

South Australia

## **Criminal Law (Forensic Procedures) Regulations 2007**

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

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### **Legislative history**

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#### **1—Short title**

These regulations may be cited as the *Criminal Law (Forensic Procedures) Regulations 2007*.

#### **3—Interpretation**

In these regulations—

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

*registered nurse* means a person registered under the *Health Practitioner Regulation National Law*—

- (a) to practise in the nursing and midwifery profession as a nurse (other than as a student); and
- (b) in the registered nurses division of that profession.

#### **4—Corresponding laws**

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 1D of the *Crimes Act 1914* of the Commonwealth;
- (c) the *Crimes (Forensic Procedures) Act 2000* of New South Wales;
- (d) Part 2 Division 3 of the *Youth Justice Act* of the Northern Territory;

- (e) Part VII Division 7 of the *Police Administration Act* 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.

#### **4A—Blood testing for communicable diseases—Notice to accused**

- (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) invite the person 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.

#### **4B—Blood testing for communicable diseases—Notification of results to accused**

- (1) The Commissioner of Police must take reasonable steps to notify a person on whom a forensic procedure is carried out pursuant to section 20B of the Act of the results of testing for communicable diseases undertaken on the material obtained from the forensic procedure.
- (2) The Commissioner of Police is taken to have complied with the requirement of subregulation (1) to notify a person of the results of testing on provision of the results to a medical practitioner nominated by the person.

#### **4C—Blood testing for communicable diseases—Notification of results to affected person**

- (1) The Commissioner of Police must take reasonable steps to notify each affected person 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.
- (2) The Commissioner of Police is taken to have complied with the requirement of subregulation (1) to notify a person of the results of testing on provision of the results to a medical practitioner nominated by the person.

- (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.

## 5—Persons qualified to carry out forensic procedures

- (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.

## 5A—Confidentiality

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.

## 6—Registration of orders

- (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.

### **7—Fees**

The fee for a copy of an audiovisual recording made under section 26 or 43 of the Act is \$10.

## 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](http://www.legislation.sa.gov.au).

### Legislation revoked by principal regulations

The *Criminal Law (Forensic Procedures) Regulations 2007* revoked the following:

*Criminal Law (Forensic Procedures) Regulations 1999*

### Principal regulations and variations

New entries appear in bold.

Year	No	Reference	Commencement
2007	58	<i>Gazette 10.5.2007 p1984</i>	14.5.2007: r 2
<b>2016</b>	<b>281</b>	<b><i>Gazette 8.12.2016 p4947</i></b>	<b>12.12.2016: r 2</b>

### Provisions varied

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
<i>r 2</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>12.12.2016</i>
r 3		
registered nurse	inserted by 281/2016 r 4	12.12.2016
rr 4A—4C	inserted by 281/2016 r 5	12.12.2016
r 5A	inserted by 281/2016 r 6	12.12.2016
<i>Sch 1</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>12.12.2016</i>