

**Reprint
as at 5 December 2011**



**Criminal Investigations (Bodily
Samples) Amendment Act 2009**

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Date of assent 2 November 2009
Commencement see section 2

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Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

This Act is administered by the Ministry of Justice.

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- 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.
- (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).

Section 2(1): this Act, except for Part 2, brought into force, on 6 September 2010, by the Criminal Investigations (Bodily Samples) Amendment Act 2009 Commencement Order 2010 (SR 2010/220).

Section 2(2): Part 2 brought into force, on 5 December 2011, by the Criminal Investigations (Bodily Samples) Amendment Act 2009 Commencement Order 2011 (SR 2011/313).

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

Preliminary provisions

4 Interpretation

- (1) Section 2(1) is amended by inserting the following definition in its appropriate alphabetical order:
“**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”.
- (2) 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”.
- (3) 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”.
- (4) The definition of **relevant offence** in section 2(1) is amended by inserting the following paragraph after paragraph (b):
“(ba) an offence against any of the provisions listed in Part 3 of the Schedule; or”.
- (5) 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”.

- (6) 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
- “**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

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,—
- “(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
- “(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 suspect; or
- “(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

- “(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 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

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****“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.
- “(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.

**“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 either—
- “(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.
- “(2) The sample must be taken in accordance with the procedures set out in Part 4.
- “(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.

“24L Relationship to Part 2

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

“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
- “(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
 - “(iii) of the effect of sections 48A, 49, 49A, 50A, 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; 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:
 - “(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, and 54A relating to the procedure 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;

- “(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 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 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—

- “(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 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) 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 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 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 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 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 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
 - “(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—
- “(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**
- (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—
 - “(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
 - “(iii) in the case of a person who was a young person on the date of the offence, a sentence of imprisonment or of a non-custodial nature is imposed for the offence or a Youth Court makes an order under section 283 of the Children, Young Persons, and Their Families Act 1989:
 - “(ac) any DNA profile derived from a bodily sample taken from a young person under Part 2B if—
 - “(i) 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; and
 - “(ii) the offence in relation to which the order was made is a relevant offence, or a related offence:”.

9 New sections 26A and 26B inserted

The following sections are inserted after section 26:

“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.
- “(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
 - “(b) any of the following applies:

- “(i) a Youth Court made an order under 1 or more of paragraphs (a) to (n) of section 283 of the Children, Young Persons, and Their Families Act 1989; or
 - “(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.
- “(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.
- “(4) The retention periods and effect of certain subsequent offences are as follows:

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

Sentence or order	Retention period for order or conviction	Retention period for subsequent offence
Section 26(a) or (ab): section 283(o) order made by a Youth Court but no imprisonment	10 years after date of section 283(o) order	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.
Section 26(a) or (ab): convicted by a District Court but no imprisonment	10 years after date of conviction	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.
Section 26(ac): section 282 order made after offence proved	4 years after date of section 282 order	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.

Sentence or order	Retention period for order or conviction	Retention period for subsequent offence
		<p>If the person is subsequently convicted by a District Court without imprisonment during that 4-year period, a further retention period of 10 years applies and runs concurrently with the 4-year period.</p> <p>If another section 282 order is subsequently made during that 4-year period after the offence is proved, a further retention period of 4 years applies and runs concurrently with the first 4-year period.</p>

- “(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 offence:
 - “(b) if the profile is stored in relation to an offence and a retention 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 provided 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.

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.

- “(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

- “(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
- “(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
- “(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.”

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

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:

“(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.

“(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.

“(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.

“(5) Despite subsection (4), if reasonable force is required to take the sample, the sample must be taken by fingerprick sample.”

13 Persons authorised to take buccal samples

(1) Section 49A(1) is amended by inserting “or under Part 2B” after “notice”.

(2) Section 49A(3) is amended by adding “; or” and also by adding the following paragraph:

“(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 to 50D inserted

The following sections are inserted after section 50:

“50A Other person must be present when young person gives sample under Part 2B

- “(1) This section and 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 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).

“50B Further provision if other person chosen to be present not present when choice made

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

- “(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
 - “(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.
- “(6) If a person chosen under subsection (5) is not present when the choice is made, the constable—
- “(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
 - “(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
 - “(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.

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

“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.
- “(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.

- “(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.”

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”.
- (2) Section 52(1)(d) is amended by inserting “or 50A(2)(b)” after “50(1)(b)”.
- (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.”

18 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—
- “(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.

“(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.”

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

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

20 New section 60A inserted

The following section is inserted after section 60:

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

“(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
 - “(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.

“(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
- “(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:
 - “(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.”

21 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,—

“(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).

“(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:

“(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

“(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

“(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
- “(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.”

- (3) Section 61(5) is amended by inserting “(in the case of a sample taken under Part 2)” after “sample”.

22 Material extracted from samples to be destroyed

Section 63 is amended by omitting “60, section 61A, or section 62 of this Act” and substituting “60, 60A, 61A, or 62”.

23 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)”.

24 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).”

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)”.

26 New section 71A inserted

The following section is inserted after section 71:

“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.
- “(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
 - “(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
 - “(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
 - “(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.”

27 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:

- “(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):
 - “(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:
 - “(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:”.
- (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.”

28 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 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”.

29 Indemnity

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

30 New Part 3 added to Schedule

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

31 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 30 of this Act for an offence described in Part 3 of the Schedule of the principal Act (as added by section 30 of this Act) is not a conviction for a relevant offence.

Part 2

Extension of authority to take and retain bodily samples

Preliminary provision

32 Interpretation

Section 2(1) is amended by inserting the following definitions in 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

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

Amendments to Part 2 of principal Act

33 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”.

34 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—

- (a) by omitting “a relevant offence” and substituting “an imprisonable 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”.

35 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”.

(2) Section 7(b)(viii) is amended by—

- (a) omitting “and that offence is a relevant offence,”; and
- (b) omitting “High Court Judge” and substituting “District Court Judge”.

(3) Section 7(b)(xiii) is amended by omitting “and the offence of which the suspect is convicted is a relevant offence,”.

36 Application for order authorising taking of bodily sample

(1) Section 13(1) is amended by omitting “High Court Judge” and substituting “District Court Judge”.

(2) Section 13(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”.

(3) Section 13(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”.

- 37 Prohibition against publication of name of respondent**
Section 14(1)(a) is amended by omitting “High Court Judge” and substituting “District Court Judge”.
- 38 Information may be withheld from respondent**
Section 15(1) is amended by omitting “High Court Judge” and substituting “District Court Judge”.
- 39 Judge may authorise bodily sample to be taken**
- (1) Section 16(1) is amended by omitting “High Court Judge” and substituting “District Court Judge”.
 - (2) Section 16(1)(a) is amended by omitting “relevant”.
- 40 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”.
 - (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”.
 - (4) Section 18(3)(b)(vii) is amended by omitting “High Court Judge” and substituting “District Court Judge”.
- 41 Judge may authorise bodily sample to be taken**
Section 23(1)(a) is amended by omitting “relevant”.
- 42 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”.

Amendments to Part 2B of principal Act

43 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**”.

44 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**”.
- (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”.

Other amendments to principal Act

45 Information that may be kept on DNA profile databank

- (1) Section 26(a)(ii) 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 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”.
- (3) Section 26(ab)(ii) 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”.

46 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 10 years after the date 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) either—
- “(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
- “(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.”

47 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”.

48 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”.
- (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.
- (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”.

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

- (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:
 - “(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 imprisonable offence or offence against any of the provisions 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.”

50 Extension of period for which sample may be retained

- (1) Section 61(1) (as substituted by section 21 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 “High Court Judge” and substituting “District Court Judge”.
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Schedule

New Part 3 added to Schedule

s 30

Part 3

Offences	Provision of Act
	<i>Animal Welfare Act 1999</i>
Wilful ill-treatment of animals	section 28
Reckless ill-treatment of animals	section 28A
	<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 firearm, airgun, pistol, imitation firearm, restricted weapon, ammunition, or explosive at time of committing offence	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>
Contravention of section 7 or section 22 involving injury or death	section 36

Part 3—*continued*

Offences	Provision of Act
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
Schedule: amended, on 7 July 2010, pursuant to section 10(2) of the Animal Welfare Amendment Act 2010 (2010 No 93).	

Contents

- 1 General
 - 2 Status of reprints
 - 3 How reprints are prepared
 - 4 Changes made under section 17C of the Acts and Regulations Publication Act 1989
 - 5 List of amendments incorporated in this reprint (most recent first)
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Notes**1 General**

This is a reprint of the Criminal Investigations (Bodily Samples) Amendment Act 2009. The reprint incorporates all the amendments to the Act as at 5 December 2011, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, see <http://www.pco.parliament.govt.nz/reprints/>.

2 Status of reprints

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 How reprints are prepared

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and

provisions that are repealed or revoked are omitted. For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

4 *Changes made under section 17C of the Acts and Regulations Publication Act 1989*

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
 - indentation
 - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
 - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
 - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

5 *List of amendments incorporated in this reprint
(most recent first)*

Criminal Investigations (Bodily Samples) Amendment Act 2009
Commencement Order 2011 (SR 2011/313)

Criminal Investigations (Bodily Samples) Amendment Act 2009
Commencement Order 2010 (SR 2010/220)

Animal Welfare Amendment Act 2010 (2010 No 93): section 10(2)
