained under Part 4 Division 2 —
- 20 (a) is subsequently reasonably suspected of having committed a serious offence within the meaning of section 31, section 62 applies to the information; or
 - (b) is subsequently charged with a serious offence within the meaning of section 44, section 63 applies to the information,
 - 25 unless the information should have been destroyed by then.

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58. Uninvolved protected person, identifying information of

(1) Unless subsection (2) applies, identifying information of a protected person obtained under Part 4 Division 3 under an IP warrant (uninvolved person) —

- 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 the warrant;
- 10 (b) if it is a DNA profile and may be compared with information in a DNA database, may only be compared in accordance with section 74; and
- (c) must be destroyed in accordance with the warrant.

15 (2) If a protected person from whom identifying information is obtained under Part 4 Division 3 —

- (a) is subsequently reasonably suspected of having committed a serious offence within the meaning of section 31, section 62 applies to the information; or
- (b) is subsequently charged with a serious offence within the meaning of section 44, section 63 applies to the information,

unless the information should have been destroyed by then.

59. Deceased people, identifying information of

25 Identifying information of a deceased person obtained under Part 4 Division 4 —

- (a) may be compared with other information, whether or not in a forensic database, if a coroner has so directed;
- (b) may be put in a forensic database if a coroner has so directed;

- (c) if it is a DNA profile and may be compared with information in a DNA database, may only be compared in accordance with section 74; and
- (d) must be destroyed in accordance with any direction for destruction made by a coroner.

60. Officers and others, identifying information of

- (1) Identifying information of a person obtained under Part 4 Division 5 —
 - (a) with the approval of the Commissioner or the employing authority, as the case requires, may be compared with other information, whether or not in a forensic database;
 - (b) with the approval of the Commissioner of Police or the employing authority, as the case requires, may be put in a forensic database; and
 - (c) must be destroyed if the person, having ceased to be a person who, under section 21, may be required to undergo an identifying procedure, requests the Commissioner of Police or the employing authority, as the case requires, to destroy it.
- (2) An approval for the purposes of subsection (1) may apply generally or in relation to a specific case or class of case.

61. Involved people, identifying information of

- (1) Unless subsection (2) applies, identifying information of an involved person obtained under Part 5 —
 - (a) may be compared with other information, whether or not in a forensic database, as soon as it is obtained;
 - (b) may be put in a forensic database as soon as it is obtained;
 - (c) if it is a DNA profile, may only be compared with information in a DNA database in accordance with section 74; and

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- (d) must be destroyed if —
- (i) within 2 years after the information is obtained no person is charged with that offence; 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 66 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 within the meaning of section 31, section 62 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 within the meaning of section 44, section 63 applies to the information,
- unless the information should have been destroyed by then.

62. Uncharged suspects, identifying information of

- (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 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;
 - 5 (b) may be put in a forensic database as soon as it is obtained;
 - (c) if it is a DNA profile may only be compared with information in a DNA database in accordance with section 74; and
 - 10 (d) must be destroyed if —
 - (i) within 2 years after the information is obtained the suspect is not charged with a relevant offence; or
 - 15 (ii) the suspect is so charged but the charge is finalised without a finding of guilt,and destruction is requested under section 66 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 63 applies to the information unless the information should have been destroyed by then.
- 20

63. Charged suspects, identifying information of

- (1) Identifying information of a suspect obtained under Part 7 —
- (a) must not —
 - 25 (i) be compared with any other information, whether or not in a forensic database; or
 - (ii) be put in a forensic database,until after a complaint against the suspect in respect of the serious offence that he or she is suspected of having committed has been lodged in a court of summary jurisdiction;
- 30

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- 5
- (b) if it is a DNA profile and may be compared with information in a DNA database, may only be compared in accordance with section 74; and
- (c) must be destroyed if the charge against the suspect is finalised without a finding of guilt and destruction is requested under section 66 by or on behalf of the suspect.
- 10 (2) Subsection (1) also applies to and in respect of identifying particulars lawfully obtained before the commencement of Part 7.

64. Prescribed prisoners, identifying information of

Identifying information of a prescribed prisoner obtained under Part 8 —

- 15 (a) may be compared with other information, whether or not in a forensic database, as soon as it is obtained;
- (b) may be put in a forensic database as soon as it is obtained;
- 20 (c) if it is a DNA profile may only be compared with information in a DNA database in accordance with section 74; and
- (d) must be destroyed if —
- 25 (i) at the time it was obtained the prisoner was in lawful custody by reason only of having been charged with an offence other than a serious offence (within the meaning given by section 44); and
- (ii) the charge is finalised without a finding of guilt and destruction is requested under section 66 by or on behalf of the prisoner.

65. Results of matched information to be made available to suspects

(1) If —

5 (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

10 (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 a copy of the results of the comparison (including any report) is made available to the person.

15 (2) The copy must be made available to the suspect as soon as practicable after it is obtained unless to do so would prejudice the investigation of any offence.

66. Destruction of identifying information, request for

20 (1) If another provision of this Act says that a request may be made under this section for the destruction of identifying information, the request may be made —

(a) if the identifying information is that of a person who is an adult at the time the request may be made — by the adult;

25 (b) if the identifying information is that 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 that of a person who is an incapable person at the time the request may be made — by the Public Advocate.

30 (2) The request must be made to the Commissioner of Police.

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67. Destroying identifying information

- 5 (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, the personal details of the person whose identifying information it is and all means of connecting the identifying information with those personal details must be destroyed.
- 10 (3) If this Part requires identifying information to be destroyed, identifying information that consists of a DNA profile of a person may nevertheless be kept on a DNA database for statistical purposes if other identifying information that would enable the identity of the person to be discovered is destroyed.

15 **68. Destroying identifying information, responsibility for**

- (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.
- 20 (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 on a forensic database, the person who controls or manages the database must ensure it is destroyed.

25 **69. 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, the court may order that it be kept for a period set by the court.

- (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.

70. Disclosure of identifying information

- (1) A person who has or had access to identifying information obtained under this Act, whether or not in a forensic database, may only disclose the information as follows:
- (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;

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- 5
- (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 86(1);
 - (m) in accordance with the *Mutual Assistance in Criminal Matters Act 1987*, or the *Extradition Act 1988*, of the Commonwealth;
 - (n) for a purpose prescribed by the regulations.
- 10
- (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 or had access to identifying information, whether or not in a forensic database, must not disclose the information except as provided by this section.
- 15
- Penalty: Imprisonment for 2 years.

71. Illegal identifying information, improper use of

- (1) In this section —
- “illegal identifying information”** means identifying information —
- 20
- (a) that has not been obtained; or
 - (b) that has not been destroyed, in accordance with this Act or a corresponding law of a participating jurisdiction other than —
 - (c) identifying information that was lawfully obtained before the commencement of this Act and that is lawfully retained; and
 - (d) identifying information to which this Act does not apply.
- 25

- (2) For the purposes of this section a person improperly uses illegal identifying information if the person —
- (a) supplies the information to another person —
 - (i) to be analysed;
 - (ii) to be put in a forensic database; or
 - (iii) to be compared with other information, whether or not in a forensic database;
 - (b) analyses the information;
 - (c) compares the information with other information, whether or not in a forensic database;
 - (d) puts the information in a forensic database;
 - (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 improperly use the information.
- Penalty: Imprisonment for 2 years.

72. Legal identifying information, improper use of

- (1) In this section —
- “legal identifying information”** means identifying information —
- (a) that has been obtained in accordance with this Act; or
 - (b) that was lawfully obtained before the commencement of this Act and that is lawfully retained.
- (2) For the purposes of this section a person improperly uses legal identifying information if the person —
- (a) compares the information with other information, whether or not in a forensic database, otherwise than in accordance with this Part; or
 - (b) puts the information in a forensic database otherwise than in accordance with this Part.

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- (3) A person must not make improper use of legal identifying information.

Penalty: Imprisonment for 2 years.

Part 11 — DNA databases

73. Interpretation

In this Part —

“crime scene index” means an index of DNA profiles derived
5 from material obtained from —

- (a) a place (whether within or outside Australia) where
an offence under the law of this State, another State, a
Territory or the Commonwealth was, or is reasonably
suspected to have been, committed;
- 10 (b) on or in the body of a person who was involved when
such an offence was committed, whether as a suspect
for, or as a victim of, or as a witness to, the offence;
- (c) on or in anything worn or carried by a person referred
to in paragraph (b) at the time of the offence; or
- 15 (d) any thing in respect of which the offence was
committed or that was used in committing, or in
connection with committing, the offence,

together with information about when and where the DNA
profile was obtained, but does not include the DNA profile
20 of a person reasonably suspected to have committed the
offence that was obtained from that person;

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

- (a) the following indexes of DNA profiles —
 - 25 (i) a crime scene index;
 - (ii) a missing persons index;
 - (iii) an offenders index;
 - (iv) a suspects index;
 - (v) an unknown deceased persons index;
 - 30 (vi) a volunteers (limited purposes) index;
 - (vii) a volunteers (unlimited purposes) index;

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- (b) a statistical index; and
- (c) an index prescribed by the regulations;

“missing persons index” means an index of the DNA profiles of —

- 5
- (a) missing people; or
 - (b) volunteers who are relatives by blood of such people, together with the personal details of the people whose profiles they are to the extent that the details are known;

“offenders index” means an index of the DNA profiles obtained —

- 10
- (a) under Part 6 or 7 from suspects each of whom has been subsequently found guilty of the offence that he or she was suspected of having committed;
 - 15 (b) under clause 3 of Schedule 1 from remand prisoners each of whom has been subsequently found guilty of the offence that he or she was suspected of having committed;
 - (c) under clause 4 of Schedule 1 from serious offenders; or
 - 20 (d) under the corresponding laws of participating jurisdictions from people who have been convicted of offences under the laws of those jurisdictions,
- together with the personal details of the people whose profiles they are;

25 **“statistical index”** means an index of information —

- (a) that is obtained from the analysis of material obtained from people under this Act or under a corresponding law of a participating jurisdiction;
- 30 (b) that does not contain the personal details of any person whose DNA profile is in the index;
- (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;

“suspects index” means an index of the DNA profiles obtained —

- 5 (a) under Part 6 or 7 from suspects each of whom has not been found guilty of the offence he or she was suspected of having committed;
 - (b) under clause 3 of Schedule 1 from remand prisoners; or
 - 10 (c) under the corresponding laws of participating jurisdictions from people who are suspected of having committed, but who have not been convicted of, offences under the laws of those jurisdictions,
- together with the personal details of the people whose profiles they are;

“unknown deceased persons index” means an index of the DNA profiles obtained under Part 4 Division 4 from deceased people whose personal details are unknown, together with information about when and where the DNA profile was obtained;

“volunteers (limited purposes) index” means an index of the DNA profiles obtained —

- (a) under Part 4 Division 2 from volunteers;
 - (b) under Part 4 Division 3 from protected people;
 - 25 (c) under similar provisions in corresponding laws of participating jurisdictions from similar people; or
 - (d) under Part 4 Division 4 from deceased people,
- in respect of which there are limits as to the forensic purposes for which the DNA profiles may be used, together with the personal details of the people whose profiles they are;

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“volunteers (unlimited purposes) index” means an index of the DNA profiles obtained —

- (a) under Part 4 Division 2 from volunteers;
 - (b) under Part 4 Division 3 from protected people;
 - 5 (c) under similar provisions in corresponding laws of participating jurisdictions from similar people; or
 - (d) under Part 4 Division 4 from deceased people,
- in respect of which there are no limits as to the forensic purposes for which the DNA profiles may be used, together with the personal details of the people whose profiles they are.

74. DNA database indexes, permitted comparisons with

- (1) A DNA profile, whether or not in a DNA database, must not be compared with a DNA profile that is in a DNA database index if the Table to this section does not permit the comparison.
- 15 (2) If the Table to this section permits a comparison “if within limit” the comparison must not be made if the forensic purposes for which the DNA profile may be used, as decided under Part 4 Division 2 or 3, do not include the purpose for which the comparison is sought to be made.
- 20

Table showing permissible comparisons

DNA profile to be compared with information in DNA database	Information in DNA database						
	A	B	C	D	E	F	G
	Crime scene index	Suspects index	Volunteers (limited purposes) index	Volunteers (unlimited purposes) index	Offenders index	Missing persons index	Unknown deceased persons index
1 From crime scene	Yes	Yes	If within limit	Yes	Yes	Yes	Yes
2 Of suspect	Yes	Yes	No	Yes	Yes	Yes	Yes
3 Of volunteer (limited purposes)	If within limit	No	No	No	If within limit	If within limit	If within limit

DNA profile to be compared with information in DNA database	Information in DNA database						
	A	B	C	D	E	F	G
	Crime scene index	Suspects index	Volunteers (limited purposes) index	Volunteers (unlimited purposes) index	Offenders index	Missing persons index	Unknown deceased persons index
4 Of volunteer (unlimited purposes)	Yes	Yes	No	Yes	Yes	Yes	Yes
5 Of serious offender	Yes	Yes	No	Yes	Yes	Yes	Yes
6 Of missing person	Yes	Yes	If within limit	Yes	Yes	Yes	Yes
7 Of unknown deceased person	See s 59	See s 59	If within limit	See s 59	See s 59	See s 59	See s 59
8 Of involved person	Yes	Yes	If within limit	No	Yes	Yes	Yes
9 Of prescribed prisoner	Yes	Yes	If within limit	Yes	Yes	Yes	Yes

75. Database managers, duties of

(1) In this section —

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

5 (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;
- 10 (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 86(1).

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76. DNA databases, operators to be authorised

- (1) The Minister, in writing, may authorise a person, other than a police officer, to create, keep, operate, control or manage a DNA database.
- 5 (2) The Minister may at any time cancel such an authorisation.
- (3) 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 12 — Admissibility of evidence

77. Evidence of refusal of consent etc.

- 5 (1) Evidence that a person refused to, or did not, 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
- 10 (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, 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 —
- 15 (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
- 20 (b) to establish or rebut an allegation that an officer investigating the commission of an offence acted contrary to law in doing the investigation.

78. Evidence of conduct of procedure

- Evidence of how an identifying procedure was done is admissible in proceedings in court against a person —
- 25 (a) to establish or rebut an allegation that unreasonable force was used to do the procedure;
- (b) in connection with deciding the admissibility of a confession or other evidence adverse to the person where the person alleges it was induced or obtained by
- 30 the use of unreasonable force;

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

79. Evidence obtained illegally

- (1) This section applies to the following evidence —
 - 5 (a) any thing 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.
- 10 (2) This section does not apply to evidence to which section 80 applies.
- (3) If —
 - (a) an identifying procedure is done on a person; and
 - 15 (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 —

 - 20 (c) the person does not object to the admission of the evidence;
 - (d) the court decides otherwise under section 88; or
 - (e) the court is of the opinion that the contravention arose out of a mistaken but reasonable belief as to the age of a child.

25 **80. Evidence kept illegally**

- If under Part 10 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
 - 30 (b) may be admitted if it is adduced by that person.

81. 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;
- 5 (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 88.

Part 13 — Enforcement elsewhere in Australia

82. Interpretation

In this Part —

5 “**authorised officer**”, in relation to a participating jurisdiction,
means a person holding an office in that jurisdiction that is
prescribed under section 83;

“**corresponding law**” means a law prescribed under section 83
to be a corresponding law;

10 “**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;

15 “**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 83 to be
the Registrar.

83. Corresponding laws etc., prescription of

The regulations may —

- 20 (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;
- 25 (b) prescribe an office in a participating jurisdiction the
holder of which is an authorised officer for the purposes
of this Part;
- 30 (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) any matters that are necessary or convenient to be prescribed in relation to the registration and carrying out of forensic orders.

84. Forensic orders, registration of

- 5 (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.
- 10 (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.
- 15 (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.

85. Forensic orders registered in WA may be executed in WA

- 20 (1) In this section —
“**registered forensic order**” means a forensic order that is registered under section 84 for the purposes of this Part.
- (2) A registered forensic order has effect in this State according to its contents and, subject to this section, may be carried out accordingly.
- 25 (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 9.

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- 5 (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.

86. Arrangements for sharing information

- 10 (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 —
- 15 (a) information from the DNA database of this State is transmitted to the authorised officer of that jurisdiction;
- (b) information from the DNA database of that jurisdiction is transmitted to the Commissioner of Police;
- 20 (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.
- 25 (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
- 30 relates to be destroyed.

Part 14 — Miscellaneous

87. Legal protection for people acting under this Act

- (1) This section does not apply to a person to whom section 137 of the *Police Act 1892* applies.
- 5 (2) In this section —
- (a) a reference to the doing of anything includes a reference to an omission to do anything; and
- (b) a reference to the exercise of a power under this Part includes a reference to the exercise of a power in Part 2 in conjunction with the exercise of the power under this Part.
- 10 (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 Part.
- 15 (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.

88. Inadmissible evidence, court may admit

- 20 (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.
- 25 (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;

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- (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;
 - 5 (d) whether any contravention of this Act in obtaining the evidence was intentional or reckless;
 - (e) whether any contravention of this Act arose from an honest and reasonable mistake of fact;
 - (f) the probative value of the evidence;
 - 10 (g) any other matter the court thinks fit.
- (4) The probative value of the evidence does not by itself justify its admission.

89. Regulations

- 15 (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 —
 - 20 (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.

90. Review of Act

- 25 (1) The Minister is to carry out a review of the operation and effectiveness of this Act as soon as practicable after the expiry of 5 years from its commencement.
- (2) The Minister is to prepare a report based on the review and, as soon as is practicable after the report is prepared, is to cause the report to be laid before each House of Parliament.

Part 15 — Temporary provisions

91. People in custody and others, identifying particulars may be taken from (Sch 1)

- (1) Schedule 1 has effect.
- 5 (2) This section and Schedule 1 cease to have effect on the third anniversary of the commencement of this section.

92. Consequential amendments (Sch 2)

Each Act listed in Schedule 2 is amended as set out in that Schedule.

10

Schedule 1 — Obtaining and using identifying particulars of people in custody and others

[s. 91]

1. Interpretation

5 In this Schedule —

“identifying information”, in relation to a person, means —

- (a) any identifying particular obtained as a result of doing an identifying procedure on the person;
- (b) the personal details of the person obtained when the identifying particular was obtained;

“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) the person’s DNA profile.

2. Identifying procedures, doing of

20 An identifying procedure that under this Schedule may be done on a person, whether or not against the will of the person, must be done in accordance with Part 9.

3. Prisoners on remand

(1) In this clause —

25 **“remand prisoner”** means a person who has been charged with but not convicted of a serious offence and who has been remanded in custody by a court in relation to the offence;

“serious offence” means —

- (a) an offence the statutory penalty for which is or includes imprisonment; or

(b) an offence under section 49, 63, 64, or 64AA of the *Road Traffic Act 1974*.

- 5 (2) A police officer may order a remand prisoner to undergo an identifying procedure for the purpose of obtaining one or more of the prisoner's identifying particulars.
- (3) A police officer must not make an order under subclause (2) unless the officer reasonably suspects that any or all of the remand prisoner's identifying particulars —
- 10 (a) are not or may not be held by the WA Police; or
(b) are or may be needed in order to verify the prisoner's identity with identifying particulars already held by the WA Police.
- (4) If a remand prisoner does not obey an order made under subclause (2) a police officer may do the identifying procedure on the prisoner against the prisoner's will.
- 15 (5) Identifying information of a remand prisoner —
- (a) may be compared with other information, whether or not in a forensic database, as soon as it is obtained;
- (b) may be put in a forensic database as soon as it is obtained;
- 20 (c) if it is a DNA profile, may only be compared with information in a DNA database in accordance with section 74; and
- (d) must be destroyed if the charge, or all charges if there are more than one, in respect of which the prisoner was remanded in custody are finalised without a finding of guilt and destruction is requested under section 66 by or on behalf of
- 25 the prisoner.

4. Serious offenders

- (1) In this clause —
- “**serious offender**” means a person who has been found —
- 30 (a) guilty of a serious offence; or

Schedule 1 Obtaining and using identifying particulars of people in custody and others

(b) not guilty on account of unsoundness of mind of a serious offence;

“serious offence” means —

- 5
- (a) an offence the statutory penalty for which is or includes imprisonment; or
- (b) an offence under section 49, 63, 64, or 64AA of the *Road Traffic Act 1974*.

(2) This clause applies to a serious offender who is —

- 10
- (a) in custody in a detention centre (as defined in section 3 of the *Young Offenders Act 1994*), whether or not serving a sentence;
- (b) subject to a supervised release order made under the *Young Offenders Act 1994*;
- 15
- (c) in custody in a prison (as defined in the *Prisons Act 1981*), whether or not serving a sentence;
- (d) subject to an early release order made under the *Sentence Administration Act 1995* or the *Sentence Administration Act 1999*; or
- 20
- (e) subject to a custody order made under the *Criminal Law (Mentally Impaired Defendants) Act 1996*.

(3) A police officer may order a serious offender to whom this clause applies to undergo an identifying procedure for the purpose of obtaining one or more of the offender’s identifying particulars.

25

(4) A police officer must not make an order under subclause (3) unless the officer reasonably suspects that any or all of the serious offender’s identifying particulars —

- (a) are not or may not be held by the WA Police; or
- (b) are or may be needed in order to verify the prisoner’s identity with identifying particulars already held by the WA Police.

30

(5) If a serious offender does not obey an order made under subclause (3) a police officer may —

-
- (a) if the offender is not in custody — without a warrant, arrest and detain him or her for a reasonable time; and
- (b) do the identifying procedure on the offender against the offender's will.
- 5 (6) Identifying information of a serious offender —
- (a) may be compared with other information, whether or not in a forensic database, as soon as it is obtained;
- (b) may be put in a forensic database as soon as it is obtained;
- 10 (c) if it is a DNA profile, may only be compared with information in a DNA database in accordance with section 74; and
- (d) must be destroyed if the serious offender ceases to be a serious offender and destruction is requested under section 66 by or on behalf of the offender.

15 **5. Ministry of Justice CEO to assist WA Police**

In order to facilitate the exercise of the powers in this Schedule, the chief executive officer of the department principally assisting the Minister who administers the *Young Offenders Act 1994* and the *Prisons Act 1981* —

- 20 (a) is to provide the Commissioner of Police with such information as the Commissioner reasonably needs;
- (b) is to permit police officers to have reasonable access to detention centres, prisons, community corrections centres and other places under the control and management of that
- 25 department; and
- (c) is to provide reasonable assistance to police officers.

6. Destroying identifying information

Sections 66, 67, 68 and 69, with any necessary changes, apply to and in respect of identifying information obtained under this Schedule.

Schedule 2 — Consequential amendments

[s. 92]

1. Bail Act 1982

s. 12	Delete “section 50AA of the <i>Police Act 1892</i> .” and insert instead — “ Parts 6 and 7 of the <i>Criminal Investigation (Identifying People) Act 2000</i> . ”.
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2. Conservation and Land Management Act 1984

s. 124(1)(c)	Delete the paragraph.
s. 124(2)	Repeal the subsection and insert instead — “ (2) The offices of ranger and conservation and land management officer are each prescribed to be public officers for the purposes of the <i>Criminal Investigation (Identifying People) Act 2000</i> and as such may exercise the powers in Part 3 of that Act. ”.
s. 124(3)	Repeal the subsection.

3. Court Security and Custodial Services Act 1999

Schedule 2 clause 7(2)	Repeal the subclause and insert instead — “ <p>(2) Photographs, fingerprints, palmprints or other identification particulars of a person in custody that are taken under subclause (1) must be destroyed if —</p> <p>(a) within 2 years after the particulars are obtained the person is not charged with an offence arising out of the circumstances by reason of which the person is in custody; or</p> <p>(b) the person is so charged but the charge is finalised without the person being found guilty.</p> ”.
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4. The Criminal Code

s. 236	In the third paragraph delete “of the person’s blood, hair (from any part of the body), nails or saliva, or”. In the third paragraph delete “or obtainable by a buccal swab,”. After the last paragraph insert the following paragraph — “ <p>This section does not authorize the taking of an identifying particular (within the meaning of section 31 of the <i>Criminal Investigation (Identifying People) Act 2000</i>) and does not apply to such an identifying particular taken under that Act.</p> ”.
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Schedule 2 Consequential amendments

5. Parks and Reserves Act 1895

s. 7A(1)(b)	After the paragraph insert — “ and ”.
s. 7A(1)(c)	Delete “; and” after the paragraph and insert instead a comma.
s. 7A(1)(d)	Delete the paragraph.
After s. 7A(1)	Insert the following subsection — “ (1a) The offices of member of the Board and ranger appointed under section 7 are each prescribed to be public officers for the purposes of the <i>Criminal Investigation (Identifying People) Act 2000</i> and as such may exercise the powers in Part 3 of that Act. ”.

6. Police Act 1892

s. 50	Repeal the section.
s. 50AA	Repeal the section.

7. Waterways Conservation Act 1976

s. 63(7)(b)	After the paragraph insert — “ and ”.
s. 63(7)(c)	Delete “; and” after the paragraph and insert instead a comma.
s. 63(7)(d)	Delete the paragraph.
After s. 63(7)	Insert the following subsection — “ (7a) The offices referred to in subsection (1) are each prescribed to be public officers for the purposes of the <i>Criminal Investigation (Identifying People) Act 2000</i> and as such may exercise the powers in Part 3 of that Act. ”.

8. Wildlife Conservation Act 1950

Before s. 20(2)	Insert the following subsection — “ (1) The office of wildlife officer is prescribed to be a public officer for the purposes of the <i>Criminal Investigation (Identifying People) Act 2000</i> and as such may exercise the powers in Part 3 of that Act. ”.
s. 20(2)(b)	Delete the semicolon after the paragraph and insert instead a full stop.
s. 20(2)(c)	Delete the paragraph.

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Defined Terms

Defined Terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined Term	Provision(s)
adult.....	3(1)
authorised officer	82
child.....	3(1)
corresponding law	3(1), 82
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database manager	75(1)
dentist	47
DNA database	3(1)
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forensic database	3(1), 56
forensic purpose	3(1)
identifying feature	3(1)
identifying information.....	92
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identifying procedure.....	3(1)
illegal identifying information	71(1)
impression.....	3(1)
incapable person.....	3(1)
intimate identifying procedure	3(1)
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IP warrant (suspect).....	3(1)
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police officer	3(1)

Defined Terms

private parts	3(1)
protected person	3(1)
Public Advocate	3(1)
public officer	3(1)
qualified	47
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