

Criminal Investigations (Bodily Samples) Amendment Bill

Government Bill

As reported from the Justice and Electoral
Committee

Commentary

Recommendation

The Justice and Electoral Committee has examined the Criminal Investigations (Bodily Samples) Amendment Bill and recommends that it be passed with the amendments shown.

Introduction

This bill amends the Criminal Investigations (Bodily Samples) Act 1995, in two stages. Initially the bill would allow the Police to collect, without prior judicial approval, a bodily sample from any person whom they “intend to charge” with certain specified offences. This would subsequently be expanded to allow the Police to collect a bodily sample from any person whom they intended to charge with an imprisonable offence.

This commentary covers the major amendments that we recommend. We also recommend minor and technical amendments to clarify the intent of the bill, which are not discussed in this commentary.

Judicial oversight

We are aware of considerable opposition to the bill because it does not provide for independent judicial oversight of the exercise of the Police's new power. It has been suggested that actions under the proposed amendments to the principal Act would constitute an unreasonable search and seizure in terms of section 21 of the New Zealand Bill of Rights Act 1990.

We understand that the bill as introduced does not require the Police to seek prior judicial approval, because many arrests are made outside of standard court hours. It would create judicial inconvenience if the Police were required to apply for a judicial order to enable a bodily sample to be taken from a person who had been arrested.

We also note that safeguards regarding the rights of individuals in the New Zealand Bill of Rights Act and to be included in the Police Operational Guidelines would render judicial oversight prior to taking the sample unnecessary. Section 6 of the New Zealand Bill of Rights Act requires an interpretation that is consistent with the Act be preferred when exercising a power contained in any enactment. The Police Operational Guidelines being developed by the New Zealand Police and the Ministry of Justice will guide the Police in the exercise of their new power by specifying the circumstances in which a sample is required.

New Zealand National members of the committee consider that these safeguards and the advantages of expanding the Police's ability to take bodily samples would outweigh any perceived advantages of requiring judicial oversight.

New Zealand Labour members of the committee, having carefully considered the Attorney-General's report to the House on the inconsistency with the New Zealand Bill of Rights Act 1990, felt strongly that there should be an amendment.

The amendment should provide for some form of judicial oversight when Police take a DNA sample. We do not think that there would be problems with the availability of Justices of the Peace after hours as predicted by officials. For example there does not appear to be a problem in gaining after-hours search warrants.

Labour members intend to table an amendment to this effect in the committee stage of the bill.

The Green Party agrees with the Attorney-General that extending the power of Police to take DNA databank samples to include people not charged with crimes and without judicial approval is contrary to the New Zealand Bill of Rights Act provision against unreasonable search and seizure.

The Green Party agrees with the Privacy Commissioner when she pointed to the particular dangers associated with the forced taking of DNA samples: “A DNA sample is not like a fingerprint—a fingerprint is nothing but identity, while DNA can reveal the most intimate details of a person’s makeup.” We also endorse her comment relevant to the bill’s lowering of the threshold for taking DNA samples beyond those provisions currently existing for serious criminals: “Some might say that people with nothing to hide have nothing to fear—I would turn that around. If a person has done nothing seriously wrong, then the Police don’t need his or her DNA.”

The Green Party favour the retention of the present system which requires judicial approval for the taking of DNA samples and where they are taken only from certain convicted offenders. The Green Party also supports the Privacy Commissioner’s recommendation for an independent oversight body for monitoring the taking of DNA samples by the Police.

New authority to take and retain bodily samples

Clause 7 of the bill as introduced inserts new Part 2B, which relates to the new authority to take bodily samples. This clause would also establish a database of DNA profiles derived from samples taken under new Part 2B, called the Part 2B temporary databank, and outlines the circumstances in which a sample taken under Part 2B might be stored on the database.

New authority to take bodily samples from persons of or over 17 years

New section 24J gives a constable the authority to take a bodily sample from a person who the Police “intend to charge” with a relevant offence, which are extended by the addition of offences listed in new Part 3 of the Schedule to the bill, or where the constable intends to bring proceedings against a person suspected of committing a relevant offence.

We recommend inserting clause 4(1A) to define “charge”, in order to reduce ambiguity in new section 24J, and in other provisions in the bill as introduced that refer to a person being “charged” as triggering certain action. We note that our recommended definition of “charge” is consistent with the phrase to “bring proceedings against a person” contained in new section 24J(1)(b).

New authority to take bodily sample from young persons

As introduced, new section 24K sets out additional criteria that must be met before a bodily sample can be taken from a young person.

We note that section 208 of the Children, Young Persons, and Their Families Act 1989 provides, amongst other things, that the Police should adopt a diversionary approach to proceedings against a young person, unless the public interest requires otherwise. In applying this principle the Police have already established practices and systems to avoid unnecessary criminal charges being brought against young people and to keep them out of the courts and criminal justice system. We consider that the provisions of the Children, Young Persons, and Their Families Act should take precedence over the amendments proposed by the bill. We therefore recommend replacing new sections 24K(1) and 24K(2) with proposed new section 24K(1). This would ensure that the protections for young people contained in the Children, Young Persons, and Their Families Act would continue to apply in relation to the exercise of the new authority in new section 24K. It would also mean that, subject to the protections outlined in clause 15, a DNA sample could be taken from a young person under similar circumstances as from an adult.

Information that may be kept on Part 2B temporary databank

We recommend amending new section 24P to provide that a DNA profile might be stored on the Part 2B temporary databank if the person from whom the sample was taken had been charged with a related “relevant offence”. As introduced, new section 24P provides that this information will be held on the temporary databank if the individual has been charged with a triggering offence or a related offence. The unqualified use of the term “related offence” could allow a DNA profile to be retained for very minor offences, which did not fall within the definition of “relevant offence” set out in the principal

Act and as amended by the bill. Our amendment would ensure that DNA profiles were not obtained for a wider range of offences than was intended.

We note that this amendment would entail consequential amendments to clauses 8, 21, and 22.

Information that may be kept on DNA profile databank

Clause 8 amends section 26 of the principal Act to specify when a DNA profile derived from a sample taken from a person under new Part 2B may be stored on the DNA profile databank.

We are aware of concern about the circumstances in which a DNA profile of a young person would be stored on the DNA profile databank. Clause 8 of the bill as introduced provides that a young person's DNA profile will be retained if a sentence of imprisonment is imposed for the offence, the Youth Court makes an order under section 282 or section 283 of the Children, Young Persons, and Their Families Act, or the court makes an order discharging the person without conviction under the Sentencing Act 2002.

We note that if an adult were discharged under section 106 of the Sentencing Act their DNA profile would not be retained. To ensure consistent treatment of DNA profiles of adults and young people, we recommend amending clause 8(2) to provide that where a young person has been discharged under section 106 of the Sentencing Act their DNA profile will not be retained.

We accept that where a young person receives an order under section 282 of the Children, Young Persons and Their Families Act their DNA profile should be retained, as such orders are often reflective of the seriousness of the charges involved. However we note that section 282 of the Children, Young Persons, and Their Families Act allows orders to be made where lesser offending is involved or where the offending by the young person has not been proven. We recommend amending clause 8(2) to provide that only where an offence had been proven under section 282 of the Children, Young Persons, and Their Families Act should the DNA profile be retained on the DNA profile databank. This amendment would also ensure consistency with the way the DNA profiles of adult offenders are treated.

We recommend amending clause 8 to define a young person in terms of the date of the offence rather than the date of the conviction. As introduced, clause 8 refers to a young person who was a young person on the date of sentence. We consider that this would limit unduly the information about young people that could be kept on the DNA profile databank, and note that our amendment would be consistent with the Children, Young Persons, and Their Families Act which takes the relevant age of the young person to be the date of the offence.

Removal of certain DNA profiles from DNA profile databank

Clause 9 of the bill as introduced provides for the removal of certain profiles from the DNA profile databank after certain periods if the individual concerned has not re-offended. We recommend replacing clause 9 of the bill as introduced with new clause 9 to improve the retention period regime.

New clause 9 provides that where a young person receives an order under section 283 of the Children, Young Persons, and Their Families Act their DNA profile should be retained for 10 years, rather than seven as set out in the bill as introduced. This is consistent with evidence that if a young offender reaches the age of 25 without re-offending the chance of his or her re-offending is very small. We also note that this amendment is also consistent with the retention period for adults.

Clause 9 of the bill as introduced provides that where a young person has re-offended their DNA profile will be held on the DNA profile databank indefinitely. To provide an incentive for young offenders to reform and to recognise any progress that they are making toward reform, we recommend that new clause 9 provide that where a young person re-offends the period for which their sample is retained is set according to the severity of the penalties handed down in subsequent proceedings.

Certain young persons may apply for removal of DNA profiles from DNA profile databank

Our recommended new clause 9 inserts new section 26B to provide that where a young person has their DNA profile on the DNA profile databank, as a result of an order under sections 282 or 283 of the

Children, Young Persons, and Their Families Act being made before the bill's proposed amendments come into force, this young person may apply to the Commissioner of Police to have their profile removed from the databank if they have received no further conviction within the 10 years following the receipt of the order. This ensures that the same retention regime as proposed by the bill would apply to a young person whose DNA profile is currently on the databank.

Young person's entitlement to have certain other persons present

New section 24K(3) (clause 7) requires that a sample taken from a young person arrested or intended to be charged with a relevant offence must be taken in accordance with the procedure set out in Part 4 of the principal Act. Clause 15 of the bill as introduced amends Part 4 of the principal Act by inserting new sections 50A and 50B to give a young person the same entitlement to have another person present when a sample is being taken under Part 2B as for a sample taken under other parts of the principal Act.

We recommend amending new section 50A, by inserting new section 50A(5), to clarify that while the young person does not have the choice as to whether other persons should be present during the taking of the sample, the young person does have the choice as to who those other persons would be.

We are concerned that allowing a young person to choose whether to have other persons present when a sample is being taken under Part 2B would create unnecessary detention due to delay. To address this we recommend amending new section 50B as inserted by the bill as introduced, and inserting new sections 50C and 50D. These new sections would give the Police the authority to nominate another person to be present during the taking of the sample, if the Police had reasonable grounds to believe that the person nominated by the young person could not be located within a reasonable period of time or where the young person fails or refuses to nominate another person to be present.

We further note that these amendments would ensure consistency with section 222 of the Children, Young Persons, and Their Families Act, which specifies the process that must be followed when a young person is being interviewed by the Police and the people who

may be nominated by the young person to be present when the interview is taking place.

Information that may be admissible in criminal proceedings

We recommend inserting new section 71A (new clause 25A) to allow the Police to apply to a District Court or Youth Court Judge for consent for bodily samples taken under new Part 2B to be retained and used by the Police as an evidential sample. New clause 25A sets out the procedure for an application to the District Court or Youth Court, and specifically that the application must be made before the sample has been analysed by or on behalf of the Police. This eliminates the need for the Police to take and process a second bodily sample from the person concerned if a sample is subsequently needed as evidence in a prosecution.

Information relating to bodily samples to be included in the annual report of the New Zealand Police

Clause 26 amends section 76 of the principal Act to require certain information relating to bodily samples to be included in the annual report of the New Zealand Police. We recommend amending clause 26(2) to include in the annual report of the New Zealand Police information relating to the number of young persons from whom samples were taken. Recording this information would make it possible to monitor the impact of the bill's amendments on young people and would help to ensure that young people were adequately protected by the proposed changes.

Savings provision relating to new relevant offences

As introduced the bill does not include any savings or transitional provisions to address extending the Police's ability to take samples for all imprisonable offences. We note that such a provision is needed to ensure that nothing in Part 3 of the principal Act would apply to a person who had been convicted, before the bill's commencement, of the new relevant offences added by the bill; we recommend inserting clause 29A accordingly.

Extension of authority to take and retain bodily samples

Clauses 31 to 46 of the bill as introduced amend Parts 2, 2B, and 3 of the principal Act to extend the authority to obtain a DNA sample from suspected persons. Primarily these clauses would permit a sample to be taken from a person suspected of committing an imprisonable offence and allow a compulsion order application to be made to the District Court to allow a sample to be taken from a person suspected of committing an imprisonable offence who had refused to consent to the taking of a bodily sample.

We are aware of concern about the staged implementation of the extended authority and the reasons behind the extension. We consider that the staged implementation of these proposed changes would allow more information to be gathered on the costs and impacts of full implementation. It would also allow the Institute of Environmental Science and Research to increase its capacity to deal with the larger workload resulting from the new regime.

Regarding the change to the threshold for taking and retaining DNA samples, we consider that expanding the authority would increase the likelihood of links being made to unsolved crime scene samples, and it might expedite some criminal investigations.

We note that the bill as introduced inserts new Part 3 to the Schedule of the principal Act to expand the range of relevant offences; one of the new relevant offences is “peeping and peering”. As this is not an imprisonable offence the Police would not be able to take a DNA sample from a person suspected of it. We consider that it would be inconsistent to allow a DNA sample to be taken from a person whom the Police intend to charge with peeping and peering when a DNA sample cannot be taken under the bill’s amendments to Part 2 of the principal Act. We therefore recommend amending clauses 31 to 46 to ensure that these provisions also refer to an offence listed in Part 3 of the Schedule.

Interpretation

As introduced clauses 31 to 46 transfer various orders in the principal Act from the High Court to the District Court. We recommend inserting a definition of District Court into clause 30 to make it clear that where functions regarding DNA are transferred to the District

Court they may also be performed by the Youth Court. We consider that where an alleged offender was subject to the Youth Court's jurisdiction it would be more appropriate for the Youth Court to exercise the functions proposed by the bill and set out in the principal Act.

Extension of authority to take bodily sample from young persons

We recommend deleting clause 43 of the bill as introduced. This would mean that the extension of the authority to take a DNA sample from a person suspected of committing an imprisonable offence would not apply to a young person aged between 14 and 17 years. This recognises our recommended amendment to new section 24K to ensure that the protections for young people contained in the Children, Young Persons, and Their Families Act, particularly the principle that the Police should adopt a diversionary approach to proceedings against a young person, are exercised.

Removal of certain DNA profiles from DNA profile databank

Clause 45 of the bill as introduced amends section 26A of the principal Act to provide a mandatory retention period of 10 years for samples from individuals convicted of an offence that is not a relevant offence. If the individual does not commit another offence in the 10 years after the initial conviction that person's DNA profile would be removed from the DNA profile databank.

We consider that it would be more appropriate to provide that where the initial conviction is subject to a sentence of imprisonment, the 10-year retention period should start once the prison sentence has ended; we recommend amending clause 45 accordingly.

As introduced the bill does not address how long the DNA profile of a young person who receives a community-based sentence will be retained. We recommend that clause 45 be amended to provide that the DNA profile of such a young person is subject to a 10-year mandatory retention period.

Issue and service of databank compulsion notice

We recommend inserting new clause 45B to amend section 39 of the principal Act to extend the Police's ability to obtain a databank compulsion notice from a person who has refused to allow a DNA

sample to be taken and who has been convicted of an imprisonable offence. The bill as introduced does not extend databank compulsion notices to take into account the extended authority to take a DNA sample.

Extension of period for which sample may be retained

We recommend inserting clause 47 to allow an application made under sections 61(1) and 61(3) of the principal Act to extend the period in which a sample may be retained, to be considered by the District Court. As introduced the bill is silent as to whether such an application would also be transferred to the jurisdiction of the District Court.

Appendix

Committee process

The Criminal Investigations (Bodily Samples) Amendment Bill was referred to us on 12 February 2009. The closing date for submissions was 6 April 2009. We received and considered 19 submissions from interested groups and individuals. We heard eight submissions.

We received advice from the Ministry of Justice, the New Zealand Police, and the Institute of Environmental Science and Research.

Committee membership

Chester Borrows (Chairperson)

Jacinda Ardern

Kanwaljit Singh Bakshi

Simon Bridges

Dr Kennedy Graham

Hon Nathan Guy (from 24 June 2009)

Hon David Parker

Lynne Pillay

Paul Quinn

Dr Richard Worth (until 16 June 2009)

**Criminal Investigations (Bodily Samples)
Amendment Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Simon Power

Criminal Investigations (Bodily Samples) Amendment Bill

Government Bill

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Extension of authority to take and retain bodily samples

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Criminal Investigations (Bodily Samples) Amendment Act **2009**.

2 Commencement

- (1) This Act, except for **Part 2**, comes into force on a date to be appointed by the Governor-General by Order in Council. 5
- (2) **Part 2** comes into force on a date to be appointed by the Governor-General by Order in Council, which date must not be earlier than the date appointed under **subsection (1)**.

3 Principal Act amended

This Act amends the Criminal Investigations (Bodily Samples) Act 1995.

Part 1

New authority to take and retain bodily samples, and other amendments to principal Act 5

Preliminary provisions

4 Interpretation

(1A) Section 2(1) is amended by inserting the following definition in its appropriate alphabetical order: 10

“**charged**, in relation to a person, means that an information charging the person with an offence has been filed in a District Court or Youth Court and a summons or warrant to arrest the person has been issued in respect of the offence charged”. 15

(1) Section 2(1) is amended by repealing the definition of **independent adult** and substituting the following definition:
“**independent adult** has the meaning given to it in **section 2A**”.

(2) Section 2(1) is amended by inserting the following definition in its appropriate alphabetical order:
“**Part 2B temporary databank** means a database maintained under **section 24O**”.

(3) The definition of **relevant offence** in section 2(1) is amended by inserting the following paragraph after paragraph (b): 25
“(ba) an offence against any of the provisions listed in **Part 3** of the Schedule; or”.

(4) Paragraphs (c) and (d) of the definition of **relevant offence** in section 2(1) are amended by omitting “1 or Part 2” and substituting in each case “1, 2, or **3**”. 30

(5) Section 2(1) is amended by inserting the following definitions in their appropriate alphabetical order:
“**triggering offence** means the particular offence that has triggered the authority to take a bodily sample under **section 24J** or, as the case may be, **section 24K** in a given case 35

“**young person** means a person of or over 14 years of age but under 17 years of age”.

5 New section 2A inserted

The following section is inserted after section 2:

“2A Meaning of independent adult 5

For the purpose of this Act, **independent adult**,—

- “(a) in relation to a suspect under the age of 17 years who has consented to the taking of a bodily sample as a result of a suspect request or a Part 2A request and who has elected to take a buccal sample himself or herself, means,— 10
- “(i) if a parent or other person having the care of the suspect is present under section 50(1)(b), that parent or person; or
- “(ii) if a person referred to in **subparagraph (i)** is not present but the suspect, or, if section 50(3) applies, the suspect’s parent or other person having care of the suspect, has chosen to have a lawyer or other person present under section 50(1)(a), that lawyer or other person; or 15
- “(iii) if none of the persons referred to in **subparagraphs (i) and (ii)** is present, any person of or over the age of 17 years, who must not be a Police employee within the meaning of section 4 of the Policing Act 2008,— 20
- “(A) chosen by the suspect; or 25
- “(B) if the suspect fails or refuses to choose, chosen by a constable:
- “(b) in relation to a young person from whom a bodily sample is being taken under **Part 2B**, means—
- “(i) if a parent or other person having the care of the young person is present under **section 50A(2)(b)**, that parent or person; or 30
- “(ii) if a person referred to in **subparagraph (i)** is not present but the young person, or, if **section 50A(4)** applies, the young person’s parent or other person having care of the young person has chosen to have a lawyer or other person present 35

- under **section 50A(2)(a)**, that lawyer or other person; or
- “(iii) if none of the persons referred to in **subparagraphs (i) and (ii)** is present, any person of or over the age of 17 years, who must not be a Police employee within the meaning of section 4 of the Policing Act 2008,—
- “(A) chosen by the young person; or
- “(B) if the young person fails or refuses to choose, chosen by a constable.”

Amendment to Part 2 of principal Act

6 New section 5A inserted

The following section is inserted after section 5:

“5A Relationship to Part 2B

The authority in this Part to take, or order the taking of, a bodily sample from a person in respect of an offence is not limited by the fact that a bodily sample has been taken from that person under **Part 2B** (whether in respect of that offence or a different offence).”

New authority to take bodily samples 20

7 New Part 2B inserted

The following Part is inserted after section 24I:

“Part 2B

“Taking bodily sample from person arrested or intended to be charged with relevant offence 25

“24J Authority to take bodily sample from person of or over 17 years arrested or intended to be charged with relevant offence

- “(1) A constable may require a person who is of or over the age of 17 years to give a bodily sample if either—
- “(a) the person is in the lawful custody of the Police and being detained for committing a relevant offence and is at a Police station or at any other place being used for Police purposes; or

- “(b) a constable has good cause to suspect the person of committing a relevant offence and intends to bring proceedings against the person in respect of that offence by way of summons.
- “(2) The sample must be taken in accordance with the procedures set out in Part 4. 5
- “(3) If **subsection (1)(b)** applies, a constable may detain the person at any place—
- “(a) in order for the bodily sample to be taken; and
- “(b) only for the period necessary in order for the bodily sample to be taken. 10
- “**24K Authority to take bodily sample from young person arrested or intended to be charged with relevant offence**
- “(1) A constable may require a young person to give a bodily sample if— 15
- “(a) either—
- “(i) the person is in the lawful custody of the Police and being detained for committing a relevant offence and is at a Police station or at any other place being used for Police purposes; or 20
- “(ii) a constable has good cause to suspect the person of committing a relevant offence and intends to bring proceedings against the person in respect of that offence by way of summons; and
- “(b) either or both of the circumstances specified in **paragraphs (a) and (b) of subsection (2)** apply. 25
- “(c) the sample is taken in accordance with the procedures set out in Part 4.
- “(2) The circumstances referred to in **subsection (1)(b)** are—
- “(a) that the maximum term of imprisonment for the offence is 7 years or more or imprisonment for life; 30
- “(b) that the person—
- “(i) has 1 or more previous convictions; or
- “(ii) has had an alternative resolution imposed where that person admitted to an offence for which the person had been charged (for example, diversion); or 35

~~“(iii) has admitted to an offence and been the subject of a family group conference under Part 4 of the Children, Young Persons, and Their Families Act 1989.~~

“(1) A constable may require a young person to give a bodily sample if either— 5

“(a) the person has been arrested for a relevant offence; or

“(b) a constable has good cause to suspect the person of committing a relevant offence and intends to bring proceedings against the person in respect of that offence by way of summons. 10

“(3) The sample must be taken in accordance with the procedures set out in Part 4.

“(4) If ~~subsection (1)(a)(ii)~~ **(1)(b)** applies, a constable may detain the person at any place— 15

“(a) in order for the bodily sample to be taken; and

“(b) only for the period necessary in order for the bodily sample to be taken.

“24L Relationship to Part 2

Nothing in Part 2 limits the authority to take a bodily sample conferred by **section 24J or 24K.** 20

“24M Information to be given to person

If a constable proposes to require a person to give a bodily sample under **section 24J or 24K**, the constable must—

“(a) hand to the person a written notice containing the particulars specified in **section 24N**; and 25

“(b) inform the person in a manner and in language that the person is likely to understand—

“(i) what the triggering offence is; and

“(ii) of the effect of **sections 24P and 24R**; and 30

“(iii) of the effect of sections **48A, 49, 49A, 50A, 50B, and 54A**; and

“(iv) that the sample will be analysed; and

“(v) that a DNA profile derived from the sample cannot be used as evidence in criminal proceedings; 35
and

“(vi) of the effect of **section 26(ab) and (ac)**; and

“(vii) of the effect of **section 60A**.

“**24N Form and content of notice**

A notice given under **section 24M**—

- “(a) must be in the prescribed form; and
- “(b) must contain the following particulars: 5
 - “(i) a reference to the triggering offence:
 - “(ii) a statement of the effect of **sections 24P and 24R**:
 - “(iii) a summary of the provisions of sections **48A**, 49, 49A, **50A**, **52B** and **54A** relating to the procedure 10 for taking the sample:
 - “(iv) a summary of the provisions of sections 55, 56, and 56A relating to the procedures for the analysis of the sample and the disclosure of the results of the analysis: 15
 - “(v) a statement of the effect of **section 26(ab) and (ac)**:
 - “(vi) a reference to the provisions of **section 60A** relating to the destruction of the sample and of any information derived from any analysis of the 20 sample:
 - “(vii) any other particulars that may be prescribed.

“**24O Part 2B temporary databank**

There may be maintained (whether in computerised form or otherwise), by or on behalf of the Police, a database of DNA 25 profiles derived from bodily samples taken under this Part.

“**24P Information that may be kept on Part 2B temporary databank**

A DNA profile derived from a bodily sample taken under this Part may be stored on a Part 2B temporary databank only if— 30

- “(a) the person from whom the bodily sample was taken has been charged with the triggering offence, or a related relevant offence; and
- “(b) circumstances have not yet arisen where—
 - “(i) records of the DNA profile must be destroyed 35 under **section 60A**; or

“(ii) the DNA profile may be stored on a DNA profile databank under **section 26(ab) or (ac)**.

“**24Q Removal of DNA profiles from Part 2B temporary databank**

When either of the circumstances in **section 24P(b)(i) or (ii)** 5
~~have~~ has arisen in relation to a DNA profile the DNA profile must be removed from the Part 2B temporary databank.

“**24R Access to and disclosure of information on Part 2B temporary databank**

“(1) Subject to **subsections (2) to (5)**, no person may have access 10
to any information stored on a Part 2B temporary databank, and no person may disclose any of that information, except for 1 or more of the following purposes:

“(a) to compare with unidentified DNA information obtained from the scenes of offences under investigation 15
or otherwise in respect of which a conviction or further conviction is yet to be obtained, for the purpose of a criminal investigation by the Police into the triggering offence or any other offence:

“(b) for the purpose of making the information available, in 20
accordance with the Privacy Act 1993, to the person to whom the information relates:

“(c) for the purpose of administering the Part 2B temporary databank.

“(2) For the purposes of **subsection (1)(a)**, DNA information is 25
unidentified if no Police investigation has established the particular person to whom the DNA information relates.

“(3) Nothing in this section applies in relation to information that does not identify any person.

“(4) Nothing in this section limits the jurisdiction of the Privacy 30
Commissioner under the Privacy Act 1993 to investigate any complaint made under Part 8 of that Act.

“(5) Nothing in this section prohibits access to, or the disclosure of, any information for the purposes of—

“(a) any application for a compulsion order; or 35

“(b) the issuing of a databank compulsion notice or the making of a Part 3 order; or

“(c) the prosecution of an offence against section 77(2).

“24S Access to and use of bodily samples taken under this Part

No person may have access to, and no person may use, any bodily sample taken from any person under this Part except for the purpose of deriving from that sample a DNA profile— 5

“(a) for the purposes of this Part; and

“(b) where applicable, for storage on a DNA profile databank in accordance with **section 26(ab) or (ac)**.”

Other amendments to principal Act

8 Information that may be kept on DNA profile databank 10

(1) Section 26 is amended by inserting “, **60A**,” after “60”.

(2) Section 26 is amended by inserting the following paragraphs after paragraph (a):

“(ab) any DNA profile derived from a bodily sample taken from a person under **Part 2B** if— 15

“(i) that person is convicted of the triggering offence, or of a related relevant offence (unless the conviction is subsequently quashed); and

“(ii) the offence of which the person is convicted is a relevant offence; and 20

“(iii) in the case of a person who was a young person on the date of the ~~conviction~~ offence, a sentence of imprisonment or of a non-custodial nature is imposed for the offence or ~~the~~ a Youth Court makes an order under section 283 of the Children, Young Persons, and Their Families Act 1989: 25

“(ac) any DNA profile derived from a bodily sample taken from a young person under **Part 2B** if—

“(i) ~~the Youth Court made an order under section 282 of the Children, Young Persons, and Their Families Act 1989 discharging the information in relation to the offence; or any court made an order under section 106 of the Sentencing Act 2002; and~~ 30

“(i) a Youth Court made an order under section 282 of the Children, Young Persons, and Their Fam- 35

ilies Act 1989 discharging the information relating to the offence after finding that the offence was proved; and

“(ii) the offence in relation to which the order was made is a relevant offence, or a related offence:”. 5

9 New section 26A inserted

The following section is inserted after section 26:

“26A Removal of certain DNA profiles from DNA profile databank

“(1) **Subsection (2)** applies to a person’s DNA profile if it is stored on a DNA profile databank under section 26(a) or **26(ab)**: 10

“(2) The profile must be removed from the databank within the period specified in **subsection (5)** if—

“(a) the person was under 17 years of age on the date of the offence referred to in section 26(a) or, as the case may be, **section 26(ab)**; and 15

“(b) either—

“(i) the Youth Court made an order under section 283 of the Children, Young Persons, and Their Families Act 1989; or 20

“(ii) the conviction for that offence was by a District Court (rather than a Youth Court) and a sentence of imprisonment was not imposed for the offence; and

“(c) since the date of that conviction,— 25

“(i) the person has not been convicted of another imprisonable offence; and

“(ii) no order under section 282 of the Children, Young Persons, and Their Families Act 1989 has been made in relation to the person for an imprisonable offence. 30

“(3) **Subsection (4)** applies to a person’s DNA profile if it is stored on a DNA profile databank under **section 26(ac)**:

“(4) The profile must be removed from the databank within the period specified in **subsection (5)** if— 35

“(a) the person was a young person on the date of the offence; and

- “(b) the Youth Court made an order under section 282 of the Children, Young Persons, and Their Families Act 1989 discharging the information in relation to the offence or any court made an order under section 106 of the Sentencing Act 2002; and 5
- “(e) since the date of that order,—
- “(i) the person has not been convicted of another imprisonable offence; and
- “(ii) no order under section 282 of the Children, Young Persons, and Their Families Act 1989 has been made in relation to the person for an imprisonable offence. 10
- “(5) The following are the periods referred to in **subsections (2) and (4)**:
- “(a) in respect of **subsection (2)**, no later than 7 years after the date of the conviction; and 15
- “(b) in respect of **subsection (4)**, no later than 4 years after the date of the order referred to in **subsection (4)(b)**.²²

9 **New sections 26A and 26B inserted**

The following sections are inserted after section 26: 20

“26A Removal of certain DNA profiles from DNA profile databank

- “(1) A DNA profile stored on a DNA profile databank must be removed from the databank and destroyed before the expiry of all fixed periods (**retention periods**) specified in **subsection (4)** that apply to the storage of the profile. 25
- “(2) In the case of a person’s DNA profile stored under section 26(a) or **(ab)**, the storage of the profile is subject to **subsection (4)** if—
- “(a) the person was a young person on the date of the offence; and 30
- “(b) any of the following applies:
- “(i) a Youth Court made an order under one or more of paragraphs (a) to (n) of section 283 of the Children, Young Persons, and Their Families Act 1989; or 35
- “(ii) a Youth Court made an order under section 283(o) of the Children, Young Persons, and

- Their Families Act 1989 but no court imposed a sentence of imprisonment for the offence; or
“(iii) a District Court (rather than a Youth Court) convicted the person of the offence but did not impose a sentence of imprisonment. 5
- “(3) In the case of a profile stored under section 26(ac), the storage of the profile is subject to **subsection (4)** if—
“(a) the person was a young person on the date of the offence; and
“(b) a Youth Court made an order under section 282 of the Children, Young Persons, and Their Families Act 1989 discharging the information relating to the offence after finding that the offence was proved. 10
- “(4) The retention periods and effect of certain subsequent offences are as follows: 15

<u>Sentence or order</u>	<u>Retention period for order or conviction</u>	<u>Retention period for subsequent offence</u>
<u>Section 26(a) or (ab): section 283(a) to (n) order made by a Youth Court</u>	<u>10 years after date of that section 283 order</u>	<u>If a section 282 order is subsequently made during that 10-year period after the offence is proved, a further retention period of 4 years applies and runs concurrently with the 10-year period.</u>

<u>Sentence or order</u>	<u>Retention period for order or conviction</u>	<u>Retention period for subsequent offence</u>
<u>Section 26(a) or (ab): section 283(o) order made by a Youth Court but no imprisonment</u>	<u>10 years after date of section 283(o) order</u>	<u>If a section 282 order is subsequently made during that 10-year period after the offence is proved, a further retention period of 4 years applies and runs concurrently with the 10-year period.</u>
<u>Section 26(a) or (ab): convicted by a District Court but no imprisonment</u>	<u>10 years after date of conviction</u>	<u>If a section 282 order is subsequently made during that 10-year period after the offence is proved, a further retention period of 4 years applies and runs concurrently with the 10-year period.</u>
<u>Section 26(ac): section 282 order made after offence proved</u>	<u>4 years after date of section 282 order</u>	<u>If a section 283 order is subsequently made during that 4-year period, a further retention period of 10 years applies and runs concurrently with the 4-year period.</u>

<u>Sentence or order</u>	<u>Retention period for order or conviction</u>	<u>Retention period for subsequent offence</u>
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If the person is
subsequently con-
victed by a District
Court without im-
prisonment during
that 4-year period,
a further retention
period of 10 years
applies and runs
concurrently with
the 4-year period.

If another section
282 order is sub-
sequently made
during that 4-year
period after the of-
fence is proved, a
further retention
period of 4 years
applies and runs
concurrently with
the first 4-year
period.

“(5) A person’s DNA profile stored under section 26 may, unless
otherwise provided by this Act, be stored indefinitely on a
DNA profile databank if any of the following apply:

“(a) if the profile is stored in relation to an offence and a
court imposes a sentence of imprisonment for the of- 5
fence:

“(b) if the profile is stored in relation to an offence and a re-
tention period initially applies to the offence and, during
that period, a subsequent order or conviction is made or
entered against the person that is not specifically pro- 10
vided for in the third column of the table in **subsection
(4)**:

Examples

During a 10-year period for a section 283 order, another section 283 order is made against the person or a conviction (with or without imprisonment) is entered against the person by any court. 5

During a 10-year period for a conviction by a District Court, a section 283 order is made against the person or another conviction (with or without imprisonment) is entered against the person by any court.

During a 4-year retention period for a section 282 order, 2 further section 282 orders are made against the person. 10

“(c) in any other case (whether the person is a young person or of or over the age of 17 years), no fixed retention period is specified by this Act.

“26B Certain young persons may apply for removal of DNA profiles from DNA profile databank” 15

“(1) This section applies to a person if,—

“(a) before the commencement of this section,—

“(i) a DNA profile of the person was taken and stored on a DNA databank under Part 2 when the person was a young person; and 20

“(ii) a Youth Court made an order in relation to the person under section 282 or 283 of the Children, Young Persons, and Their Families Act 1989 in relation to an offence but no court imposed a sentence of imprisonment for the offence; and 25

“(b) within 10 years after the date of that order, the person is not convicted of an imprisonable offence.

“(2) The person’s DNA profile must be removed from the DNA databank and destroyed if the person applies in writing to the Commissioner requesting the removal of the profile. 30

10 Heading above section 45AA amended

The heading above section 45AA is amended by adding “: *Compulsion order or databank compulsion notice*”.

11 Method by which bodily sample may be taken 35

The heading to section 48 is amended by adding “: **samples under Parts 2, 2A, and 3**”.

12 New section 48A inserted

The following section is inserted after section 48:

“48A Method by which bodily sample may be taken: samples under Part 2B

- “**(1)** If a bodily sample is being taken under **Part 2B**, it may, subject to **subsections (2) to (5)**, be taken by either of the following methods: 5
- “**(a)** fingerprick sample;
 - “**(b)** buccal sample.
- “**(2)** The person from whom the sample is to be taken must be given an opportunity to elect which of the 2 methods referred to in **subsection (1)** is to be used to take the sample. 10
- “**(3)** A constable may indicate to a person making an election under **subsection (2)** that the Police prefer a particular method for taking the sample. 15
- “**(4)** The sample must be taken—
- “**(a)** by the method in **subsection (1)** that the person has chosen; or
 - “**(b)** if the person has been given a reasonable opportunity to elect which of the methods in **subsection (1)** is to be used to take the sample and has indicated that he or she has no preference as to the method by which the sample is taken, by the method referred to in **subsection (1)** chosen by a constable. 20
- “**(5)** Despite **subsection (4)**, if reasonable force is required to take the sample, the sample must be taken by fingerprick sample.” 25

13 Persons authorised to take buccal samples

- (1)** Section 49A(1) is amended by inserting “or under **Part 2B**” after “notice”. 30
- (2)** Section 49A(3) is amended by adding “; or” and also by adding the following paragraph: 30
- “**(c)** in the case of a sample being taken under **Part 2B**, have the buccal sample taken by an independent adult under the supervision of a constable.”

14 Person giving sample entitled to have certain other persons present

- (1) The heading to section 50 is amended by inserting “**under Part 2, 2A, or 3**” after “**sample**”.
- (2) Section 50(1) is amended by inserting “under Part 2, 2A, or 3” after “taken”.

15 New sections 50A and 50B to 50D inserted

The following sections are inserted after section 50:

“50A Other person must be present when young person giving gives sample under Part 2B entitled to have certain other persons present”

- “(1) This section and ~~section 50B~~ **sections 50B to 50D** apply to a young person from whom a bodily sample is to be taken under **Part 2B**.
- “(2) The young person is entitled to have the following persons present during the taking of the sample:
 - “(a) a lawyer, or another person, of the young person’s choice; and
 - “(b) a parent or other person who has the care of that young person.
- “(3) The constable ~~who proposes to take~~ responsible for arranging the taking of the bodily sample must—
 - “(a) ascertain whether the young person wishes to exercise the right conferred on that person by **subsection (2)**; and
 - “(b) take all reasonable steps to ensure that each person chosen is notified that the young person wishes him or her to be present during the taking of the sample.
- “(4) A person referred to in **subsection (2)(a)** may, unless the young person objects, be chosen on the young person’s behalf by a parent or other person who has the care of that young person, and in that case **subsection (3)** applies with all necessary modifications.
- “(5) One of the following persons must be present during the taking of a bodily sample from a young person under **Part 2B**:
 - “(a) a person chosen under this section by the young person or by a parent or other person who has the care of that young person:

“(b) a person chosen under **section 50B(5)** by the young person or a parent or other person who has the care of that young person:

“(c) a person chosen under **section 50B(5)** by a constable:

“(d) a person, who is not a Police employee within the meaning of section 4 of the Policing Act 2008, chosen by the constable if the young person fails or refuses to make a choice under **subsection (2)**.

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“50B Constable may specify another place and date for taking of sample if young person chooses under section 50A to have Further provision if other person chosen to be present not present when choice made

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“(1) This section applies if—

“(a) a young person chooses under **section 50A** to have a person or persons described in **section 50A(2)** present, or a parent or other person who has the care of that young person chooses under **section 50A(4)** to have a person described in **section 50A(2)(a)** present; and

15

“(b) any person chosen is not present when the choice is made.

20

“(2) The constable may, by notice in writing to the young person or a parent or other person who has the care of that young person, require the attendance of the young person on a date and at a time and place specified in the notice to give the bodily sample.

“(3) If the constable issues a notice under **subsection (2)**, the constable must take all reasonable steps to ensure that each person chosen as described in **subsection (1)(a)** is notified—

25

“(a) that the young person wishes him or her to be present during the taking of the sample; and

“(b) of the date on which, and the time and place at which, the sample is to be taken.

30

“(4) **Subsection (5)** applies if a constable believes, on reasonable grounds, that any person chosen as described in **subsection (1)(a)** cannot with reasonable diligence be located or will not be available within a period of time that is reasonable in the circumstances.

35

“(5) The constable may refuse to allow the young person to have the person described in **subsection (1)(a)** present and—

- “(a) may give the young person or a parent or other person who has the care of that young person the opportunity to—
- “(i) choose another person described in **section 50A(2)** to be present; or 5
- “(ii) elect that the constable choose a person who is not a Police employee within the meaning of section 4 of the Policing Act 2008 to be present; or
- “(b) if the young person or parent or other person fails or refuses to make a choice or an election under **paragraph (a)**, may choose a person who is not a Police employee within the meaning of section 4 of the Policing Act 2008 to be present. 10
- “(6) If a person chosen under **subsection (5)** is not present when the choice is made, the constable— 15
- “(a) may, by notice in writing to the young person or a parent or other person who has the care of that young person, require the attendance of the young person on a date and at a time and place specified in the notice to give the bodily sample; and 20
- “(b) if the constable issues a notice under **paragraph (a)**, must take all reasonable steps to ensure that the person chosen is notified,—
- “(i) if applicable, that the young person wishes him or her to be present during the taking of the sample; and 25
- “(ii) of the date on which, and the time and place at which, the sample is to be taken.
- “(7) However, if a constable believes, on reasonable grounds, that any person chosen as described in **subsection (5)(a)(i)** cannot with reasonable diligence be located or will not be available within a period of time that is reasonable in the circumstances, the constable may choose a person who is not a Police employee within the meaning of section 4 of the Policing Act 2008 to be present. 30 35

“50C Judge may issue warrant for arrest and detention if young person fails to attend in accordance with notice under section 50B

“(1) A Judge of the appropriate court may, on application by a person described in **subsection (2), issue a warrant to arrest and detain a young person until a bodily sample is taken if the Judge is satisfied that—** 5

“(a) a notice was given to a young person under **section 50B(2) or (6); and**

“(b) the young person failed to attend as specified in the notice to give a bodily sample. 10

“(2) A person referred to in **subsection (1) is—**

“(a) the constable who gave the notice; or

“(b) any other constable.

“(3) Nothing in this section requires a Judge to direct the issue of an arrest warrant if the Judge is satisfied that the person to whom the notice relates was unable to attend to give a bodily sample on the date specified in the notice due to reasons outside that person’s control. 15

“(4) In **subsection (1), **appropriate court** means—** 20

“(a) if the young person has not yet been charged for the triggering offence, the court in which the charge would be laid; or

“(b) if the young person has been charged for the triggering offence, the court in which the charge was laid. 25

“50D Form and effect of warrant issued under section 50C

“(1) A warrant issued under **section 50C—**

“(a) must be in the prescribed form; and

“(b) expires immediately after a bodily sample is taken from the person to whom the notice under **section 50B (the notice) relates.** 30

“(2) A warrant under **section 50C authorises—**

“(a) the arrest of the person to whom the notice relates; and

“(b) the detention of that person for as long as is reasonably necessary to take a bodily sample from that person, but in no case longer than 24 hours. 35

“(3) If a bodily sample is taken under a warrant issued under **section 50C**, this Act applies as if the sample is being taken under **Part 2B** in respect of the triggering offence.

“(4) The power to arrest and detain a person under a warrant issued under **section 50C** may be exercised on 1 occasion only.” 5

16 Suitably qualified persons and certain other persons, not compelled to take sample or be present

- (1) Section 51(b) is amended by—
- (a) inserting “or **50A(2)(a) or (4) or 50B(5)**” after “50(1)(a) or (3)”; and
 - (b) inserting “or **50A(2)(b)**” after “50(1)(b)”.
- (2) Section 51(c) is amended by omitting “49A(4)(b) or (6)(a)” and substituting “49A(3)(c), (4)(b), or (6)(a)”.

17 Who may be present when bodily sample taken

- (1) Section 52(1)(c) is amended by inserting “or **section 50A(2) or (4) or 50B(5)**” after “50”. 15
- (2) Section 52(1)(d) is amended by inserting “or **50A(2)(b)**” after “50(1)(b)”. 20
- (3) Section 52(1) is amended by inserting the following paragraph after paragraph (da):
- “(db) in the case of a young person from whom a bodily sample is to be taken under **Part 2B** and who has elected to take a buccal sample himself or herself or to have a buccal sample taken by an independent adult, that independent adult.” 25
- (3) Section 52(1) is amended by adding the following paragraphs:
- “(f) any person chosen by a constable under **section 50B(5)**:
- “(g) any other person who is entitled by or under this Act to be present.” 30

18 New section 52B inserted

The following section is inserted after section 52A:

“52B Who must be present when young person takes own buccal sample under Part 2B

A young person from whom a bodily sample is being taken under **Part 2B** and who has elected to take a buccal sample himself or herself must not take the buccal sample unless— 5

“(a) an independent adult is present when the buccal sample is taken; and

“(b) the young person has confirmed, in the presence of that independent adult, before taking the buccal sample, that he or she has elected to take the buccal sample himself or herself.” 10

19 New section 54A inserted

The following section is inserted after section 54:

“54A Procedure for taking bodily sample under Part 2B

“(1) If a constable proposes to require a person to give a bodily sample under **Part 2B**, the constable must— 15

“(a) ascertain from the person whether he or she wishes the sample to be taken by way of fingerprick sample or buccal sample:

“(b) inform the person that if he or she refuses to give a bodily sample a constable may use or cause to be used reasonable force to assist a suitably qualified person to take a fingerprick sample. 20

“(2) If a person refuses to give a bodily sample when required to do so under **Part 2B**, a constable may use or cause to be used reasonable force to assist a suitably qualified person to take a fingerprick sample.” 25

20 Disposal of bodily samples and identifying information obtained under Part 2

Section 60(1)(d) is amended by omitting “12” and substituting “24”. 30

21 New section 60A inserted

The following section is inserted after section 60:

“60A Disposal of bodily samples and identifying information obtained under Part 2B 35

“(1) This section applies to—

- “(a) a bodily sample taken under **Part 2B**; and
- “(b) every record of any analysis of that bodily sample carried out on behalf of any constable; and
- “(c) every record, to the extent that it contains—
- “(i) information about the sample; and 5
- “(ii) particulars that are identifiable by any person as particulars identifying that information with the person from whom the sample was taken.
- “(2) The Commissioner must ensure that the bodily sample referred to in **subsection (1)(a)** is destroyed as soon as practicable after a DNA profile is obtained from the sample. 10
- “(3) The Commissioner must ensure that any record referred to in **subsection (1)(b) and (c)** is destroyed,—
- “(a) subject to section 61, as soon as practicable after the expiry of the period of 2 months beginning on the date on which the sample is taken, if the person is not charged with the triggering offence, or a related relevant offence, before the expiry of that period; or 15
- “(b) if the person is charged with such an offence before the expiry of that period, as soon as practicable after the first of the following to occur: 20
- “(i) the charge is withdrawn; or
- “(ii) the person is acquitted of the offence.
- “(4) Nothing in this section requires the destruction of a DNA profile that may lawfully be retained in a DNA profile databank.” 25

22 Extension of period for which sample may be retained

- (1) Section 61 is amended by repealing subsection (1) and substituting the following subsections:
- “(1) On application in accordance with this section, a High Court Judge may,— 30
- “(a) in respect of a bodily sample taken under Part 2 and related records as described in section 60(1)(b) and (c), extend the period specified in section 60(1)(d); or
- “(b) in respect of records as described in **section 60A(1)(b) and (c)**, extend the period specified in **section 60A(3)(a)**. 35

- “(1A) In this section, the period in section 60(1)(d) or, as the case may be, **section 60A(3)(a)** is referred to as the **relevant period**.”
- (2) Section 61 is amended by repealing subsection (3) and substituting the following subsections: 5
- “(3) An extension or, as the case requires, a further extension of the relevant period may be granted under this section only if the High Court Judge is satisfied—
- “(a) that the person from whom the bodily sample was taken has not been charged with the triggering offence, or a related relevant offence; and 10
- “(b) either of the circumstances mentioned in **subsection (3A)** exists.
- “(3A) The circumstances referred to in **subsection (3)** are—
- “(a) that there is still good cause to suspect that the person committed an offence referred to in **subsection (3)(a)** and—
- “(i) there is a good reason for the person not having been charged; and
- “(ii) it is important to the investigation of the offence that the bodily sample, and any records that would otherwise be required to be destroyed, be retained; or 20
- “(b) that—
- “(i) there is not, or no longer, good cause to suspect that the person committed an offence referred to in **subsection (3)(a)**; but 25
- “(ii) it is important to the investigation of the offence, or to criminal proceedings in relation to that offence, that the bodily sample, and any records that would otherwise be required to be destroyed, be retained.” 30
- (3) Section 61(5) is amended by inserting “(in the case of a sample taken under Part 2)” after “sample”.
- 23 Material extracted from samples to be destroyed** 35
- Section 63 is amended by omitting “60, section 61A, or section 62 of this Act” and substituting “60, **60A**, 61A, or 62”.

24 Translation of notices

Section 64(a) is amended by omitting “6(2)(a) or section 8(2)(a) or section 24E(a) or section 30(2)(a) or section 33(b) of this Act” and substituting “6(2)(a), 8(2)(a), 24E(a), **24N**, 30(2)(a), or 33(b)”.

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24A Non-attendance of persons not to affect admissibility of evidence

(1) Section 69 is amended by inserting “or **section 50A(2)(a) or (4) or 50B(5)**” after “section 50”.

(2) Section 69 is amended by adding the following subsection as subsection (2):

“(2) This section is subject to **section 50A(5)**.”

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25 Information stored on DNA profile databank not admissible in criminal proceedings

(1) The heading of section 71 is amended by inserting “or **obtained under Part 2B**” after “databank”.

(2) Section 71 is amended by inserting the following subsection after subsection (1):

“(1A) Subject to subsection (4), no DNA profile that is derived from a bodily sample taken under **Part 2B** is admissible against any person in any criminal proceedings.”

(3) Section 71(4) is amended by inserting “or **(1A)**” after “subsection (1)”.

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25A New section 71A inserted

The following section is inserted after section 71:

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“71A Judge may consent to bodily sample taken under Part 2B being retained and used for evidential purposes

“(1) A District Court Judge or Youth Court Judge may, on application made in accordance with this section, consent to a bodily sample taken from a person under **Part 2B** being retained and used by the Police as an evidential sample.

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“(2) An application for consent under **subsection (1)**—

“(a) must be made by a constable; and

“(b) must be made before the sample concerned is analysed by or on behalf of the Police; and

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- “(c) must be in writing and contain—
- “(i) sufficient information to fairly inform the Judge of the nature of the bodily sample, the statutory authority for taking it, and the date on which it was taken; and 5
- “(ii) a statement that satisfies the Judge that the sample has not been analysed; and
- “(iii) a statement that the constable believes the sample taken from the person would tend to confirm or disprove the person’s involvement in the commission of the offence and that gives the reasons for that belief; and 10
- “(d) may be made without notice.
- “(3) If the form of an application or consent under this section is not prescribed, the form must be acceptable to the court.” 15

26 Information relating to bodily samples to be included in annual report of Police

- (1) Section 76 is amended by inserting the following paragraphs after paragraph (ea):
- “(eb) the number of occasions on which a bodily sample has been taken under **Part 2B**: 20
- “(ec) the number of occasions on which a DNA profile was derived from a bodily sample taken under **Part 2B**:
- “(ed) the number of occasions on which a DNA profile derived from a bodily sample taken under **Part 2B** matched with DNA information referred to in **section 24R(1)(a)**: 25
- “(ee) the number of occasions on which a DNA profile derived from a bodily sample taken under **Part 2B** matched DNA information collected from the scene of the offence in respect of which the bodily sample was taken: 30
- “(ef) the number of occasions on which a constable used reasonable force under **section 54A(2)**:
- “(eg) the total number of DNA profiles stored on a Part 2B temporary databank at the end of the period under review:” 35

- (2) Section 76 is amended by adding the following subsection as subsection (2):
- “(2) The information required by **subsection (1)(eb) to (eg)** must be provided together with a breakdown of those totals according to the ethnicity of the persons from whom the samples were taken, and the number of young persons from whom the samples were taken, so far as that information is known by the Police.”

27 Offences

- (1) Section 77(1) is amended by repealing paragraph (b) and substituting the following paragraphs:
- “(b) refuses to allow a bodily sample to be taken pursuant to under a databank compulsion notice or under **Part 2B** and, as a result of that refusal, no sample is taken; or
- “(c) having been given a notice under **section 50B** requiring him or her to attend on a specified date and at a specified place and time to give a bodily sample under **Part 2B**, fails to comply with that notice.”
- (2) Section 77(2)(a) is amended by inserting “, or a Part 2B temporary databank,” after “databank”.
- (3) Section 77(2)(b) is amended by inserting “or a Part 2B temporary databank” after “databank”.
- (4) Section 77(2)(c) is amended by inserting “, or a Part 2B temporary databank,” after “databank”.
- (5) Section 77(2)(d) is amended by—
- (a) inserting “**24R** or” after “section”.
- (b) inserting “or a Part 2B temporary databank” after “databank” in each place where it appears.
- (6) Section 77(2)(e) is amended by inserting “**24S** or” after “section”.

28 Indemnity

Section 79(1) is amended by adding “or **54A(2)**”.

29 New Part 3 added to Schedule

The Schedule is amended by adding the **Part 3** set out in the **Schedule** of this Act.

29A Savings provision relating to new relevant offences

For the purposes of Part 3 of the principal Act, a conviction entered by any court before the commencement of **section 29** of this Act for an offence described in **Part 3** of the Schedule of the principal Act (as added by **section 29**) is not a conviction for a relevant offence. 5

Part 2

**Extension of authority to take and retain
bodily samples**

Preliminary provision 10

30 Interpretation

Section 2(1) is amended by inserting the following ~~definition~~ definitions in its their appropriate alphabetical order:

“**District Court**, in sections 6(2)(b)(vii), 7(b)(viii), 13(1), 14(1)(a), 15(1), 16(1), and 18(1) and (3)(b)(vii), includes a Youth Court if the suspect or respondent is subject to the Youth Court’s jurisdiction 15

“**imprisonable offence** means an offence punishable by a term of imprisonment; and includes an offence punishable by imprisonment for life”. 20

Amendments to Part 2 of principal Act

31 Authority to take bodily sample from suspect

Section 5(a) is amended by omitting “indictable offence” and substituting “imprisonable offence or offence against any of the provisions listed in **Part 3** of the Schedule”. 25

32 Request to consent to taking of bodily sample

(1) Section 6(1) is amended by omitting “indictable offence” and substituting “imprisonable offence or offence against any of the provisions listed in **Part 3** of the Schedule”.

(2) Section 6(2)(b)(vii) is amended— 30
(a) by omitting “a relevant offence” and substituting “an imprisonment offence or offence against any of the provisions listed in **Part 3** of the Schedule”; and

- (b) by omitting “High Court Judge” and substituting “District Court Judge”.

33 Form and content of notice

- (1) Section 7(b)(i) is amended by omitting “indictable offence” and substituting “imprisonable offence or offence against any of the provisions listed in **Part 3** of the Schedule” 5
- (2) Section 7(b)(viii) is amended by—
- (a) omitting “and that ~~the~~ offence is a relevant offence,”; and
- (b) omitting “High Court Judge” and substituting “District Court Judge”. 10
- (3) Section 7(b)(xiii) is amended by omitting “and the offence of which the suspect is convicted is a relevant offence,”.

34 Application for order authorising taking of bodily sample

- (1) Section 13(1) is amended by omitting “High Court Judge” and substituting “District Court Judge”. 15
- (2) Section 13(1)(a) is amended by omitting “a relevant offence” and substituting “an imprisonment offence or offence against any of the provisions listed in **Part 3** of the Schedule”.
- (3) Section 13(2)(a) is amended by omitting “a relevant offence” and substituting “an imprisonment offence or offence against any of the provisions listed in **Part 3** of the Schedule”. 20

35 Prohibition against publication of name of respondent

- Section 14(1)(a) is amended by omitting “High Court Judge” and substituting “District Court Judge”. 25

36 Information may be withheld from respondent

- Section 15(1) is amended by omitting “High Court Judge” and substituting “District Court Judge”.

37 Judge may authorise bodily sample to be taken

- (1) Section 16(1) is amended by omitting “High Court Judge” and substituting “District Court Judge”. 30
- (2) Section 16(1)(a) is amended by omitting “relevant”.

38 Application for order authorising taking of bodily sample from person under 17

- (1) Section 18(1) is amended by omitting “High Court Judge” and substituting “District Court Judge”.
- (2) Section 18(1)(a) is amended by omitting “a relevant offence” and substituting “an imprisonable offence or offence against any of the provisions listed in **Part 3** of the Schedule”. 5
- (3) Section 18(2)(a) is amended by omitting “a relevant offence” and substituting “an imprisonable offence or offence against any of the provisions listed in **Part 3** of the Schedule”. 10
- (4) Section 18(3)(b)(vii) is amended by omitting “High Court Judge” and substituting “District Court Judge”.

39 Judge may authorise bodily sample to be taken

Section 23(1)(a) is amended by omitting “relevant”.

40 Form and content of compulsion order

Section 24(4)(h) is amended by omitting “a relevant offence” and substituting “an imprisonable offence or offence against any of the provisions listed in **Part 3** of the Schedule”. 15

Amendments to Part 2B of principal Act

41 Part 2B heading amended

The heading to **Part 2B** is amended by omitting “relevant offence” and substituting “**imprisonable offence or offence listed in Part 3 of Schedule**”. 20

42 Authority to take bodily sample from person of or over 17 years arrested or intended to be charged with relevant offence

- (1) The heading to **section 24J** (as inserted by **section 7** of this Act) is amended by omitting “relevant offence” and substituting “**imprisonable offence or offence listed in Part 3 of Schedule**”. 25 30
- (2) **Section 24J(1)(a) and (b)** is amended by omitting “a relevant offence” and substituting in each case “an imprisonable offence or offence against any of the provisions listed in **Part 3** of the Schedule”.

- 43 Authority to take bodily sample from young person arrested or intended to be charged with relevant offence**
- (1) The heading to **section 24K** (as inserted by section 7 of this Act) is amended by omitting “**relevant offence**” and substituting “**imprisonable offence**”. 5
- (2) **Section 24K(1)(a)(i) and (ii)** is amended by omitting “a relevant offence” and substituting in each case “an imprisonment offence”.

Other amendments to principal Act

- 44 Information that may be kept on DNA profile databank** 10
- (1) Section 26(a)(ii) is amended by omitting “a relevant offence” and substituting “an imprisonment offence or offence against any of the provisions listed in **Part 3** of the Schedule”.
- (1A) **Section 26 (ab)(i)** is amended by omitting “relevant offence” and substituting “imprisonable offence or offence against any of the provisions listed in **Part 3** of the Schedule”. 15
- (2) **Section 26 (ab)(ii)** is amended by omitting “a relevant offence” and substituting “an imprisonment offence or offence against any of the provisions listed in **Part 3** of the Schedule”. 20
- 45 Removal of certain DNA profiles from DNA profile databank**
- Section 26A** (as inserted by **section 9** of this Act) is amended by adding the following subsection:
- “(6) The profile must be removed from the databank no later than 25
10 years after the date of the conviction on which the person ceases to be subject to a sentence of imprisonment in respect of the offence, or, in any other case, no later than 10 years after the date of conviction, if—
- “(a) the person to whom the profile relates was of or over 30
17 years of age on the date of the offence referred to in section 26(a) or, as the case may be, **section 26(ab)**; and
- “(a) either— 35
- “(i) the person to whom the profile relates was a
young person on the date of the offence referred

- to in section 26(a) or, as the case may be, **section 26(ab)**, and a court imposed a community-based sentence in respect of the offence; or
- “(ii) the person to whom the profile relates was of or over 17 years of age on the date of the offence referred to in section 26(a) or, as the case may be, **section 26(ab)**; and 5
- “(b) the conviction was for an offence that was not a relevant offence at the time of the conviction; and
- “(c) the person has not been convicted of an imprisonable offence or offence against any of the provisions listed in **Part 3** of the Schedule since the date of the conviction.” 10
- 45A** Certain young persons may apply for removal of DNA profiles from DNA profiles databank
Section 26B(1)(b) (as inserted by **section 9** of this Act) is amended by adding “or offence against any of the provisions listed in **Part 3** of the Schedule”. 15
- 45B** Issue and service of databank compulsion notice
- (1) Section 39(1)(a) is amended by omitting “a relevant offence” and substituting “an imprisonable offence or offence against any of the provisions listed in **Part 3** of the Schedule”. 20
- (2) Section 39(3) is amended by omitting “relevant offence” wherever it appears and substituting “imprisonable offence or offence against any of the provisions listed in **Part 3** of the Schedule” in each case. 25
- (3) Section 39(4) is amended by omitting “relevant offence” and substituting “imprisonable offence or offence against any of the provisions listed in **Part 3** of the Schedule”.
- 46** Disposal of bodily samples and identifying information obtained under Part 2 30
- (1) Section 60(1)(f) is amended by omitting “a relevant offence” and substituting “an imprisonable offence or offence against any of the provisions listed in **Part 3** of the Schedule”.
- (2) Section 60 is amended by repealing subsection (2) and substituting the following subsections: 35

- “(2) **Subsection (2A)** applies if—
- “(a) a bodily sample is taken under Part 2 from a person; and
 - “(b) the person is convicted of the offence in respect of which the sample is taken, or of a related offence; and
 - “(c) the offence of which the person is convicted is an im- 5
prisonable offence or offence against any of the provi-
sions listed in **Part 3** of the Schedule.
- “(2A) The Commissioner must ensure that the sample is retained only for as long as necessary to enable a DNA profile to be obtained from the sample, and is then destroyed.” 10

47 Extension of period for which sample may be retained

- (1) **Section 61(1)** (as substituted by **section 22** of this Act) is amended by omitting “High Court Judge” and substituting “District Court Judge”.
 - (2) **Section 61(3)** (as so substituted) is amended by omitting 15
“High Court Judge” and substituting “District Court Judge”.
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**Schedule
New Part 3 added to Schedule**

s 29

Part 3

Offences	Provision of Act
	<i>Animal Welfare Act 1999</i>
Wilful ill-treatment of animals	section 28
	<i>Arms Act 1983</i>
Carrying or possession of firearms, airguns, pistols, restricted weapons, or explosives, except for lawful, proper, and sufficient purpose	section 45
Unlawful possession of pistol or restricted weapon	section 50
Unlawful carriage or possession in public place of firearm, airgun, pistol, ammunition, explosive, or restricted weapon	section 51
Possession of imitation firearm, restricted weapon, ammunition, or explosive to resist, prevent arrest, or commit offence <u>firearm, airgun, pistol, imitation firearm, restricted weapon, ammunition, or explosive at time of committing offence</u>	section 54(2)
Carrying firearm, airgun, pistol, imitation firearm, restricted weapon, ammunition, or explosive with criminal intent	section 55
	<i>Crimes Act 1961</i>
Indecent act in public place	section 125
Indecent act with intent to insult or offend	section 126
Aggravated assault	section 192
Assault with intent to injure	section 193
Male assaults female	section 194(b)
Cruelty to a child	section 195
Disabling	section 197
Possession of offensive weapons or disabling substances	section 202A
Assault with weapon	section 202C
Receiving (if the value of the property does not exceed \$1,000)	section 246
Threatening acts	section 308
	<i>Land Transport Act 1998</i>

**Criminal Investigations (Bodily Samples)
Amendment Bill**

Part 3—*continued*

Offences	Provision of Act
Contravention of section 7 or section 22 involving injury or death	section 36
Person in charge of motor vehicle causing injury or death	section 61
	<i>Summary Offences Act 1981</i>
Peeping or peering into dwellinghouse	section 30

Legislative history

10 February 2009	Introduction (Bill 14–1)
12 February 2009	First reading and referral to Justice and Electoral Committee
