

South Australia

Criminal Law (Forensic Procedures) Regulations 2022

under the *Criminal Law (Forensic Procedures) Act 2007*

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Schedule 1—Repeal of *Criminal Law (Forensic Procedures) Regulations 2007*

- 1 Repeal of *Criminal Law (Forensic Procedures) Regulations 2007*

Legislative history

1—Short title

These regulations may be cited as the *Criminal Law (Forensic Procedures) Regulations 2022*.

2—Commencement

These regulations come into operation on the day on which they are made.

3—Interpretation

In these regulations—

Act means the *Criminal Law (Forensic Procedures) Act 2007*.

4—Corresponding laws (section 3 of Act)

The following laws, as in force from time to time, are prescribed for the purposes of the definition of *corresponding law* in section 3(1) of the Act:

- (a) the *Crimes (Forensic Procedures) Act 2000* of the Australian Capital Territory;
- (b) Part ID of the *Crimes Act 1914* of the Commonwealth;

- (c) the *Crimes (Forensic Procedures) Act 2000* of New South Wales;
- (d) Part VII Division 7 of the *Police Administration Act 1978* of the Northern Territory;
- (e) Part 2 Division 3 of the *Youth Justice Act 2005* of the Northern Territory;
- (f) Chapter 17 of the *Police Powers and Responsibilities Act 2000* of Queensland;
- (g) the *Forensic Procedures Act 2000* of Tasmania;
- (h) Part III Division 1 Subdivision 30A of the *Crimes Act 1958* of Victoria;
- (i) the *Criminal Investigation (Identifying People) Act 2002* of Western Australia.

5—Blood testing for communicable diseases—Notice to accused (section 20B of Act)

- (1) If a forensic procedure consisting of the taking of a sample of blood is to be carried out on a person pursuant to section 20B of the Act, the authorising officer must, before the procedure is carried out—
 - (a) give the person written notice that—
 - (i) a sample of the person's blood is to be taken pursuant to section 20B of the Act; and
 - (ii) the blood will be tested for communicable diseases; and
 - (b) if the person is under the age of 16 years—take reasonable steps to give to the person's parent or guardian written notice of the matters set out in paragraph (a); and
 - (c) invite the person (or, if the person is under the age of 16 years, the person's parent or guardian) to nominate a medical practitioner to receive a copy of the results of the testing.
- (2) A failure to comply with a requirement of subregulation (1) in respect of a forensic procedure does not invalidate the forensic procedure or otherwise affect the authority to perform the forensic procedure and any testing on the material obtained from it.

6—Blood testing for communicable diseases—Notification of results to accused (section 20B of Act)

- (1) If a forensic procedure is carried out on a person pursuant to section 20B of the Act, the Commissioner of Police must take reasonable steps to notify the following persons of the results of testing for communicable diseases undertaken on the material obtained from the forensic procedure:
 - (a) the person on whom the forensic procedure was carried out;
 - (b) if the person is under the age of 16 years at the time the forensic procedure is carried out—the person's parent or guardian.
- (2) The Commissioner of Police is taken to have complied with the requirement of subregulation (1) to notify a person or the person's parent or guardian of the results of testing on provision of the results to a medical practitioner nominated by the person or the person's parent or guardian.

7—Blood testing for communicable diseases—Notification of results to affected person (section 20B of Act)

- (1) The Commissioner of Police must take reasonable steps to notify the following persons of the results of testing for communicable diseases undertaken on material obtained from a forensic procedure carried out pursuant to section 20B of the Act:
 - (a) each affected person;
 - (b) if the affected person is under the age of 16 years—the affected person's parent or guardian.
- (2) The Commissioner of Police is taken to have complied with the requirement of subregulation (1) to notify a person or the person's parent or guardian of the results of testing on provision of the results to a medical practitioner nominated by the person or the person's parent or guardian.
- (3) In this regulation—

affected person in relation to a forensic procedure, means a person engaged in prescribed employment referred to in section 20B(1)(b) of the Act who likely came into contact with, or was otherwise exposed to, biological material of the person on whom the forensic procedure is carried out.

8—Persons qualified to carry out forensic procedures (sections 24 and 55 of Act)

- (1) For the purposes of section 24(1)(b) and 55(5) of the Act—
 - (a) a person who is a registered nurse is qualified to carry out a forensic procedure of any type except the taking of a dental impression; and
 - (b) a police officer or a person authorised by the Commissioner of Police is qualified to carry out a forensic procedure (other than an intrusive forensic procedure) consisting of—
 - (i) the taking of prints of the hands, fingers, feet or toes; or
 - (ii) an examination of a part of a person's body; and
 - (c) a person who has satisfactorily completed a course of training approved for the purpose by the Minister is qualified to carry out a forensic procedure (other than an intrusive forensic procedure) consisting of 1 or more of the following:
 - (i) the taking of a sample of hair from a person's body;
 - (ii) the taking of a sample of fingernail or toenail, or material from under a fingernail or toenail;
 - (iii) the taking of a sample of biological or other material from an external part of the body;
 - (iv) the taking of a sample by buccal swab;
 - (v) the taking of a sample of blood by finger-prick for the purpose of obtaining a DNA profile;
 - (vi) the taking of an impression or cast of a wound.

- (2) A forensic procedure consisting of the taking of a sample of blood by finger-prick for the purpose of obtaining a DNA profile should only be carried out by a person in accordance with subregulation (1)(c)(v) if it is not appropriate, in the circumstances, to take a sample by buccal swab for the purpose of obtaining the DNA profile.

9—Confidentiality (section 50 of Act)

For the purposes of section 50(1)(p) of the Act, a purpose connected to the administration of Part 2 Division 4 of the Act is prescribed.

10—Release and disclosure for scientific purposes—prescribed authority (section 50A of Act)

For the purposes of section 50A(1) of the Act, a person for the time being performing the duties, or holding or acting in the position, of Director of Forensic Science SA is a prescribed authority.

11—Registration of orders (section 56 of Act)

- (1) The Minister will maintain a register of orders for the purposes of section 56(2) of the Act (the *Register*).
- (2) The Register—
- (a) may be kept in electronic form; and
 - (b) must contain the following particulars in relation to each order:
 - (i) the date on which and place at which the order was made;
 - (ii) the name of the court or authority that made the order;
 - (iii) the name of the person against whom the order was made;
 - (iv) the terms of the order.
- (3) If the Minister has entered into an arrangement with the Minister responsible for the administration of a corresponding law in accordance with section 56(2) of the Act, the Minister will, at the request of the Minister responsible for the administration of the corresponding law, register an order made under the corresponding law in the Register.
- (4) In any proceedings an apparently genuine document purporting to be a certified copy of, or extract from, the Register will be accepted, in the absence of proof to the contrary, as proof of the matters specified in the copy or extract.

Schedule 1—Repeal of *Criminal Law (Forensic Procedures) Regulations 2007*

1—Repeal of *Criminal Law (Forensic Procedures) Regulations 2007*

The *Criminal Law (Forensic Procedures) Regulations 2007* are repealed.

Legislative history

Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal regulations

Year	No	Reference	Commencement
2022	69	<i>Gazette 25.8.2022 p2618</i>	25.8.2022: r 2