

Reprint  
as at 14 November 2018



**Criminal Investigations (Bodily Samples) Regulations  
2004**  
(SR 2004/53)

Silvia Cartwright, Governor-General

**Order in Council**

At Wellington this 15th day of March 2004

Present:

Her Excellency the Governor-General in Council

Pursuant to section 80 of the Criminal Investigations (Bodily Samples) Act 1995, Her Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

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**Note**

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.  
Note 4 at the end of this reprint provides a list of the amendments incorporated.

**These regulations are administered by the Ministry of Justice.**

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## **Regulations**

### **1 Title**

These regulations are the Criminal Investigations (Bodily Samples) Regulations 2004.

### **2 Commencement**

These regulations come into force on 15 April 2004.

### **3 Interpretation**

In these regulations, unless the context otherwise requires,—

**Act** means the Criminal Investigations (Bodily Samples) Act 1995

**order** means a compulsion order, a Part 3 order, or an order that a databank compulsion notice is of no effect

**Registrar** means the Registrar of a court and includes a Deputy Registrar of a court.

### **4 Forms**

- (1) The forms set out in the Schedule must be used in respect of the matters under the Act to which those forms relate.
- (2) Nothing in subclause (1) limits section 64 of the Act (which relates to the translation of notices).

### **5 Service of notices**

- (1) A notice required to be given to, or served on, any person may be given or served—
  - (a) by personally delivering it to the person to whom it relates or, if the person does not accept it, by putting it down in the person's presence and bringing it to the person's attention; or
  - (b) by leaving it for the person to whom it relates at the person's place of residence with any person—
    - (i) who is normally resident at that place with the person to whom it relates; and

- (ii) who appears to be over the age of 18 years; or
  - (c) in the case of a person detained in a prison, by delivering the notice to the manager or other officer apparently in charge of the prison in which the person is detained, who must deal with the notice under regulation 194 of the Corrections Regulations 2005.
- (2) If an attempt to give or serve a notice in a manner set out in subclause (1) is unsuccessful, the notice may be given or served—
  - (a) by sending it by post in a registered letter addressed to the person to whom it is to be given or served at the person's usual or last known place of residence or business; or
  - (b) by leaving it with a lawyer or other person who indicates that he or she is authorised to accept the notice on behalf of the person.
- (3) If a notice is sent to any person by post under subclause (2)(a),—
  - (a) the notice is deemed to have been delivered to the person at the time when the registered letter would be delivered in the ordinary course of post; and
  - (b) it is sufficient in proving delivery of the notice, if it is proved that the letter was properly addressed and posted.
- (4) Nothing in this regulation applies to any notice that is required by the Act to be handed to a person.

Regulation 5(1)(c): amended, on 1 June 2005, pursuant to section 208(2) of the Corrections Act 2004 (2004 No 50).

Regulation 5(1)(c): amended, on 1 June 2005, pursuant to section 235(1) of the Corrections Act 2004 (2004 No 50).

Regulation 5(1)(c): amended, on 1 June 2005, pursuant to section 235(3) of the Corrections Act 2004 (2004 No 50).

## **6 Service of orders**

- (1) A Registrar must, as soon as practicable after the making of an order, take all reasonable steps to serve a copy of the order on the person to whom it relates.
- (2) An order served under subclause (1) must be served—
  - (a) by personally delivering it to the person to whom it relates or, if the person refuses to accept it, by putting it down in the person's presence and bringing it to the person's attention; or
  - (b) by leaving it for the person to whom it relates at the person's place of residence with any person—
    - (i) who is normally resident at that place with the person to whom it relates; and
    - (ii) who appears to be over the age of 18 years; or
  - (c) in the case of a person detained in a prison, by delivering the order to the manager or other officer apparently in charge of the prison in which the

person is detained, who must deal with the order under regulation 194 of the Corrections Regulations 2005.

- (3) If an attempt to serve an order in a manner set out in subclause (2) is unsuccessful, a copy of the order may be served on the lawyer (if any) who represents the person to whom the order relates.

Regulation 6(2)(c): amended, on 1 June 2005, pursuant to section 208(2) of the Corrections Act 2004 (2004 No 50).

Regulation 6(2)(c): amended, on 1 June 2005, pursuant to section 235(1) of the Corrections Act 2004 (2004 No 50).

Regulation 6(2)(c): amended, on 1 June 2005, pursuant to section 235(3) of the Corrections Act 2004 (2004 No 50).

## **7 Advising of time and place for databank compulsion notice hearing**

Regulation 6 applies, with all necessary modifications, to a Registrar who must advise certain persons of the time and place of a databank compulsion notice hearing under section 41B(2) of the Act.

## **8 Notice of judicial variation of place and date for taking bodily sample**

If a compulsion order or databank compulsion notice is varied by a Judge under section 47 of the Act, a Registrar must, as soon as practicable after the variation, take all reasonable steps to give notice of the variation to—

- (a) the person to whom the notice relates, if that person is not the applicant for the variation; or
- (b) the Commissioner, if the person to whom the notice relates is the applicant for the variation.

## **9 Proof of service**

- (1) Proof that a document has been served on a person under the Act may be given—

- (a) by affidavit made by the person serving the document showing that the document was served and when and how it was served; or
- (b) on oath before a court by the person serving the document; or
- (c) if the document was served by an officer of the court or by a constable or Police employee who is not a constable, by showing that it was served and when and how it was served—
  - (i) in an endorsement on the original document or a copy of it; or
  - (ii) in a certificate attached to the original document or a copy of it.

- (2) An endorsement or certificate under subclause (1)(c) must be signed,—

- (a) by the person who served the document; or
- (b) if service was effected by registered letter, by an officer of the court or a constable or Police employee who is not a constable who knows of the service.

- (3) Subclauses (1) and (2) apply to the giving of a document to any person subject to any necessary modifications.

Regulation 9(1)(c): amended, on 1 October 2008, pursuant to section 116(a)(vii) of the Policing Act 2008 (2008 No 72).

Regulation 9(1)(c): amended, on 1 October 2008, pursuant to section 116(d) of the Policing Act 2008 (2008 No 72).

Regulation 9(2)(b): amended, on 1 October 2008, pursuant to section 116(a)(vii) of the Policing Act 2008 (2008 No 72).

Regulation 9(2)(b): amended, on 1 October 2008, pursuant to section 116(d) of the Policing Act 2008 (2008 No 72).

## **10 Revocation**

The Criminal Investigations (Blood Samples) Regulations 1996 (SR 1996/190) are revoked.

## **11 Savings**

Despite regulation 10, the Criminal Investigations (Blood Samples) Regulations 1996 continue to apply to any matter that is required by section 83 of the Act to be dealt with as if the Criminal Investigations (Bodily Samples) Amendment Act 2003 had not been passed.

## Schedule Forms

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## Form 1

Notice of request to suspect of or over the age of 17 years to give bodily  
sample

*Section 7, Criminal Investigations (Bodily Samples) Act 1995*

**Read this notice carefully—it contains important information you should know****What am I being asked to do?**

You are being asked to consent to the taking of a bodily sample because—

- it is believed that you have or may have committed the offence of [*specify offence*], which is an imprisonable offence or an offence against any of the provisions listed in Part 3 of the Schedule of the Criminal Investigations (Bodily Samples) Act 1995; and
- there are reasonable grounds to believe that analysis of a bodily sample would tend to confirm or disprove your involvement in the commission of that offence.

**Can I seek legal advice about this request?**

Yes, you may wish to consult a lawyer before deciding whether or not to consent to the taking of a bodily sample or if there is anything you do not understand about this request.

**Do I have to give a bodily sample?**

No, you do not have to give a bodily sample.

**What will the bodily sample be used for if I consent to it being taken?**

If you do decide to give a bodily sample, it will be—

- analysed on behalf of the Police; and
- the results of that analysis may be used as evidence in criminal proceedings in New Zealand or may be provided to a foreign country for a criminal investigation or a prosecution in that country following a request for assistance under the Mutual Assistance in Criminal Matters Act 1992.

**What is the time limit for deciding?**

You have 48 hours from the time this request is made to decide whether or not you want to consent to the taking of a bodily sample. If you have not consented within that period, you will be taken to have refused to give your consent.

**Can I change my mind after I have given consent?**

Yes, you may withdraw your consent at any time before the bodily sample is taken. If you withdraw your consent, you will be taken as having refused to give consent.



### **What will happen if I do not consent to give a bodily sample?**

If you refuse to give consent to the taking of a bodily sample, the Police may apply to a District Court Judge for a suspect compulsion order that requires you to give a bodily sample, but only if—

- there is good cause to suspect that you committed the offence referred to at the beginning of this notice or a related offence (as defined in section 2(2) of the Criminal Investigations (Bodily Samples) Act 1995); and
- it is an imprisonable offence or an offence against any of the provisions listed in Part 3 of the Schedule of that Act.

### **How will the bodily sample be taken?**

You may choose whether you want the bodily sample to be taken by any of the following methods:

- a buccal sample (a mouth swab); or
- a blood sample from a vein; or
- a blood sample from a fingerprick (taken from the tip of your finger or thumb).

The Police may tell you that they prefer that the bodily sample be taken by a particular method, but the final decision is yours. However, if you do not choose a particular method and you do not have a preference as to which method is to be used, the Police may choose a method for the taking of the bodily sample.

### **Who will take the bodily sample?**

The answer to this differs depending on the method you choose for the taking of the bodily sample.

#### *Buccal sample (mouth swab)*

If you choose a buccal sample (mouth swab), you must take a mouth swab yourself under the supervision of a constable.\*

\*If you have a disability or injury that means you are unable to take a mouth swab yourself, the mouth swab must be taken by a suitably qualified person (being a medical practitioner, nurse, medical technologist, or phlebotomist).

#### *Blood sample from vein*

If you choose a blood sample from a vein, it must be taken by a suitably qualified person.

#### *Blood sample from fingerprick*

If you choose a blood sample from a fingerprick, it must be taken by a suitably qualified person.

### **Can I have someone with me when I give the bodily sample?**

Yes, you may have the bodily sample taken in the presence of one person of your choice. That person may be your lawyer, but it may be any other person.

**Can I get my own analysis done?**

Yes, but if you do want your own analysis done you have to make your own arrangements for this. The procedure for getting a sample for your own analysis differs depending on which method you choose for the taking of your bodily sample.

*Buccal sample (mouth swab) taken by you*

If you choose to take a mouth swab yourself, you will be asked by the constable who supervises you taking the mouth swab whether you want to take another mouth swab in order to have your own analysis done.

If you do want to take another mouth swab—

- a constable will give you the means to take a second mouth swab; and
- the buccal sample will be given to you or, if you are in custody, to a person you have nominated.

*Buccal sample (mouth swab) taken by suitably qualified person (because of disability or injury)*

If you choose to take a mouth swab but you have a disability or injury that means you are unable to take a mouth swab yourself, you will be asked by the suitably qualified person who takes the mouth swab whether you want to have another mouth swab taken in order to have your own analysis done.

If you do want another mouth swab taken—

- the suitably qualified person will take another mouth swab from you; and
- the buccal sample will be given to you or, if you are in custody, to a person you have nominated.

*Blood sample from vein*

If you choose to have a blood sample taken from a vein you will be asked by the suitably qualified person who takes the blood sample whether you want to have part of the blood sample in order to have your own analysis done. If you do want to have your own analysis done, the blood sample will be divided into 2 parts. One part of the blood sample will be given to you or, if you are in custody, to a person you have nominated.

*Blood sample from fingerprick*

If you choose to have a blood sample taken from a fingerprick you will be asked by the suitably qualified person who takes the fingerprick sample whether you want to have another fingerprick sample taken in order to have your own analysis done.

If you do want another fingerprick sample taken—

- the suitably qualified person will take another fingerprick sample; and
- the blood sample will be given to you or, if you are in custody, to a person you have nominated.

### **How is the bodily sample dealt with once it is taken?**

The answer to this differs depending on which method you choose for the taking of the bodily sample.

#### *Buccal sample (mouth swab)*

In this situation the constable who supervises you taking a mouth swab or the suitably qualified person who takes the mouth swab will—

- seal the buccal sample in a container once it has dried; or
- place it in a container in a way that allows it to dry.

#### *Blood sample from vein*

In this situation the suitably qualified person who takes the blood sample from a vein will place it in a sealable container and may add a substance to it that ensures the blood remains in the best condition for testing.

#### *Blood sample from fingerprick*

In this situation the suitably qualified person who takes the blood sample from a fingerprick will seal it in a container as soon as practicable after it has dried.

### **What information will I get about the analysis done on behalf of the Police?**

When the bodily sample has been analysed on behalf of the Police, a copy of the record of that analysis will be made available to you or your lawyer.

The Police will also make available a copy of any record of any comparison made between that analysis and any analysis of material that may have come from the person who committed the offence referred to at the beginning of this notice.

### **What will the Police do with the bodily sample and the analysis of it?**

Your bodily sample, and any information that comes from an analysis of it, will be held by or on behalf of the Police.

Information that comes from the analysis of your bodily sample may be stored on a DNA profile databank maintained by or on behalf of the Police if—

- you are convicted of the offence referred to at the beginning of this notice or a related offence (as defined in section 2(2) of the Criminal Investigations (Bodily Samples) Act 1995); and
- it is an imprisonable offence or an offence against any of the provisions listed in Part 3 of the Schedule of that Act.

### **How long will the Police hold the bodily sample and the analysis of it?**

Your bodily sample, every record of the analysis of the sample, all information about the sample, and all particulars that link you to the sample must be destroyed by the Police (within certain time periods specified in the Criminal Investigations (Bodily Samples) Act 1995) in the following circumstances:

- if you are not charged with the offence referred to at the beginning of this notice or a related offence; or
- if you are charged, but the charge is withdrawn or you are acquitted; or
- if you are convicted, but the offence is not an imprisonable offence or an offence against any of the provisions listed in Part 3 of the Schedule of the Criminal Investigations (Bodily Samples) Act 1995; or
- if you are convicted of an imprisonable offence or an offence against any of the provisions listed in Part 3 of the Schedule of that Act. (However, in this situation information that comes from the analysis of the sample may be kept on a DNA profile databank.)

**Consent to taking of bodily sample**

I consent to give a bodily sample (please write “yes” or “no”)

.....  
Signature of suspect

.....  
Date

Schedule form 1: amended, on 4 February 2016, by regulation 4 of the Criminal Investigations (Bodily Samples) Amendment Regulations (No 2) 2015 (LI 2015/302).

Schedule form 1: amended, on 5 December 2011, by regulation 4 of the Criminal Investigations (Bodily Samples) Amendment Regulations 2011 (SR 2011/314).

Schedule form 1: amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Schedule form 1: amended, on 15 December 2005, by section 6 of the Criminal Investigation (Bodily Samples) Amendment Act 2005 (2005 No 98).

Form 2

Notice of request to suspect of or over the age of 14 years but under the age of  
17 years to give bodily sample

*Section 8, Criminal Investigations (Bodily Samples) Act 1995*

**Read this notice carefully—it contains important information both you and your  
parent should know**

**What am I and my parent being asked to do?**

You and your parent\* are being asked to consent to the taking of a bodily sample from you because—

- it is believed that you have or may have committed the offence of [*specify offence*]; and
- there are reasonable grounds to believe that analysis of a bodily sample would tend to confirm or disprove your involvement in the commission of that offence.

\*For the purposes of this request, a **parent**—

- (a) means a parent or guardian; and
- (b) includes a step-parent; and
- (c) includes, if no parent or guardian can be found with reasonable diligence or is capable of consenting to the taking of a bodily sample, a person in New Zealand who is acting in the place of a parent.

**Can we seek legal advice about this request?**

Yes, you or your parent may wish to consult a lawyer before deciding whether or not to consent to the taking of a bodily sample or if there is anything you do not understand about this request.

**Do both of us need to consent?**

Yes, as you are under the age of 17 years, a bodily sample may only be taken as a result of this request if both you and one of your parents consent to it being taken.

**Do I have to give a bodily sample?**

No, you do not have to give a bodily sample. Your parent is under no obligation to consent either.

**What will the bodily sample be used for if we consent to it being taken?**

If you and your parent do decide that you will give a bodily sample, it will be—

- analysed on behalf of the Police; and
- the results of that analysis may be used as evidence in criminal proceedings in New Zealand or may be provided to a foreign country for a criminal investigation or a prosecution in that country following a request for assistance under the Mutual Assistance in Criminal Matters Act 1992.

**What is the time limit for deciding?**

You and your parent have 48 hours from the time this request is made to decide whether or not you want to consent to the taking of a bodily sample. If both you and your parent have not consented within that period, you will be taken to have refused to give consent.

**Can we change our minds after we have given consent?**

Yes, you or your parent may withdraw consent at any time before the bodily sample is taken. If you or your parent withdraw consent, you will be taken as having refused to give consent.

**What will happen if we do not consent to give a bodily sample?**

If you or your parent refuse to give consent to the taking of a bodily sample, the Police may apply to a District Court Judge for a juvenile compulsion order that requires you to give a bodily sample, but only if—

- there is good cause to suspect that you committed the offence referred to at the beginning of this notice or a related offence (as defined in section 2(2) of the Criminal Investigations (Bodily Samples) Act 1995); and
- it is an imprisonable offence or an offence against any of the provisions listed in Part 3 of the Schedule of that Act.

**How will the bodily sample be taken?**

You may choose whether you want the bodily sample to be taken by any of the following methods:

- a buccal sample (a mouth swab); or
- a blood sample from a vein; or
- a blood sample from a fingerprick (taken from the tip of your finger or thumb).

The Police may tell you that they prefer that the bodily sample be taken by a particular method, but the final decision is yours. However, if you do not choose a particular method and you do not have a preference as to which method is to be used, the Police may choose a method for the taking of the bodily sample.

**Who will take the bodily sample?**

The answer to this differs depending on the method you choose for the taking of the bodily sample.

*Buccal sample (mouth swab)*

If you choose a buccal sample (mouth swab), you may—

- take a mouth swab yourself under the supervision of a constable\*; or
- have a mouth swab taken by a suitably qualified person (being a medical practitioner, nurse, medical technologist, or phlebotomist).

\*If you have a disability or injury that means you are unable to take a mouth swab yourself, the mouth swab must be taken by a suitably qualified person.

*Blood sample from vein*

If you choose a blood sample from a vein, it must be taken by a suitably qualified person.

*Blood sample from fingerprick*

If you choose a blood sample from a fingerprick, it must be taken by a suitably qualified person.

**Can I have someone with me when I give the bodily sample?**

Yes, you may ask to have one of your parents, or the person who has the care of you, with you when the bodily sample is taken.

You may also have the bodily sample taken in the presence of one other person of your choice. That person may be your lawyer, but it may be any other person. You may choose this person yourself or let your parent, or the person who has the care of you, choose for you.

**What happens if I choose to take a buccal sample (mouth swab) myself?**

If you choose to take a mouth swab yourself then there must be an independent adult present to hear you confirm that decision and also when you take the mouth swab.

The independent adult may be a parent or the person who has the care of you, or the lawyer or other person either of you has chosen to be present. If none of those persons are present, the independent adult may be any person chosen by you who is of or over the age of 17 years and who is not a constable or a Police employee who is not a constable.

If you fail or refuse to choose an independent adult, a constable may choose any person who is of or over the age of 17 years and who is not a constable or a Police employee who is not a constable to be the independent adult.

**Can I get my own analysis done?**

Yes, but if you do want your own analysis done, you have to make your own arrangements for this. The procedure for getting a sample for your own analysis differs depending on which method you choose for the taking of your bodily sample.

*Buccal sample (mouth swab) taken by you*

If you choose to take a mouth swab yourself, you will be asked by the constable who supervises you taking the mouth swab whether you want to take another mouth swab in order to have your own analysis done.

If you do want to take another mouth swab—

- a constable will give you the means to take a second mouth swab; and

- the buccal sample will be given to you or, if you are in custody, to a person you have nominated.

*Buccal sample (mouth swab) taken by suitably qualified person*

If you choose to have a mouth swab taken by a suitably qualified person (or a mouth swab is taken by a suitably qualified person because you have a disability or injury that means you are unable to take a mouth swab yourself), you will be asked by the suitably qualified person who takes the mouth swab whether you want to have another mouth swab taken in order to have your own analysis done.

If you do want another mouth swab taken—

- the suitably qualified person will take another mouth swab from you or, if you choose (and you do not have a disability or injury that means you are unable to take a mouth swab yourself), will give you the means to take a second mouth swab yourself; and
- the buccal sample will be given to you or, if you are in custody, to a person you have nominated.

*Blood sample from vein*

If you choose to have a blood sample taken from a vein you will be asked by the suitably qualified person who takes the blood sample whether you want to have part of the blood sample in order to have your own analysis done. If you do want to have your own analysis done, the blood sample will be divided into 2 parts. One part of the blood sample will be given to you or, if you are in custody, to a person you have nominated.

*Blood sample from fingerprick*

If you choose to have a blood sample taken from a fingerprick you will be asked by the suitably qualified person who takes the fingerprick sample whether you want to have another fingerprick sample taken in order to have your own analysis done.

If you do want another fingerprick sample taken,—

- the suitably qualified person will take another fingerprick sample; and
- the blood sample will be given to you or, if you are in custody, to a person you have nominated.

**How is the bodily sample dealt with once it is taken?**

The answer to this differs depending on which method you choose for the taking of the bodily sample.

*Buccal sample (mouth swab)*

In this situation the constable who supervises you taking a mouth swab or the suitably qualified person who takes the mouth swab will—

- seal the buccal sample in a container once it has dried; or



- place it in a container in a way that allows it to dry.

*Blood sample from vein*

In this situation the suitably qualified person who takes the blood sample from a vein will place it in a sealable container and may add a substance to it that ensures the blood remains in the best condition for testing.

*Blood sample from fingerprick*

In this situation the suitably qualified person who takes the blood sample from a fingerprick will seal it in a container as soon as practicable after it has dried.

**What information will I get about the analysis done on behalf of the Police?**

When the bodily sample has been analysed on behalf of the Police, a copy of the record of that analysis will be made available to you or your lawyer.

The Police will also make available a copy of any record of any comparison made between that analysis and any analysis of material that may have come from the person who committed the offence referred to at the beginning of this notice.

**What will the Police do with the bodily sample and the analysis of it?**

Your bodily sample, and any information that comes from an analysis of it, will be held by or on behalf of the Police.

Information that comes from the analysis of your bodily sample may be stored on a DNA profile databank maintained by or on behalf of the Police if—

- you are convicted of the offence referred to at the beginning of this notice or a related offence (as defined in section 2(2) of the Criminal Investigations (Bodily Samples) Act 1995); and
- it is an imprisonable offence or an offence against any of the provisions listed in Part 3 of the Schedule of that Act.

**How long will the Police hold the bodily sample and the analysis of it?**

Your bodily sample, every record of the analysis of the sample, all information about the sample, and all information linking you with the sample, must be destroyed by the Police (within certain time periods specified in the Criminal Investigations (Bodily Samples) Act 1995) in the following circumstances:

- if you are not charged with the offence referred to at the beginning of this notice or a related offence; or
- if you are charged, but the charge is withdrawn or you are acquitted; or
- if you are convicted, but the offence is not an imprisonable offence or an offence against any of the provisions listed in Part 3 of the Schedule of the Criminal Investigations (Bodily Samples) Act 1995; or
- if you are convicted of an imprisonable offence or an offence against any of the provisions listed in Part 3 of the Schedule of that Act. (However, in this situ-

ation information that comes from the analysis of the sample may be kept on a DNA profile databank.)

**Consent to taking of bodily sample**

I consent to give a bodily sample (please write “yes” or “no”)

.....  
Signature of suspect

.....  
Date

**Parent’s consent to taking of bodily sample**

I consent to a bodily sample being taken from [*specify name of suspect*] (please write “yes” or “no”)

.....  
Signature of parent

.....  
Date

Schedule form 2: amended, on 4 February 2016, by regulation 5 of the Criminal Investigations (Bodily Samples) Amendment Regulations (No 2) 2015 (LI 2015/302).

Schedule form 2: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Schedule form 2: amended, on 5 December 2011, by regulation 4 of the Criminal Investigations (Bodily Samples) Amendment Regulations 2011 (SR 2011/314).

Schedule form 2: amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Schedule form 2: amended, on 1 October 2008, pursuant to section 116(a)(vii) of the Policing Act 2008 (2008 No 72).

Schedule form 2: amended, on 1 October 2008, pursuant to section 116(d) of the Policing Act 2008 (2008 No 72).

Schedule form 2: amended, on 15 December 2005, by section 6 of the Criminal Investigation (Bodily Samples) Amendment Act 2005 (2005 No 98).

Form 3

Suspect compulsion order (for suspect of or over the age of 17 years)

*Section 24, Criminal Investigations (Bodily Samples) Act 1995*

Case No: .....

To *[full name of respondent]*

On an application made by *[name of constable of or above level of position of inspector]*, the Honourable Justice *[name of Judge]* makes the following suspect compulsion order under section 16 of the Criminal Investigations (Bodily Samples) Act 1995 subject to any other conditions specified in this order:

1 You are required to give a bodily sample:

*[If the Judge has specified the type of bodily sample to be taken because of the respondent's state of health or because this is a further suspect compulsion order]*

\*2 You must give the bodily sample by way of a buccal sample (or blood sample from a vein) (or blood sample from a fingerprick) because of your state of health (or because this is a further suspect compulsion order):

3 You must attend to give the bodily sample (or if the Judge has specified the method by which the bodily sample is to be taken, specify that method)—

*[If the Judge believes good reasons exist for why the bodily sample must be taken at the specified place and on the specified date]*

(a) at *[specify place]*, which may not be varied by agreement between you and the Police; and

(b) on *[specify date]*, which may not be varied by agreement between you and the Police:

**or**

at *[specify place]* on *[specify date]*, unless you and a constable agree to vary that place or vary that date to an earlier date, or both:

**or**

*[If the Judge believes good reasons exist for why the bodily sample must be taken on the specified date]*

(a) at *[specify place]*, unless you and a constable agree to vary that place; and

(b) on *[specify date]*, which may not be varied by agreement between you and the Police:

**or**

*[If the Judge believes good reasons exist for why the bodily sample must be taken at the specified place]*

- (a) at [*specify place*], which may not be varied by agreement between you and the Police; and
- (b) on [*specify date*], unless you and a constable agree to vary that date to an earlier date:

[*Note applicable if any of the above 3 options apply.*]

**Note:** If you are detained in custody (in a manner specified in section 46(1) of the Criminal Investigations (Bodily Samples) Act 1995 (for example, in a prison)), an agreement reached between you and the Police to vary the date (*or* place) (*or* date and place) for the taking of the bodily sample is of no effect unless it has been approved by the person who has the custody of, or responsibility for, you.

***or***

[*If the respondent is serving a sentence by way of home detention*]

- (a) at the place where you are detained on home detention being [*specify address*], which may not be varied by agreement between you and the Police; and
- (b) on [*specify date*] unless you and a constable agree to vary that date to an earlier date (which must be approved by your supervising probation officer):

***or***

[*If the respondent is serving a sentence by way of home detention but because of the respondent's state of health the Judge is of the view that it is necessary for the respondent to give the bodily sample at a place other than where the respondent is detained*]

- (a) at [*specify place*], being a place other than the residence at which you are detained on home detention, which may not be varied by agreement with the Police; and
- (b) on [*specify date*], unless you and a constable agree to vary that date to an earlier date (which must be approved by your supervising probation officer).

\*4 This suspect compulsion order is subject to the following conditions: [*state any other conditions specified by the Judge*].

\*Delete if inapplicable.

**Read the following carefully—it contains important information about being required to provide a bodily sample**

**If there is anything you do not understand about this order, talk to your lawyer**

### **How will the bodily sample be taken?**

Unless a Judge has specified at the beginning of this order the method by which a bodily sample is to be taken, you may choose whether you want the bodily sample to be taken by any of the following methods:

- a buccal sample (a mouth swab); or
- a blood sample from a vein; or
- a blood sample from a fingerprick (taken from the tip of your finger or thumb).

If a Judge has not specified the method by which the bodily sample is to be taken, the Police may tell you that they prefer that the bodily sample be taken by a particular method, but the final decision is yours. However, if you do not choose a particular method and you do not have a preference as to which method is to be used, the Police may choose a method for the taking of the bodily sample.

If you agree to give a bodily sample in compliance with this order, the sample will be taken by the method you choose (*or* specified by a Judge).

### **What will the bodily sample be used for?**

Your bodily sample will be—

- analysed on behalf of the Police; and
- the results of that analysis may be used as evidence in criminal proceedings in New Zealand or may be provided to a foreign country for a criminal investigation or a prosecution in that country following a request for assistance under the Mutual Assistance in Criminal Matters Act 1992.

### **Who will take the bodily sample?**

The answer to this differs depending on the method you choose (*or* a Judge has specified) for the taking of the bodily sample.

#### *Buccal sample (mouth swab)*

If you choose (*or* a Judge has specified) a buccal sample (mouth swab), you may—

- take a mouth swab yourself under the supervision of a constable\*; or
- have a mouth swab taken by a suitably qualified person (being a medical practitioner, nurse, medical technologist, or phlebotomist).

\*If you have a disability or injury that means you are unable to take a mouth swab yourself, the mouth swab must be taken by a suitably qualified person.

#### *Blood sample from vein*

If you choose (*or* a Judge has specified) a blood sample from a vein, it must be taken by a suitably qualified person.

*Blood sample from fingerprick*

If you choose (*or* a Judge has specified) a blood sample taken from a fingerprick, it must be taken by a suitably qualified person.

**Can I be forced to give a bodily sample?**

If you refuse to give a bodily sample in compliance with this order, a constable may use or cause to be used reasonable force to assist a suitably qualified person to take a bodily sample. If you are in a prison, a prison officer may also assist the constable.

If force is used, the bodily sample will be taken—

- by a blood sample from a fingerprick; or
- by a mouth swab (but, only if a Judge has specified at the beginning of this order that a mouth swab must be taken because of your state of health).

**Can I have someone with me when I give the bodily sample?**

Yes, you may have the sample taken in the presence of one person of your choice. That person may be your lawyer, but may be any other person.

**Can I get my own analysis done?**

Yes, but if you do want your own analysis done, you have to make your own arrangements for this. The procedure for getting a sample for your own analysis differs depending on which method you choose (*or* a Judge has specified) for the taking of your bodily sample.

*Buccal sample (mouth swab) taken by you*

If you choose (*or* a Judge has specified) a mouth swab and you choose to take the mouth swab yourself, you will be asked by the constable who supervises you taking the mouth swab whether you want to take another mouth swab in order to have your own analysis done.

If you do want to take another mouth swab—

- a constable will give you the means to take a second mouth swab; and
- the buccal sample will be given to you or, if you are in custody, to a person you have nominated.

*Buccal sample (mouth swab) taken by suitably qualified person*

If you choose (*or* a Judge has specified) a mouth swab and you choose to have the mouth swab taken by a suitably qualified person (*or* a mouth swab is taken by a suitably qualified person because you have a disability or injury that means you are unable to take a mouth swab yourself), you will be asked by the suitably qualified person who takes the mouth swab whether you want to have another mouth swab taken in order to have your own analysis done.

If you do want another mouth swab taken—

- the suitably qualified person will take another mouth swab from you or, if you choose (and you do not have a disability or injury that means you are unable to take a mouth swab yourself), will give you the means to take a second mouth swab yourself; and
- the buccal sample will be given to you or, if you are in custody, to a person you have nominated.

*Blood sample from vein*

If you choose (*or* a Judge has specified) a blood sample from a vein, you will be asked by the suitably qualified person who takes the blood sample whether you want to have part of the blood sample in order to have your own analysis done. If you do want to have your own analysis done, the blood sample will be divided into 2 parts. One part of the blood sample will be given to you or, if you are in custody, to a person you have nominated.

*Blood sample from fingerprick*

If you choose (*or* a Judge has specified) a blood sample from a fingerprick, you will be asked by the suitably qualified person who takes the fingerprick sample whether you want to have another fingerprick sample taken in order to have your own analysis done.

If you do want another fingerprick sample taken—

- the suitably qualified person will take another fingerprick sample; and
- the blood sample will be given to you or, if you are in custody, to a person you have nominated.

**How is the bodily sample dealt with once it is taken?**

The answer to this differs depending on the method you choose (*or* a Judge has specified) for the taking of the bodily sample.

*Buccal sample (mouth swab)*

In this situation the constable who supervises you taking a mouth swab or the suitably qualified person who takes the mouth swab will—

- seal the buccal sample in a container once it has dried; or
- place it in a container in a way that allows it to dry.

*Blood sample from vein*

In this situation the suitably qualified person who takes the blood sample from a vein will place it in a sealable container and may add a substance to it that ensures the blood remains in the best condition for testing.

*Blood sample from fingerprick*

In this situation the suitably qualified person who takes the blood sample from a fingerprick will seal the blood sample in a container as soon as practicable after it has dried.

**What information will I get about the analysis done on behalf of the Police?**

When the bodily sample has been analysed on behalf of the Police, a copy of the record of that analysis will be made available to you or your lawyer.

The Police will also make available a copy of any record of any comparison made between that analysis and any analysis of material that may have come from the person who committed the offence to which the application for this order relates.

**What will the Police do with the bodily sample and the analysis of it?**

Your bodily sample, and any information that comes from an analysis of it, will be held by or on behalf of the Police.

Information that comes from the analysis of your bodily sample may be stored on a DNA profile databank maintained by or on behalf of the Police if—

- you are convicted of the offence to which this order relates or a related offence (as defined in section 2(2) of the Criminal Investigations (Bodily Samples) Act 1995); and
- it is an imprisonable offence or an offence against any of the provisions listed in Part 3 of the Schedule of that Act.

**How long will the Police hold the bodily sample and the analysis of it?**

Your bodily sample, every record of the analysis of the sample, all information about the sample, and all information linking you with the sample, must be destroyed by the Police (within certain periods specified in the Criminal Investigations (Bodily Samples) Act 1995) in the following circumstances:

- if you are not charged with the offence to which this order relates, or a related offence that is an imprisonable offence or an offence against any of the provisions listed in Part 3 of the Schedule of the Criminal Investigations (Bodily Samples) Act 1995; or
- if you are charged, but the charge is withdrawn or you are acquitted; or
- if you are convicted, but the offence is not an imprisonable offence or an offence against any of the provisions listed in Part 3 of the Schedule of that Act; or
- if you are convicted of an imprisonable offence or an offence against any of the provisions listed in Part 3 of the Schedule of that Act. (However, in this situation information that comes from the analysis of the sample may be kept on a DNA profile databank.)



**Can a court vary this order?**

You may apply to the District Court or the High Court to have the date or place, or date and place, specified in this order varied by a District Court Judge or a High Court Judge. However, you may not apply to vary a date or place, or date and place, that has been varied by agreement between you and the Police.

If you want to apply for this order to be varied by a District Court Judge or High Court Judge, talk to your lawyer.

Dated at [*place*] this [*date*] day of [*month*] 20

.....  
(Deputy) Registrar

Schedule form 3: amended, on 14 November 2018, by section 119(2) of the Courts Matters Act 2018 (2018 No 50).

Schedule form 3: amended, on 14 November 2018, by section 119(3) of the Courts Matters Act 2018 (2018 No 50).

Schedule form 3: amended, on 4 February 2016, by regulation 6 of the Criminal Investigations (Bodily Samples) Amendment Regulations (No 2) 2015 (LI 2015/302).

Schedule form 3: amended, on 5 December 2011, by regulation 4 of the Criminal Investigations (Bodily Samples) Amendment Regulations 2011 (SR 2011/314).

Schedule form 3: amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Schedule form 3: amended, on 1 October 2008, pursuant to section 116(b) of the Policing Act 2008 (2008 No 72).

Schedule form 3: amended, on 15 December 2005, by section 6 of the Criminal Investigation (Bodily Samples) Amendment Act 2005 (2005 No 98).

Schedule form 3: amended, on 1 June 2005, pursuant to section 235(1) of the Corrections Act 2004 (2004 No 50).

## Form 4

## Juvenile compulsion order (for suspect under the age of 17 years)

*Section 24, Criminal Investigations (Bodily Samples) Act 1995*

Case No: .....

**To** *[full name of respondent]*

On an application made by *[name of constable of or above level of position of inspector]*, the Honourable Justice *[name of Judge]* makes the following juvenile compulsion order under section 23 of the Criminal Investigations (Bodily Samples) Act 1995 subject to any other conditions specified in this order:

1 You are required to give a bodily sample:

*[If the Judge has specified the type of bodily sample to be taken because of the respondent's state of health or because this is a further juvenile compulsion order]*

\*2 You must give the bodily sample by way of a buccal sample (or blood sample from a vein) (or blood sample from a fingerprick) because of your state of health (or because this is a further juvenile compulsion order):

3 You must attend to give the bodily sample (or if the Judge has specified the method by which the bodily sample is to be taken, specify that method)—

*[If the Judge believes good reasons exist for why the bodily sample must be taken at the specified place and on the specified date]*

- (a) at *[specify place]*, which may not be varied by agreement between you and the Police; and
- (b) on *[specify date]*, which may not be varied by agreement between you and the Police:

**or**

at *[specify place]* on *[specify date]*, unless you and a constable agree to vary that place or vary that date to an earlier date, or both:

**or**

*[If the Judge believes good reasons exist for why the bodily sample must be taken on the specified date]*

- (a) at *[specify place]*, unless you and a constable agree to vary that place; and
- (b) on *[specify date]*, which may not be varied by agreement between you and the Police:

**or**

*[If the Judge believes good reasons exist for why the bodily sample must be taken at the specified place]*

- (a) at [*specify place*], which may not be varied by agreement between you and the Police; and
- (b) on [*specify date*], unless you and a constable agree to vary that date to an earlier date:

[*Note applicable if any of the above 3 options apply.*]

**Note:** If you are detained in custody (in a manner specified in section 46(1) of the Criminal Investigations (Bodily Samples) Act 1995 (for example, in a prison)), an agreement reached between you and the Police to vary the date (*or* place) (*or* date and place) for the taking of the bodily sample is of no effect unless it has been approved by the person who has the custody of, or responsibility for, you.

***or***

[*If the respondent is serving a sentence by way of home detention*]

- (a) at the place where you are detained on home detention being [*specify address*], which may not be varied by agreement between you and the Police; and
- (b) on [*specify date*] unless you and a constable agree to vary that date to an earlier date (which must be approved by your supervising probation officer):

***or***

[*If the respondent is serving a sentence by way of home detention but because of the respondent's state of health the Judge is of the view that it is necessary for the respondent to give the bodily sample at a place other than where the respondent is detained*]

- (a) at [*specify place*], being a place other than the residence at which you are detained on home detention, which may not be varied by agreement with the Police; and
- (b) on [*specify date*], unless you and a constable agree to vary that date to an earlier date (which must be approved by your supervising probation officer).

\*4 This juvenile compulsion order is subject to the following conditions: [*state any other conditions specified by the Judge*].

\*Delete if inapplicable.

**Read the following carefully—it contains important information about being required to provide a bodily sample**

**If there is anything you do not understand about this order, talk to your lawyer**

**How will the bodily sample be taken?**

Unless a Judge has specified at the beginning of this order the method by which a bodily sample is to be taken, you may choose whether you want the bodily sample to be taken by any of the following methods:

- a buccal sample (a mouth swab); or
- a blood sample from a vein; or
- a blood sample from a fingerprick (taken from the tip of your finger or thumb).

If a Judge has not specified the method by which the bodily sample is to be taken, the Police may tell you that they prefer that the bodily sample be taken by a particular method, but the final decision is yours. However, if you do not choose a particular method and you do not have a preference as to which method is to be used, the Police may choose a method for the taking of the bodily sample.

If you agree to give a bodily sample in compliance with this order, the sample will be taken by the method you choose (*or* specified by a Judge).

**What will the bodily sample be used for?**

Your bodily sample will be—

- analysed on behalf of the Police; and
- the results of that analysis may be used as evidence in criminal proceedings in New Zealand or may be provided to a foreign country for a criminal investigation or a prosecution in that country following a request for assistance under the Mutual Assistance in Criminal Matters Act 1992.

**Who will take the bodily sample?**

The answer to this differs depending on the method you choose (*or* a Judge has specified) for the taking of the bodily sample.

*Buccal sample (mouth swab)*

If you choose (*or* a Judge has specified) a buccal sample (mouth swab), you may—

- take a mouth swab yourself under the supervision of a constable\*; or
- have a mouth swab taken by a suitably qualified person (being a medical practitioner, nurse, medical technologist, or phlebotomist); or
- if you are under the age of 14 years, have your parent† take a mouth swab under the supervision of a constable.

\*If you have a disability or injury that means you are unable to take a mouth swab yourself, the mouth swab must be taken by a suitably qualified person or, if you are under the age of 14 years, you may choose whether the mouth swab is to be taken by a suitably qualified person or by a parent.

†For the purposes of this order, a **parent**—

- (a) means a parent or guardian; and
- (b) includes a step-parent; and

- (c) includes, if no parent or guardian can be found with reasonable diligence or is capable of consenting to the taking of a buccal sample, a person in New Zealand who is acting in the place of a parent.

*Blood sample from vein*

If you choose (*or* a Judge has specified) a blood sample from a vein, it must be taken by a suitably qualified person.

*Blood sample from fingerprick*

If you choose (*or* a Judge has specified) a blood sample taken from a fingerprick, it must be taken by a suitably qualified person.

**Can I be forced to give a bodily sample?**

If you refuse to give a bodily sample in compliance with this order, a constable may use or cause to be used reasonable force to assist a suitably qualified person to take a bodily sample. If you are in a prison, a prison officer may also assist the constable.

If force is used, the bodily sample will be taken—

- by a blood sample from a fingerprick; *or*
- by a mouth swab (but, only if a Judge has specified at the beginning of this order that a mouth swab must be taken because of your state of health).

**Can I have someone with me when I give the bodily sample?**

Yes, you may ask to have one of your parents, or the person who has the care of you, with you when the bodily sample is taken.

You may also choose to have the bodily sample taken in the presence of one other person of your choice. That person may be your lawyer, but it may be any other person. You may choose this person yourself or let your parent, or the person who has the care of you, choose for you.

**Can I get my own analysis done?**

Yes, but if you do want your own analysis done, you have to make your own arrangements for this. The procedure for getting a sample for your own analysis differs depending on which method you choose (*or* a Judge has specified) for the taking of your bodily sample.

*Buccal sample (mouth swab) taken by you (or by parent if you are under the age of 14 years)*

If you choose (*or* a Judge has specified) a mouth swab and you choose to take the mouth swab yourself (*or* to have it taken by a parent), you will be asked by the constable who supervises you (*or* your parent) taking the mouth swab whether you want to take (*or* have your parent take) another mouth swab in order to have your own analysis done.

If you do want to take (*or* have your parent take) another mouth swab—

- a constable will give you (*or* your parent) the means to take a second mouth swab; and
- the buccal sample will be given to you or, if you are in custody, to a person you have nominated.

*Buccal sample (mouth swab) taken by suitably qualified person*

If you choose (*or* a Judge has specified) a mouth swab and you choose to have the mouth swab taken by a suitably qualified person (*or* a mouth swab is taken by a suitably qualified person because you have a disability or injury that means you are unable to take a mouth swab yourself), you will be asked by the suitably qualified person who takes the mouth swab whether you want to have another mouth swab taken in order to have your own analysis done.

If you do want another mouth swab taken—

- the suitably qualified person will take another mouth swab from you or, if you choose (and you do not have a disability or injury that means you are unable to take a mouth swab yourself), will give you the means to take a second mouth swab yourself (*or* if you are under the age of 14 years and choose, give your parent the means to take a second mouth swab); and
- the buccal sample will be given to you or, if you are in custody, to a person you have nominated.

*Blood sample from vein*

If you choose (*or* a Judge has specified) a blood sample from a vein, you will be asked by the suitably qualified person who takes the blood sample whether you want to have part of the blood sample in order to have your own analysis done. If you do want to have your own analysis done, the blood sample will be divided into 2 parts. One part of the blood sample will be given to you or, if you are in custody, to a person you have nominated.

*Blood sample from fingerprick*

If you choose (*or* a Judge has specified) a blood sample from a fingerprick, you will be asked by the suitably qualified person who takes the fingerprick sample whether you want to have another fingerprick sample taken in order to have your own analysis done.

If you do want another fingerprick sample taken—

- the suitably qualified person will take another fingerprick sample; and
- the blood sample will be given to you or, if you are in custody, to a person you have nominated.

**How is the bodily sample dealt with once it is taken?**

The answer to this differs depending on the method you choose (*or* a Judge has specified) for the taking of the bodily sample.

*Buccal sample (mouth swab)*

In this situation the constable who supervises you (*or* your parent) taking a mouth swab or the suitably qualified person who takes the mouth swab will—

- seal the buccal sample in a container once it has dried; or
- place it in a container in a way that allows it to dry.

*Blood sample from vein*

In this situation the suitably qualified person who takes the blood sample from a vein will place it in a sealable container and may add a substance to it that ensures the blood remains in the best condition for testing.

*Blood sample from fingerprick*

In this situation the suitably qualified person who takes the blood sample from a fingerprick will seal the blood sample in a container as soon as practicable after it has dried.

**What information will I get about the analysis done on behalf of the Police?**

When the bodily sample has been analysed on behalf of the Police, a copy of the record of that analysis will be made available to you or your lawyer.

The Police will also make available a copy of any record of any comparison made between that analysis and any analysis of material that may have come from the person who committed the offence to which the application for this order relates.

**What will the Police do with the bodily sample and the analysis of it?**

Your bodily sample, and any information that comes from an analysis of it, will be held by or on behalf of the Police.

Information that comes from the analysis of your bodily sample may be stored on a DNA profile databank maintained by or on behalf of the Police if—

- you are convicted of the offence to which this order relates or a related offence (as defined in section 2(2) of the Criminal Investigations (Bodily Samples) Act 1995); and
- it is an imprisonable offence or an offence against any of the provisions listed in Part 3 of the Schedule of that Act.

**How long will the Police hold the bodily sample and the analysis of it?**

Your bodily sample, every record of the analysis of the sample, all information about the sample, and all information linking you with the sample, must be destroyed by the Police (within certain specified periods in the Criminal Investigations (Bodily Samples) Act 1995) in the following circumstances:

- if you are not charged with the offence to which this order relates, or a related offence that is an imprisonable offence or an offence against any of the provi-

sions listed in Part 3 of the Schedule of the Criminal Investigations (Bodily Samples) Act 1995; or

- if you are charged, but the charge is withdrawn or you are acquitted; or
- if you are convicted, but the offence is not an imprisonable offence or an offence against any of the provisions listed in Part 3 of the Schedule of that Act; or
- if you are convicted of an imprisonable offence or an offence against any of the provisions listed in Part 3 of the Schedule of that Act. (However, in this situation information that comes from the analysis of the sample may be kept on a DNA profile databank.)

### Can a court vary this order?

You may apply to the District Court to have the date or place, or date and place, specified in this order varied by a District Court Judge. However, you may not apply to vary a date or place, or date and place, that has been varied by agreement between you and the Police.

If you want to apply for this order to be varied by a District Court Judge, talk to your lawyer.

Dated at *[place]* this *[date]* day of *[month]* 20

.....  
(Deputy) Registrar

Schedule form 4: amended, on 4 February 2016, by regulation 7 of the Criminal Investigations (Bodily Samples) Amendment Regulations (No 2) 2015 (LI 2015/302).

Schedule form 4: amended, on 5 December 2011, by regulation 4 of the Criminal Investigations (Bodily Samples) Amendment Regulations 2011 (SR 2011/314).

Schedule form 4: amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Schedule form 4: amended, on 1 October 2008, pursuant to section 116(b) of the Policing Act 2008 (2008 No 72).

Schedule form 4: amended, on 15 December 2005, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2005 (2005 No 98).

Schedule form 4: amended, on 1 June 2005, pursuant to section 235(1) of the Corrections Act 2004 (2004 No 50).



Form 5

Notice of request to suspect of or over the age of 10 years but under the age of 14 years when offence committed to give bodily sample

*Section 24F, Criminal Investigations (Bodily Samples) Act 1995*

**Read this notice carefully—it contains important information both you and your parent should know**

**What am I and my parent being asked to do?**

You and your parent\* are being asked to consent to the taking of a mouth swab from you in order to obtain a buccal sample because—

- it is believed that you have or may have committed the offence of [*specify offence*] for which you may not be lawfully prosecuted; and
- there are reasonable grounds to believe that analysis of a buccal sample would tend to confirm or disprove your involvement in the commission of that offence.

\*For the purposes of this request, a **parent**—

- (a) means a parent or guardian; and
- (b) includes a step-parent; and
- (c) includes, if no parent or guardian can be found with reasonable diligence or is capable of consenting to the taking of a bodily sample, a person in New Zealand who is acting in the place of a parent.

**Can we seek legal advice about this request?**

Yes, you or your parent may wish to consult a lawyer before deciding whether or not to consent to the taking of a buccal sample (mouth swab) or if there is anything you do not understand about this request.

**Can we consult with anyone else?**

Yes, you or your parent may also wish to consult with any other person (who is not a constable) before deciding whether or not to consent to the taking of a buccal sample (mouth swab).

**Do both of us need to consent?**

Yes, as you are under the age of 17 years, a buccal sample (mouth swab) may only be taken as a result of this request if both you and one of your parents consent to it being taken.

**Do I have to give a buccal sample (mouth swab)?**

No, you do not have to give a buccal sample\*. Your parent is under no obligation to consent either.

\*Due to you being under the age of 14 years at the time the offence was committed, there is no authority to request that you give any other type of bodily sample in response to a suspect request.

**What will the buccal sample (mouth swab) be used for if we consent to it being taken?**

If you and your parent do decide that you will give a buccal sample by way of a mouth swab, it will be analysed on behalf of the Police. If the results of the analysis tend to confirm your involvement in the offence specified at the beginning of this notice the results may be used to make an application to the Family Court for a declaration that you are in need of care or protection on the ground set out in section 14(1)(e) of the Oranga Tamariki Act 1989 (relating to the number, nature, or magnitude of your offending giving rise to serious concern for your well-being).

**Note:** Due to you being under the age of 14 years when the offence was committed you may not be prosecuted for the offence.

**Can we change our minds after we have given consent?**

Yes, you or your parent may withdraw consent at any time before the buccal sample (mouth swab) is taken.

**Who will take the buccal sample (mouth swab)?**

You may,—

- take a mouth swab yourself, under the supervision of a constable\*; or
- have a mouth swab taken by a suitably qualified person (being a medical practitioner, nurse, medical technologist, or phlebotomist); or
- if you are currently under the age of 14 years, have your parent take a mouth swab under the supervision of a constable.

\*If you have a disability or injury that means you are unable to take a mouth swab yourself, the mouth swab may be taken by a suitably qualified person or, if you are under the age of 14 years, you may choose whether you want the mouth swab to be taken by a suitably qualified person or by a parent. (If you are under the age of 14 years and do not make that choice, the buccal sample will not be taken.)

**Can I have someone with me when I give the buccal sample (mouth swab)?**

Yes, you may ask to have one of your parents, or the person who has the care of you, with you when the buccal sample is taken.

You may also have the mouth swab taken in the presence of one other person of your choice. That person may be your lawyer, but it may be any other person. You may choose this person yourself or let your parent, or the person who has the care of you, choose for you.

**What happens if I choose to take a buccal sample (mouth swab) myself?**

If you choose to take a mouth swab yourself then there must be an independent adult present to hear you confirm that decision and also when you take the mouth swab.

The independent adult may be a parent, or the person who has the care of you, or the lawyer or other person either of you has chosen to be present. If none of those persons are present, the independent adult may be any person chosen by you who is of or over

the age of 17 years who is not a constable or a Police employee who is not a constable.

If you fail or refuse to choose an independent adult, a constable may choose any person who is of or over the age of 17 years and who is not a constable or a Police employee who is not a constable to be the independent adult.

### **Can I get my own analysis done?**

Yes, but if you do want your own analysis done, you have to make your own arrangements for this. The procedure for getting a sample for your own analysis differs depending on which method you choose for the taking of your buccal sample.

#### *Buccal sample (mouth swab) taken by you (or by parent if you are under the age of 14 years)*

If you choose to take a mouth swab yourself (*or* to have a mouth swab taken by a parent), you will be asked by the constable who supervises you (*or* your parent) taking the mouth swab whether you want to take (*or* have your parent take) another mouth swab in order to have your own analysis done.

If you do want to take (*or* have your parent take) another mouth swab—

- a constable will give you (*or* your parent) the means to take a second mouth swab; and
- the buccal sample will be given to you or, if you are in custody, to a person you have nominated.

#### *Buccal sample (mouth swab) taken by suitably qualified person*

If you choose to have a mouth swab taken by a suitably qualified person (*or* a mouth swab is taken by a suitably qualified person because you have a disability or injury that means you are unable to take a mouth swab yourself) you will be asked by the suitably qualified person who takes the mouth swab whether you want to have another mouth swab taken in order that you can get your own analysis done.

If you do want another mouth swab taken—

- the suitably qualified person will take another mouth swab from you or, if you choose (and you do not have a disability or injury that means you are unable to take a mouth swab yourself), will give you the means to take a second mouth swab yourself (*or* if you are under the age of 14 years and choose, give your parent the means to take a second mouth swab); and
- the buccal sample will be given to you or, if you are in custody, to a person you have nominated.

### **How is the buccal sample dealt with once it is taken?**

The constable who supervises you (*or* your parent) taking a mouth swab or the suitably qualified person who takes the mouth swab will—

- seal the buccal sample in a container once it has dried; or

- place it in a container in a way that allows it to dry.

**What information will I get about the analysis done on behalf of the Police?**

When the buccal sample has been analysed on behalf of the Police, a copy of the record of that analysis will be made available to you or your lawyer.

The Police will also make available a copy of any record of any comparison made between that analysis and any analysis of material that may have come from the person who committed the offence referred to at the beginning of this notice.

**How long will the Police hold the buccal sample and the analysis of it?**

Your buccal sample, every record of the analysis of the sample, all information about the sample, and all information linking you with the sample, must be destroyed by the Police,—

- in a case where the results of the analysis of the buccal sample do not tend to confirm your involvement in the offence referred to at the beginning of this notice, as soon as practicable after the Police receive those results; or
- in a case where the results of the analysis of the buccal sample tend to confirm your involvement in the offence referred to at the beginning of this notice, but an application has not been made for a declaration that you are in need of care or protection on the ground set out in section 14(1)(e) of the Oranga Tamariki Act 1989, not later than 60 days after the Police receive the results of the analysis of those results; or
- in a case where the results of the analysis of the buccal sample tend to confirm your involvement in the offence referred to at the beginning of this notice and an application has been made for a declaration that you are in need of care or protection on the ground set out in section 14(1)(e) of the Oranga Tamariki Act 1989, as soon as practicable after a decision is made by the Family Court in relation to that application (whether or not a declaration is made).

**Consent to taking of buccal sample**

I consent to give a buccal sample (please write “yes” or “no”)

.....  
Signature of suspect

.....  
Date

**Parent’s consent to taking of buccal sample**

I consent to the taking of a buccal sample from [*specify name of suspect*] (please write “yes” or “no”)

.....  
Signature of parent

.....  
Date

Schedule form 5: amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

Schedule form 5: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Schedule form 5: amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Schedule form 5: amended, on 1 October 2008, pursuant to section 116(a)(vii) of the Policing Act 2008 (2008 No 72).

Schedule form 5: amended, on 1 October 2008, pursuant to section 116(d) of the Policing Act 2008 (2008 No 72).

Schedule form 5: amended, on 15 December 2005, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2005 (2005 No 98).

## Form 5A

Notice requiring person of or over 14 years but under 17 years to give bodily sample (on ground that he or she has been arrested for, or Police intend to charge him or her with, relevant offence)

*Sections 24M and 24N, Criminal Investigations (Bodily Samples) Act 1995*

**Read this notice carefully—it contains important information you should know. If there is anything you do not understand about this notice, talk to your lawyer.**

To *[full name of person to whom this notice relates]*

You are required to give a bodily sample under section 24K of the Criminal Investigations (Bodily Samples) Act 1995 because—

*Select whichever of the following grounds applies.*

- you have been arrested for *[specify relevant offence]*, which is a relevant offence (as defined in section 2(1) of that Act) and triggers the authority to take the bodily sample.
- the Police intend to charge you with the offence of *[specify relevant offence]*, which is a relevant offence (as defined in section 2(1) of that Act) and triggers the authority to take the bodily sample.

This notice is issued by *[officer requiring sample to be taken]*, who is stationed at *[officer's station]*.

**Can I seek legal advice about this notice?**

Yes, you or your parent may wish to consult a lawyer if there is anything you do not understand about this notice.

For the purposes of this notice, **parent**—

- (a) means a parent or guardian;
- (b) includes a step-parent (if the step-parent shares responsibility for day-to-day care with one of your parents);
- (c) includes, if no parent or guardian can be found with reasonable diligence, a person in New Zealand who is acting in the place of a parent.

**How will the bodily sample be taken?**

You may choose to have a bodily sample taken by either of the following methods:

- a buccal sample (mouth swab); or
- a blood sample from a fingerprick (taken from the tip of your finger or thumb).

The Police may tell you that they prefer that the bodily sample be taken by a particular method, but the final decision is yours.

However, if you do not choose a particular method and you do not have a preference as to which method is used, the Police may choose a method for taking of the bodily sample.

[Section 48A, Criminal Investigations (Bodily Samples) Act 1995.]

**Who will take the bodily sample?**

This depends on the method you choose for taking the sample.

*Buccal sample (mouth swab)*

You may choose one of the following:

- you may take the mouth swab yourself, under the supervision of a constable; or
- you may have the mouth swab taken by a suitably qualified person; or
- you may have the mouth swab taken by an independent adult under the supervision of a constable.

*Blood sample from fingerprick*

If you choose to give a blood sample from a fingerprick, it must be taken by a suitably qualified person.

[Sections 49 and 49A, Criminal Investigations (Bodily Samples) Act 1995.]

**Can I be forced to give a bodily sample?**

Yes, if you refuse to give a bodily sample as required by this notice, a constable may use or cause to be used reasonable force to assist a suitably qualified person to take a bodily sample. If force is used, the sample will be taken by a blood sample from a fingerprick.

[Section 54A, Criminal Investigations (Bodily Samples) Act 1995.]

**Can I have someone with me when I give my sample?**

Yes, because you are under 17 years of age, you must have another person with you when the sample is taken. You may have the following people with you:

- a lawyer or another person of your choice; and
- a parent or another person who is your caregiver.

(Full notification is given, and the people you choose can be recorded, at the end of this notice.)

[Section 50A, Criminal Investigations (Bodily Samples) Act 1995.]

**How is the bodily sample dealt with once it is taken?**

This depends on the sample method you choose.

*Buccal sample (mouth swab)*

The constable who supervises you while you take the mouth swab or the suitably qualified person who takes the mouth swab will—

- (a) press the foam swab onto the sample card; and
- (b) seal the sample card into the paper envelope; and

- (c) seal the used foam swab into the self-seal plastic bag; and
- (d) seal both the swab and the sample card in the security seal bag.

*Blood sample from fingerprick*

The suitably qualified person who takes the blood sample from a fingerprick will seal the blood sample in a container as soon as practicable after it has dried.

[Sections 56 and 56A, Criminal Investigations (Bodily Samples) Act 1995.]

**What will the Police do with the bodily sample and the analysis of it?**

Your bodily sample will be analysed to obtain a DNA profile if you are charged with the triggering offence referred to at the beginning of this notice or a related relevant offence. During the period between your being charged and the disposal of the charges, the profile will be held on a temporary DNA profile databank maintained by or on behalf of the Police.

Your bodily sample will be—

- analysed on behalf of the Police to obtain a DNA profile and (unless a court authorises it to be kept) destroyed as soon as practicable after a DNA profile is obtained; and
- the DNA profile will be stored on a temporary DNA profile databank maintained by or on behalf of the Police; and
- the DNA profile will be compared with unidentified DNA information obtained from scenes of crime.

A DNA profile derived from a bodily sample taken from you under Part 2B of the Criminal Investigations (Bodily Samples) Act 1995 is not admissible against you in any criminal proceedings. However, a District Court Judge or Youth Court Judge may authorise a bodily sample taken under Part 2B of that Act to be retained and used as an evidential sample in criminal proceedings. The Police may only make this application in the following circumstances:

- if the sample has not yet been analysed; and
- if the Police believe the sample taken would tend to confirm or disprove your involvement in the commission of the offence that is the subject of the criminal proceedings.

If you are convicted of the offence referred to at the beginning of this notice or a related offence, your profile and details that link you to that sample will be transferred to the permanent DNA databank.

[Sections 24P, 26, 60A, and 71A, Criminal Investigations (Bodily Samples) Act 1995.]

**Can I have a sample for my own analysis?**

Yes, you may request a second sample but you need to make your own arrangements to get your sample analysed. The process for taking your sample again depends on the



type of sample you choose to give for your own analysis and is the same as described earlier.

[Sections 56 and 56A, Criminal Investigations (Bodily Samples) Act 1995.]

**What information will be kept on the DNA profile databank?**

Information will be held relating to the sample, the profile, and details identifying you as the donor.

A DNA profile derived under Part 2B of the Criminal Investigations (Bodily Samples) Act 1995 may be stored on a DNA profile databank (kept under section 25 of that Act) if—

- you are convicted of a relevant offence (either the triggering offence or a related offence) and given a sentence of imprisonment or a non-custodial sentence, or an order is made against you under section 283 of the Oranga Tamariki Act 1989; or
- the charge relates to a relevant offence or a related offence, and is discharged under section 282 of that Act even though the offence was proved.

[Section 26(ab) and (ac), Criminal Investigations (Bodily Samples) Act 1995.]

**Are there any controls on the use of the information on a DNA profile databank?**

Yes, there are controls. No one may have access to or may disclose information stored on a DNA databank except for 1 or more of the following purposes:

- comparing a DNA profile on the databank with another DNA profile in the course of a criminal investigation:
- making your information available to you in accordance with the Privacy Act 1993;
- administering the DNA profile databank:
- responding to a request by a foreign country under the Mutual Assistance in Criminal Matters Act 1992 for assistance to investigate or prosecute a criminal offence in that country, but only if the offence corresponds to an offence in New Zealand punishable by a term of imprisonment of more than 1 year.

[Section 27, Criminal Investigations (Bodily Samples) Act 1995.]

**Are there any circumstances when the bodily samples and the information are destroyed?**

Your bodily sample must be destroyed as soon as practicable after a DNA profile is obtained from the sample.

Records about your bodily sample must be destroyed—

- as soon as practicable after the end of 2 months beginning on the date on which your bodily sample was taken, if you are not charged with the offence referred to at the beginning of this notice or a related relevant offence before that 2-month period ends; or

- as soon as practicable after the charge is withdrawn or you are acquitted of the offence, if that happens.

If you are convicted of a relevant offence, your DNA profile will be kept on the DNA profile databank for a period of time depending on the outcome of the proceedings against you in either the Youth Court or District Court. The following table sets out the retention periods for DNA profiles following certain court sentences or orders, including those for subsequent offences (**CYPA** refers to the Oranga Tamariki Act 1989):

<b>Sentence or order</b>	<b>Retention period(s)</b>
Section 282 CYPA order made	4 years; a second section 282 CYPA order during that initial 4 years carries a separate 4-year retention period that runs concurrently with the first period; a subsequent section 283 CYPA order carries a 10-year retention period that also runs concurrently with the first period; a subsequent conviction without imprisonment carries a 10-year period that also runs concurrently with the first period
Section 283(a) to (n) CYPA order made	10 years; a subsequent section 282 CYPA order carries a 4-year retention period that runs concurrently with the 10-year period
Section 283(o) CYPA order made	10 years; a subsequent section 282 CYPA order carries a 4-year retention period that runs concurrently with the 10-year period
Convicted by District Court but not sentenced to imprisonment	10 years; a subsequent section 282 CYPA order carries a 4-year retention period that runs concurrently with the 10-year period
Sentenced to imprisonment by a court	10 years after the date on which the person ceases to be subject to a sentence of imprisonment in respect of the offence (if conviction for offence that was not a relevant offence at the time of the conviction and the person has not been convicted of an imprisonable offence or offence against any of the provisions listed in Part 3 of the Schedule of the Act since the date of conviction).
Sentenced to community-based sentence	10 years after the date of conviction (if conviction for offence that was not a relevant offence at the time of the conviction and the person has not been convicted of an imprisonable offence or offence against any of the provisions listed in Part 3 of the Schedule of the Act since the date of conviction)
Others (eg, a section 283 CYPA order is made and during the 10-year retention period another section 283 CYPA order is made against you)	indefinite

[Sections 26A and 60A, Criminal Investigations (Bodily Samples) Act 1995.]

**Notification of right to have person present during taking of bodily sample**

Because you are under 17 years of age, you must have another person with you when the sample is taken. You can have the following people present:

- a lawyer or another person of your choice; and
- a parent or another person who is your caregiver.

Unless you object, your parent or caregiver may choose a lawyer or another person to be present during the taking of the sample.

If you wish to have someone present and you wish the Police to notify that person, the Police will take all reasonable steps to do so. Please note that it is the responsibility of the person requested to be present to take steps to attend when the bodily sample is taken. The Police have no responsibility for arranging transportation or accommodation or for paying costs associated with that person's attendance.

*Select one of the following:*

- I do not require Police to notify any person concerning my DNA sample.
- I wish Police to notify the following persons of the time, date, and place where the sample is to be taken.

**Requested person details** (to have present during the taking of the bodily sample)

<b>First name</b>	<b>Last name</b>	<b>Address</b>	<b>Phone (home)</b>	<b>Phone (work)</b>
[specify]	[specify]	[specify]	[specify]	[specify]

I understand the information explained in this notice: Yes/No

Date:

Signature of suspect:

Date:

Signature of parent:

**Attention officer in charge**

Upon signing, the original should be placed on the DNA file and copies given to the donor and parent/caregiver.

Schedule form 5A: inserted, on 6 September 2010, by regulation 4(a) of the Criminal Investigations (Bodily Samples) Amendment Regulations 2010 (SR 2010/221).

Schedule form 5A: amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

Schedule form 5A: amended, on 4 February 2016, by regulation 8 of the Criminal Investigations (Bodily Samples) Amendment Regulations (No 2) 2015 (LI 2015/302).

Schedule form 5A: amended, on 5 December 2011, by regulation 4 of the Criminal Investigations (Bodily Samples) Amendment Regulations 2011 (SR 2011/314).

## Form 5B

Notice requiring person of or over 17 years to give bodily sample (on ground that he or she has been arrested for, or Police intend to charge him or her with, imprisonable offence or offence against provision listed in Part 3 of Schedule of Act)

*Sections 24M and 24N, Criminal Investigations (Bodily Samples) Act 1995*

**Read this notice carefully—it contains important information you should know. If there is anything you do not understand about this notice, talk to your lawyer.**

To [full name of person to whom this notice relates]

You are required to give a bodily sample under section 24J of the Criminal Investigations (Bodily Samples) Act 1995 because—

*Select whichever of the following grounds applies.*

- you have been detained for [specify offence], which is an imprisonable offence or an offence against any of the provisions listed in Part 3 of the Schedule of that Act.
- the Police intend to charge you with the offence of [specify offence], which is an imprisonable offence or an offence against any of the provisions listed in Part 3 of the Schedule of that Act, and triggers the authority to take the bodily sample.

This notice is issued by [officer requiring sample to be taken], who is stationed at [officer's station].

**Can I seek legal advice about this notice?**

Yes, you may wish to consult a lawyer if there is anything you do not understand about this notice.

**How will the bodily sample be taken?**

You may choose to have a bodily sample taken by either of the following methods:

- a buccal sample (mouth swab); or
- a blood sample from a fingerprick (taken from the tip of your finger or thumb).

The Police may tell you that they prefer that the bodily sample be taken by a particular method, but the final decision is yours.

However, if you do not choose a particular method and you do not have a preference as to which method is used, the Police may choose a method for taking the bodily sample.

[Section 48A, Criminal Investigations (Bodily Samples) Act 1995.]

**Who will take the bodily sample?**

This depends on the method you choose for taking the sample.

*Buccal sample (mouth swab)*

You may choose one of the following:

- you may take the mouth swab yourself, under the supervision of a constable; or
- you may have the mouth swab taken by a suitably qualified person.

*Blood sample from fingerprick*

If you choose to give a blood sample from a fingerprick, it must be taken by a suitably qualified person.

[Sections 49 and 49A, Criminal Investigations (Bodily Samples) Act 1995.]

**Can I be forced to give a bodily sample?**

Yes, if you refuse to give a bodily sample as required by this notice, a constable may use or cause to be used reasonable force to assist a suitably qualified person to take a bodily sample. If force is used, the sample will be taken by a blood sample from a fingerprick.

[Section 54A, Criminal Investigations (Bodily Samples) Act 1995.]

**How is the bodily sample dealt with once it is taken?**

This depends on the sample method you choose.

*Buccal sample (mouth swab)*

The constable who supervises you while you take the mouth swab or the suitably qualified person who takes the mouth swab will—

- (a) press the foam swab onto the sample card; and
- (b) seal the sample card into the paper envelope; and
- (c) seal the used foam swab into the self-seal plastic bag; and
- (d) seal both the swab and the sample card in the security seal bag.

*Blood sample from fingerprick*

The suitably qualified person who takes the blood sample from a fingerprick will seal the blood sample in a container as soon as practicable after it has dried.

[Sections 56 and 56A, Criminal Investigations (Bodily Samples) Act 1995.]

**What will the Police do with the bodily sample and the analysis of it?**

Your bodily sample will be analysed to obtain a DNA profile if you are charged with the triggering offence referred to at the beginning of this notice or a related offence. During the period between your being charged and the disposal of the charges, the profile will be held on a temporary DNA profile databank maintained by or on behalf of the Police.

You bodily sample will be—

- analysed on behalf of the Police to obtain a DNA profile and (unless a court authorises it to be kept) destroyed as soon as practicable after a DNA profile is obtained; and
- the DNA profile will be stored on a temporary DNA profile databank maintained by or on behalf of the Police; and
- the DNA profile will be compared with unidentified DNA information obtained from scenes of crime.

A DNA profile derived from a bodily sample taken from you under Part 2B of the Criminal Investigations (Bodily Samples) Act 1995 is not admissible against you in any criminal proceedings. However, a District Court Judge or Youth Court Judge may authorise a bodily sample taken under Part 2B of that Act to be retained and used as an evidential sample in criminal proceedings. The Police may only make this application in the following circumstances:

- if the sample has not yet been analysed; and
- if the Police believe the sample taken would tend to confirm or disprove your involvement in the commission of the offence that is the subject of the criminal proceedings.

If you are convicted of the offence referred to at the beginning of this notice or a related offence, your profile and details that link you to that sample will be transferred to the permanent DNA databank.

[Sections 24P, 26, 60A, and 71A, Criminal Investigations (Bodily Samples) Act 1995.]

### **Can I have a sample for my own analysis?**

Yes, you may request a second sample but you need to make your own arrangements to get your sample analysed. The process for taking your sample again depends on the type of sample you choose to give for your own analysis and is the same as described earlier.

[Sections 56 and 56A, Criminal Investigations (Bodily Samples) Act 1995.]

### **What information will be kept on the DNA profile databank?**

Information will be held relating to the sample, the profile, and details identifying you as the donor.

A DNA profile derived under Part 2B of the Criminal Investigations (Bodily Samples) Act 1995 may be stored on a DNA profile databank (kept under section 25 of that Act) if you are convicted of an imprisonable offence or an offence against any of the provisions listed in Part 3 of the Schedule of that Act (either the triggering offence or a related offence). If you were under the age of 17 years on the date of the offence, the profile cannot be stored there unless—

- an order has been made under section 282 of the Oranga Tamariki Act 1989 discharging the charge relating to the offence (if it is a relevant offence or a related offence) after finding the offence was proved:

- a sentence of imprisonment or a non-custodial sentence has been imposed or an order made under section 283 of that Act.

[Section 26(ab) and (ac), Criminal Investigations (Bodily Samples) Act 1995.]

**Are there any controls on the use of the information on a DNA profile databank?**

Yes, there are controls. No one may have access to or may disclose information stored on a DNA databank except for 1 or more of the following purposes:

- comparing a DNA profile on the databank with another DNA profile in the course of a criminal investigation;
- making your information available to you in accordance with the Privacy Act 1993;
- administering the DNA profile databank;
- responding to a request by a foreign country under the Mutual Assistance in Criminal Matters Act 1992 for assistance to investigate or prosecute a criminal offence in that country, but only if the offence corresponds to an offence in New Zealand punishable by a term of imprisonment of more than 1 year.

[Section 27, Criminal Investigations (Bodily Samples) Act 1995.]

**Are there any circumstances when the bodily samples and the information are destroyed?**

Your bodily sample must be destroyed as soon as practicable after a DNA profile is obtained from the sample.

Records about your bodily sample must be destroyed—

- as soon as practicable after the end of 2 months beginning on the date on which your bodily sample was taken, if you are not charged with the offence referred to at the beginning of this notice or a related offence before that 2-month period ends; or
- as soon as practicable after the charge is withdrawn or you are acquitted of the offence, if that happens.

If you are convicted of an imprisonable offence or an offence against any of the provisions listed in Part 3 of the Schedule of that Act, your DNA profile will be kept on the DNA profile databank for a period of time depending on the outcome of the proceedings against you in either the Youth Court or District Court. The following table sets out the retention periods for DNA profiles following certain court sentences or orders, including those for subsequent offences (**CYPA** refers to the Oranga Tamariki Act 1989—disregard the CYPA entries if they do not apply to you):

<b>Sentence or order</b>	<b>Retention period(s)</b>
Section 282 CYPA order made	4 years; a second section 282 CYPA order during that initial 4 years carries a separate 4-year retention period that runs concurrently with the first period; a subsequent section 283 CYPA order carries a 10-year retention period that also runs concurrently with the first period; a subsequent conviction without

<b>Sentence or order</b>	<b>Retention period(s)</b>
	imprisonment carries a 10-year period that also runs concurrently with the first period
Section 283(a) to (n) CYPA order made	10 years; a subsequent section 282 CYPA order carries a 4-year retention period that runs concurrently with the 10-year period
Section 283(o) CYPA order made	10 years; a subsequent section 282 CYPA order carries a 4-year retention period that runs concurrently with the 10-year period
Convicted by District Court but not sentenced to imprisonment	10 years; a subsequent section 282 CYPA order carries a 4-year retention period that runs concurrently with the 10-year period
Sentenced to imprisonment by a court	10 years after the date on which the person ceases to be subject to a sentence of imprisonment in respect of the offence (if conviction for offence that was not a relevant offence at the time of the conviction and the person has not been convicted of an imprisonable offence or offence against any of the provisions listed in Part 3 of the Schedule of the Act since the date of conviction)
Sentenced to community-based sentence	10 years after the date of conviction (if conviction for offence that was not a relevant offence at the time of the conviction and the person has not been convicted of an imprisonable offence or offence against any of the provisions listed in Part 3 of the Schedule of the Act since the date of conviction)
Others (eg, a section 283 CYPA order is made and during the 10-year retention period another section 283 CYPA order is made against you)	indefinite

[Sections 26A and 60A, Criminal Investigations (Bodily Samples) Act 1995.]

I understand the information explained in this notice: Yes/No

Date:

Signature of suspect:

**Attention officer in charge**

Upon signing, the original should be placed on the DNA file and copies given to the donor.

Schedule form 5B: inserted, on 6 September 2010, by regulation 4(a) of the Criminal Investigations (Bodily Samples) Amendment Regulations 2010 (SR 2010/221).

Schedule form 5B: amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

Schedule form 5B: amended, on 4 February 2016, by regulation 9(1) of the Criminal Investigations (Bodily Samples) Amendment Regulations (No 2) 2015 (LI 2015/302).

Schedule form 5B: amended, on 4 February 2016, by regulation 9(2) of the Criminal Investigations (Bodily Samples) Amendment Regulations (No 2) 2015 (LI 2015/302).

Schedule form 5B: amended, on 4 February 2016, by regulation 9(3) of the Criminal Investigations (Bodily Samples) Amendment Regulations (No 2) 2015 (LI 2015/302).



Schedule form 5B: amended, on 4 February 2016, by regulation 9(4) of the Criminal Investigations (Bodily Samples) Amendment Regulations (No 2) 2015 (LI 2015/302).

Schedule form 5B: amended, on 4 February 2016, by regulation 9(5) of the Criminal Investigations (Bodily Samples) Amendment Regulations (No 2) 2015 (LI 2015/302).

Schedule form 5B: amended, on 5 December 2011, by regulation 4 of the Criminal Investigations (Bodily Samples) Amendment Regulations 2011 (SR 2011/314).

Schedule form 5B: amended (with effect on 6 September 2010), on 10 September 2010 by regulation 4(a) of the Criminal Investigations (Bodily Samples) Amendment Regulations (No 2) 2010 (SR 2010/305).

Schedule form 5B: amended (with effect on 6 September 2010), on 10 September 2010 by regulation 4(b) of the Criminal Investigations (Bodily Samples) Amendment Regulations (No 2) 2010 (SR 2010/305).

## Form 6

Notice of request to give bodily sample for DNA profile databank (for person  
of or over the age of 17 years)

*Section 31, Criminal Investigations (Bodily Samples) Act 1995*

**Read this notice carefully—it contains important information you should know****What am I being asked to do?**

You are being asked to consent to the taking of a bodily sample. The purpose of this request is to obtain information that will be stored on a DNA profile databank and that may be used by the Police in the investigation of criminal offences.

**Can I seek legal advice about this request?**

Yes, you may wish to consult a lawyer before deciding whether or not to consent to the taking of a bodily sample or if there is anything you do not understand about this request.

**Do I have to give a bodily sample?**

No, you do not have to give a bodily sample.

**What will the bodily sample be used for if I consent to it being taken?**

If you do decide to give a bodily sample, it will be—

- analysed on behalf of the Police to obtain a DNA profile; and
- the DNA profile will be stored as a DNA profile databank maintained by or on behalf of the Police.

**Are there any controls on use of information on a DNA profile databank?**

Yes, there are controls. No one may have access to, or may disclose information stored on, a DNA profile databank, except for 1 or more of the following purposes:

- comparing a DNA profile on the databank with another DNA profile, in the course of a criminal investigation by the Police;
- making your information available to you in accordance with the Privacy Act 1993;
- administering the DNA profile databank;
- responding to a request by a foreign country under the Mutual Assistance in Criminal Matters Act 1992 for assistance to investigate or prosecute a criminal offence in that country, but only if the offence corresponds to an offence in New Zealand punishable by a term of imprisonment of more than 1 year.

Information stored on a DNA profile databank may also be used—

- in applying for certain orders and issuing certain notices under the Criminal Investigations (Bodily Samples) Act 1995; and
- in prosecuting people who commit certain offences against that Act.

### **Can I change my mind after I have given consent?**

Yes, you may withdraw your consent at any time before the bodily sample is taken.

### **How will the bodily sample be taken?**

You may choose whether you want the bodily sample to be taken by any of the following methods:

- a buccal sample (a mouth swab); or
- a blood sample from a vein; or
- a blood sample from a fingerprick (taken from the tip of your finger or thumb).

The Police may tell you that they prefer that the bodily sample be taken by a particular method, but the final decision is yours. However, if you do not choose a particular method and you do not have a preference as to which method is to be used, the Police may choose a method for the taking of the bodily sample.

### **Who will take the bodily sample?**

The answer to this differs depending on the method you choose for the taking of the bodily sample.

#### *Buccal sample (mouth swab)*

If you choose a buccal sample (mouth swab) you must take a mouth swab yourself under the supervision of a constable.\*

\*If you have a disability or injury that means you are unable to take a mouth swab yourself, the mouth swab must be taken by a suitably qualified person (being a medical practitioner, nurse, medical technologist, or phlebotomist).

#### *Blood sample from vein*

If you choose a blood sample from a vein, it must be taken by a suitably qualified person.

#### *Blood sample from fingerprick*

If you choose a blood sample taken from a fingerprick, it must be taken by a suitably qualified person.

### **Can I have someone with me when I give the bodily sample?**

Yes, you may have the bodily sample taken in the presence of one person of your choice. That person may be your lawyer, but it may be any other person.

### **Can I get my own analysis done?**

Yes, but if you do want your own analysis done, you have to make your own arrangements for this. The procedure for getting a sample for your own analysis differs depending on which method you choose for the taking of your bodily sample.

*Buccal sample (mouth swab) taken by you*

If you choose to take a mouth swab yourself, you will be asked by the constable who supervises you taking the mouth swab whether you want to take another mouth swab in order to have your own analysis done.

If you do want to take another mouth swab—

- a constable will give you the means to take a second mouth swab; and
- the buccal sample will be given to you or, if you are in custody, to a person you have nominated.

*Buccal sample (mouth swab) taken by suitably qualified person in the case of disability or injury*

If you choose to take a mouth swab yourself but you have a disability or injury that means you are unable to take a mouth swab yourself, you will be asked by the suitably qualified person who takes the mouth swab whether you want to have another mouth swab taken in order to have your own analysis done.

If you do want another mouth swab taken—

- the suitably qualified person will take another mouth swab from you; and
- the buccal sample will be given to you or, if you are in custody, to a person you have nominated.

*Blood sample from vein*

If you choose to have a blood sample taken from a vein you will be asked by the suitably qualified person who takes the sample whether you want to have part of the blood sample in order to have your own analysis done. If you do want to have your own analysis done, the blood sample will be divided into 2 parts. One part of the blood sample will be given to you or, if you are in custody, to a person you have nominated.

*Blood sample from fingerprick*

If you choose to have a blood sample taken from a fingerprick you will be asked by the suitably qualified person who takes the fingerprick sample whether you want to have another fingerprick sample taken in order to have your own analysis done.

If you do want another fingerprick sample taken—

- the suitably qualified person will take another fingerprick sample; and
- the blood sample will be given to you or, if you are in custody, to a person you have nominated.

**How is the bodily sample dealt with once it is taken?**

The answer to this differs depending on which method you choose for the taking of the bodily sample.

*Buccal sample (mouth swab)*

In this situation the constable who supervises you taking a mouth swab (*or* in the case of disability or injury the suitably qualified person who has taken the mouth swab) will—

- seal the buccal sample in a container once it has dried; or
- place it in a container in a way that allows it to dry.

*Blood sample from vein*

In this situation the suitably qualified person who takes the blood sample from a vein will place it in a sealable container and may add a substance to it that ensures the blood remains in the best condition for testing.

*Blood sample from fingerprick*

In this situation the suitably qualified person who takes the blood sample from a fingerprick will seal the blood sample in a container as soon as practicable after it has dried.

**What information will I get about the analysis done on behalf of the Police?**

When the bodily sample has been analysed on behalf of the Police, a copy of the record of that analysis will be made available to you or your lawyer.

**Can I withdraw my consent to the use of the bodily sample?**

You may generally withdraw your consent to the use of the bodily sample at any time. To do this simply notify the Commissioner of Police in writing of your decision to withdraw your consent. The Police are then obliged to destroy the sample, every record of any analysis of the sample, all information about the sample, and all information linking you with the sample.

**When can't I withdraw my consent to the use of the bodily sample?**

In certain circumstances you may not withdraw your consent to the use of your bodily sample and the resulting data will remain on the databank.

You may not withdraw your consent if, after the sample is taken, you are convicted of an imprisonable offence or an offence against any of the provisions in Part 3 of the Schedule of the Criminal Investigations (Bodily Samples) Act 1995, unless that conviction is later quashed.

If you give a sample for a DNA profile databank, you may at the same time agree to let the Police use the sample in the investigation of a specific offence. In that case, you may withdraw your consent to the use of the sample for DNA databank purposes, but the Police may continue to use the sample for the purposes of that investigation.

At the time you withdraw your consent, the Police may be taking, or may want to take, steps to obtain from you another bodily sample for use in the investigation of a specific offence. In that case, the bodily sample you gave for the DNA profile data-

bank, and the DNA profile obtained from it, may be retained until those steps have been taken.

**Consent to taking of bodily sample**

I consent to give a bodily sample (please write “yes” or “no”)

.....  
**Signature**

.....  
**Date**

Schedule form 6: amended, on 4 February 2016, by regulation 10(1) of the Criminal Investigations (Bodily Samples) Amendment Regulations (No 2) 2015 (LI 2015/302).

Schedule form 6: amended, on 4 February 2016, by regulation 10(2) of the Criminal Investigations (Bodily Samples) Amendment Regulations (No 2) 2015 (LI 2015/302).

Schedule form 6: amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Schedule form 6: amended, on 15 December 2005, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2005 (2005 No 98).

Form 7  
Notice of dual requests

*Section 33, Criminal Investigations (Bodily Samples) Act 1995*

**Read this notice carefully—it contains important information you should know  
If there is anything you do not understand about this notice, talk to your lawyer**

**What am I being asked to do?**

You are being asked to consent to the taking of a bodily sample for 2 separate purposes.

You will be given 2 other notices that explain what those 2 purposes are. The 2 notices are—

- a notice of request to suspect of or over the age of 17 years to give a bodily sample; and
- notice of request to give a bodily sample for a DNA profile databank (for a person of or over the age of 17 years).

**You should read both the notices carefully.**

**Do I have to comply with both of the notices?**

No, you do not have to give a bodily sample for either purpose.

**What are my choices?**

You may—

- consent to the taking of a bodily sample for both purposes; or
- consent to the taking of a bodily sample for one of the purposes and refuse to consent for the other purpose; or
- refuse both of the requests.

**What happens if I agree to only one of the requests?**

If you consent to the taking of a bodily sample for only one purpose, then information obtained from the analysis of that sample may generally be used for that purpose only.

**Acknowledgment of receipt of notice**

I have received a copy of this notice:

.....  
Signature

.....  
Date

## Form 8

## Databank compulsion notice (for person of or over the age of 17 years)

*Section 39A, Criminal Investigations (Bodily Samples) Act 1995*

To [full name of person to whom this databank compulsion notice relates]

You are required to give a bodily sample for a DNA profile databank because you have been convicted of the offence of [specify offence], which is an imprisonable offence or an offence against any of the provisions listed in Part 3 of the Schedule of the Criminal Investigations (Bodily Samples) Act 1995.

This notice is issued by [name of constable of or above the level of position of inspector who is issuing this notice] who is stationed at [name place].

You must attend to give a bodily sample (or if this is a further databank compulsion notice then insert the type of bodily sample to be taken that has been specified by the Judge)—

at [specify place] on [specify date] unless you and a constable agree to vary the place or vary the date to an earlier date, or both.

**Note:** If you are detained in custody (in a manner referred to in section 46(1) of the Criminal Investigations (Bodily Samples) Act 1995 (for example, in a prison)), an agreement reached between you and the Police to vary the date, place, or date and place for the taking of the bodily sample is of no effect unless it has been approved by the person who has the custody of, or responsibility for, you.

**or**

[If the person to whom this notice relates is serving a sentence by way of home detention]

- (a) at the place where you are detained on home detention being [specify address], which may not be varied by agreement between you and the Police; and
- (b) on [specify date], unless you and a constable agree to vary that date to an earlier date (which must be approved by your supervising probation officer).

**or**

[If the person to whom this notice relates is serving a sentence by way of home detention, but because of the person's state of health the constable issuing this notice is of the view that it is necessary for the person to give the sample at a place other than where that person is detained]

- (a) at [specify place], being a place other than the residence at which you are detained on home detention, which may not be varied by agreement between you and the Police; and



- (b) on [*specify date*], unless you and a constable agree to vary that date to an earlier date (which must be approved by your supervising probation officer).

**Read the following carefully—it contains important information you should know**

**If there is anything you do not understand about this notice, talk to your lawyer**

**What can I do if I think this notice is incorrect?**

If there is any matter that you wish to bring to the attention of the Police (for example, you have never been convicted of an offence) call the number at the end of this notice and ask to speak to the constable who issued this notice.

If you do not think the correct procedure has been followed by the Police, you may request a databank compulsion notice hearing before the date specified at the beginning of this notice as the date on which you must attend to give a bodily sample.

**On what grounds may I request a databank compulsion notice hearing?**

You may request a databank compulsion notice hearing under section 41(1) of the Criminal Investigations (Bodily Samples) Act 1995 on any of the following grounds:

- the offence in relation to which this notice has been issued is not an imprisonable offence or an offence against any of the provisions in Part 3 of the Schedule of the Criminal Investigations (Bodily Samples) Act 1995:
- the conviction for the offence in relation to which this notice has been issued is not a conviction to which Part 3 of the Criminal Investigations (Bodily Samples) Act 1995 applies:
- the conviction for the offence in relation to which this notice has been issued—
  - was quashed before this notice was issued; or
  - was quashed after this notice was issued but the bodily sample has not yet been taken and the Police have not notified you that this notice is of no effect:
- that all 3 methods available for the taking of a bodily sample (buccal sample (mouth swab), blood sample from a vein, blood sample from a fingerprick) will cause serious harm to your health if taken on the date specified at the beginning of this notice on which you must attend to give a bodily sample:
- that the date specified at the beginning of this notice on which you must attend to give a bodily sample is a date on or before the date that is 14 days after the date on which this notice was served on you:
- that the date specified at the beginning of this notice on which you must attend to give a bodily sample is,—
  - if you are not detained under a sentence of imprisonment (as defined in section 4A of the Criminal Investigations (Bodily Samples) Act 1995) for the offence in relation to which this notice is issued at the time this

notice is served, a date that is on or after the date 6 months after the date of which conviction for the offence to which this notice relates was entered; or

- if you are detained under a sentence of imprisonment for the offence in relation to which this notice is issued at the time the notice is served, a date that is on or after the later of the 2 following dates:
  - the date you are released from being detained under a sentence of imprisonment for the offence to which this notice relates; or
  - the date 6 months after the date your conviction for the offence to which this notice relates was entered:
- you were not served with this notice.

### **How will the bodily sample be taken?**

Unless a Judge has specified the method by which a bodily sample is to be taken, you may choose whether you want the bodily sample to be taken by any of the following methods:

- a buccal sample (a mouth swab); or
- a blood sample from a vein; or
- a blood sample from a fingerprick (taken from the tip of your finger or thumb).

If a Judge has not specified the method by which a bodily sample is to be taken, the Police may tell you that they prefer that the bodily sample be taken by a particular method, but the final decision is yours. However, if you do not choose a particular method and you do not have a preference as to which method is to be used, the Police may choose a method for the taking of a bodily sample.

If you agree to give a bodily sample in compliance with this notice, the sample will be taken by the method you choose (*or* a Judge has specified).

### **What will the bodily sample be used for?**

Your bodily sample will be—

- analysed on behalf of the Police to obtain a DNA profile; and
- the DNA profile will be stored on a DNA profile databank maintained by or on behalf of the Police.

### **Who will take the bodily sample?**

The answer to this differs depending on the method you choose (*or* a Judge has specified) for the taking of the bodily sample.

#### *Buccal sample (mouth swab)*

If you choose (*or* a Judge has specified) a buccal sample (mouth swab), you may—

- take a mouth swab yourself under the supervision of a constable\*; or

- have a mouth swab taken by a suitably qualified person (being a medical practitioner, nurse, medical technologist, or phlebotomist).

\*If you have a disability or injury that means you are unable to take a mouth swab yourself, the mouth swab must be taken by a suitably qualified person.

*Blood sample from vein*

If you choose (*or* a Judge has specified) a blood sample from a vein, it must be taken by a suitably qualified person.

*Blood sample from fingerprick*

If you choose (*or* a Judge has specified) a blood sample taken from a fingerprick, it must be taken by a suitably qualified person.

**Can I be forced to give a bodily sample?**

If you refuse to give a bodily sample in compliance with this notice, a constable may use or cause to be used reasonable force to assist a suitably qualified person to take a bodily sample. If you are in a prison, a prison officer may also assist the constable.

If force is used, the bodily sample will be taken by a blood sample from a fingerprick.

**Can I have someone with me when I give the bodily sample?**

Yes, you may have the bodily sample taken in the presence of one person of your choice. That person may be your lawyer, but it may be any other person.

**What information will I get about the analysis done on behalf of the Police?**

When the bodily sample has been analysed on behalf of the Police, a copy of the record of that analysis will be made available to you or your lawyer.

**Is it against the law to refuse to give a bodily sample?**

Yes, if you refuse to allow a bodily sample to be taken and as a result no sample is taken, you are committing an offence. The offence carries a maximum penalty of 3 months' imprisonment or a fine of \$2,000, or both.

**Can I get my own analysis done?**

Yes, but if you do want your own analysis done, you have to make your own arrangements for this. The procedure for getting a sample for your own analysis differs depending on which method you choose (*or* a Judge has specified) for the taking of the bodily sample.

*Buccal sample (mouth swab) taken by you*

If you choose (*or* a Judge has specified) a mouth swab and you choose to take the mouth swab yourself, you will be asked by the constable who supervises you taking the mouth swab whether you want to take another mouth swab in order to have your own analysis done.

If you do want to take another mouth swab—

- a constable will give you the means to take a second mouth swab; and
- the buccal sample will be given to you or, if you are in custody, to a person you have nominated.

*Buccal sample (mouth swab) taken by suitably qualified person*

If you choose (*or* a Judge has specified) a mouth swab and you choose to have the mouth swab taken by a suitably qualified person (*or* a mouth swab is taken by a suitably qualified person because you have a disability or injury that means you are unable to take a mouth swab yourself), you will be asked by the suitably qualified person who takes the mouth swab whether you want another mouth swab taken in order to have your own analysis done.

If you do want another mouth swab taken—

- the suitably qualified person will take the mouth swab or, if you choose (and you do not have a disability or injury that means you are unable to take a mouth swab yourself), will give you the means to take a second mouth swab yourself; and
- the buccal sample will be given to you or, if you are in custody, to a person you have nominated.

*Blood sample from vein*

If you choose (*or* a Judge has specified) a blood sample from a vein, you will be asked by the suitably qualified person who takes the sample whether you want to have part of the blood sample in order to have your own analysis done. If you do want to have your own analysis done, the sample will be divided into 2 parts. One part of the blood sample will be given to you or, if you are in custody, to a person you have nominated.

*Blood sample from fingerprick*

If you choose (*or* a Judge has specified) a blood sample from a fingerprick, you will be asked by the suitably qualified person who takes your fingerprick sample whether you want to have another fingerprick sample taken in order to have your own analysis done.

If you do want another fingerprick sample taken—

- the suitably qualified person will take another fingerprick sample; and
- the blood sample will be given to you or, if you are in custody, to a person you have nominated.

**How is the bodily sample dealt with once it is taken?**

The answer to this differs depending on which method you choose (*or* a Judge has specified) for the taking of the bodily sample.

*Buccal sample (mouth swab)*

In this situation the constable who supervises you taking a mouth swab or the suitably qualified person who takes the mouth swab will—

- seal the buccal sample in a container once it has dried; or
- place it in a container in a way that allows it to dry.

*Blood sample from vein*

In this situation the suitably qualified person who takes the blood sample from a vein will place it in a sealable container and may add a substance to it that ensures the blood remains in the best condition for testing.

*Blood sample from fingerprick*

In this situation the suitably qualified person who takes the blood sample from a fingerprick will seal the sample in a container as soon as practicable after it has dried.

**Can a court vary this notice?**

You may apply to the court before which you were sentenced, or are to be sentenced, for the offence specified at the beginning of this notice, to have the date or place, or date and place, specified in this notice varied. However, you may not apply to have a date or place, or date and place, that has been varied by agreement between you and the Police varied by the court.

If you want to apply to a court for this notice to be varied, talk to your lawyer.

**Are there any controls on the use of information on a DNA profile databank?**

Yes, there are controls. No one may have access to, or may disclose information stored on, a DNA profile databank, except for 1 or more of the following purposes:

- comparing a DNA profile on the databank with another DNA profile, in the course of a criminal investigation by the Police;
- making your information available to you in accordance with the Privacy Act 1993;
- administering the DNA profile databank;
- responding to a request by a foreign country under the Mutual Assistance in Criminal Matters Act 1992 for assistance to investigate or prosecute a criminal offence in that country, but only if the offence corresponds to an offence in New Zealand punishable by a term of imprisonment of more than 1 year.

Information stored on a DNA profile databank may also be used—

- in applying for certain orders and issuing certain notices under the Criminal Investigations (Bodily Samples) Act 1995;
- in prosecuting people who commit certain offences against that Act.

.....  
Signature of constable of or above  
the level of position of inspector

.....  
Printed name of constable of or above  
the level of position of inspector

.....  
Date

**Note:** The phone number of the Police station where the constable who issued this notice may be contacted is [*specify number*].

Schedule form 8: amended, on 4 February 2016, by regulation 11(1) of the Criminal Investigations (Bodily Samples) Amendment Regulations (No 2) 2015 (LI 2015/302).

Schedule form 8: amended, on 4 February 2016, by regulation 11(2) of the Criminal Investigations (Bodily Samples) Amendment Regulations (No 2) 2015 (LI 2015/302).

Schedule form 8: amended, on 4 February 2016, by regulation 11(3) of the Criminal Investigations (Bodily Samples) Amendment Regulations (No 2) 2015 (LI 2015/302).

Schedule form 8: amended, on 5 December 2011, by regulation 4 of the Criminal Investigations (Bodily Samples) Amendment Regulations 2011 (SR 2011/314).

Schedule form 8: amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Schedule form 8: amended, on 1 October 2008, pursuant to section 116(b) of the Policing Act 2008 (2008 No 72).

Schedule form 8: amended, on 15 December 2005, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2005 (2005 No 98).

Schedule form 8: amended, on 1 June 2005, pursuant to section 235(1) of the Corrections Act 2004 (2004 No 50).

Form 8A

Databank compulsion notice (for returning offender of or over the age of  
17 years)

*Section 14, Returning Offenders (Management and Information) Act 2015*

**To** *[full name of person to whom this databank compulsion notice relates]*

You are required to give a bodily sample for a DNA profile databank because—

- you have been convicted in *[country]* of the offence of *[offence]* for conduct that constitutes an imprisonable offence in New Zealand; and
- your conviction would, if entered in a New Zealand court, be a conviction to which Part 3 of the Criminal Investigations (Bodily Samples) Act 1995 applies; and
- your conviction was a ground of your removal or deportation from *[country]* to New Zealand.

This notice is issued by *[name of constable of or above the level of position of inspector who is issuing this notice]* who is stationed at *[place]*.

You must attend to give a bodily sample (*or if this is a further databank compulsion notice then insert the type of bodily sample to be taken that has been specified by the Judge*)—

at *[place]* on *[date]* unless you and a constable agree to vary the place or vary the date to an earlier date, or both.

**Note:** If you are detained in custody (in a manner referred to in section 46(1) of the Criminal Investigations (Bodily Samples) Act 1995 (for example, in a prison)), an agreement reached between you and the Police to vary the date, place, or date and place for the taking of the bodily sample is of no effect unless it has been approved by the person who has the custody of, or responsibility for, you.

**Read the following carefully—it contains important information you should know**

**If there is anything you do not understand about this notice, talk to your lawyer**

**What can I do if I think this notice is incorrect?**

If there is any matter that you wish to bring to the attention of the Police (for example, you have never been convicted of an offence) call the number at the end of this notice and ask to speak to the constable who issued this notice.

If you do not think the correct procedure has been followed by the Police, you may request a databank compulsion notice hearing before the date specified at the beginning of this notice as the date on which you must attend to give a bodily sample.

**On what grounds may I request a databank compulsion notice hearing?**

You may request a databank compulsion notice hearing under section 41(1) of the Criminal Investigations (Bodily Samples) Act 1995 on any of the following grounds:

- the conduct relating to the conviction in relation to which this notice has been issued does not constitute an imprisonable offence in New Zealand;
- the conviction in relation to which this notice has been issued would not, if entered in a New Zealand court, be a conviction to which Part 3 of the Criminal Investigations (Bodily Samples) Act 1995 applies;
- the conviction in relation to which this notice has been issued was not a ground of your removal or deportation to New Zealand;
- the conviction in relation to which this notice has been issued—
  - was quashed before this notice was issued; or
  - was quashed after this notice was issued but the bodily sample has not yet been taken and the Police have not notified you that this notice is of no effect;
- that all 3 methods available for the taking of a bodily sample (buccal sample (mouth swab), blood sample from a vein, blood sample from a fingerprick) will cause serious harm to your health if taken on the date specified at the beginning of this notice on which you must attend to give a bodily sample;
- that the date specified at the beginning of this notice on which you must attend to give a bodily sample is a date on or before the date that is 14 days after the date on which this notice was served on you (unless you have agreed with the constable to give the bodily sample immediately on your return to New Zealand);
- that the date specified at the beginning of this notice on which you must attend to give a bodily sample is a date that is later than 6 months after the date on which you returned to New Zealand;
- you were not served with this notice.

**How will the bodily sample be taken?**

Unless a Judge has specified the method by which a bodily sample is to be taken, you may choose whether you want the bodily sample to be taken by any of the following methods:

- a buccal sample (a mouth swab); or
- a blood sample from a vein; or
- a blood sample from a fingerprick (taken from the tip of your finger or thumb).

If a Judge has not specified the method by which a bodily sample is to be taken, the Police may tell you that they prefer that the bodily sample be taken by a particular method, but the final decision is yours. However, if you do not choose a particular



method and you do not have a preference as to which method is to be used, the Police may choose a method for the taking of a bodily sample.

If you agree to give a bodily sample in compliance with this notice, the sample will be taken by the method you choose (*or* a Judge has specified).

### **What will the bodily sample be used for?**

Your bodily sample will be—

- analysed on behalf of the Police to obtain a DNA profile; and
- the DNA profile will be stored on a DNA profile databank maintained by or on behalf of the Police.

### **Who will take the bodily sample?**

The answer to this differs depending on the method you choose (*or* a Judge has specified) for the taking of the bodily sample.

#### *Buccal sample (mouth swab)*

If you choose (*or* a Judge has specified) a buccal sample (mouth swab), you may—

- take a mouth swab yourself under the supervision of a constable\*; or
- have a mouth swab taken by a suitably qualified person (being a medical practitioner, nurse, medical technologist, or phlebotomist).

\*If you have a disability or injury that means you are unable to take a mouth swab yourself, the mouth swab must be taken by a suitably qualified person.

#### *Blood sample from vein*

If you choose (*or* a Judge has specified) a blood sample from a vein, it must be taken by a suitably qualified person.

#### *Blood sample from fingerprick*

If you choose (*or* a Judge has specified) a blood sample taken from a fingerprick, it must be taken by a suitably qualified person.

### **Can I be forced to give a bodily sample?**

If you refuse to give a bodily sample in compliance with this notice, a constable may use or cause to be used reasonable force to assist a suitably qualified person to take a bodily sample. If you are in a prison, a prison officer may also assist the constable.

If force is used, the bodily sample will be taken by a blood sample from a fingerprick.

### **Can I have someone with me when I give the bodily sample?**

Yes, you may have the bodily sample taken in the presence of 1 person of your choice. That person may be your lawyer, but it may be any other person.

**What information will I get about the analysis done on behalf of the Police?**

When the bodily sample has been analysed on behalf of the Police, a copy of the record of that analysis will be made available to you or your lawyer.

**Is it against the law to refuse to give a bodily sample?**

Yes, if you refuse to allow a bodily sample to be taken and as a result no sample is taken, you are committing an offence. The offence carries a maximum penalty of 3 months' imprisonment or a fine of \$2,000, or both.

**Can I get my own analysis done?**

Yes, but if you do want your own analysis done, you have to make your own arrangements for this. The procedure for getting a sample for your own analysis differs depending on which method you choose (or a Judge has specified) for the taking of the bodily sample.

*Buccal sample (mouth swab) taken by you*

If you choose (or a Judge has specified) a mouth swab and you choose to take the mouth swab yourself, you will be asked by the constable who supervises you taking the mouth swab whether you want to take another mouth swab in order to have your own analysis done.

If you do want to take another mouth swab,—

- a constable will give you the means to take a second mouth swab; and
- the buccal sample will be given to you or, if you are in custody, to a person you have nominated.

*Buccal sample (mouth swab) taken by suitably qualified person*

If you choose (or a Judge has specified) a mouth swab and you choose to have the mouth swab taken by a suitably qualified person (or a mouth swab is taken by a suitably qualified person because you have a disability or injury that means you are unable to take a mouth swab yourself), you will be asked by the suitably qualified person who takes the mouth swab whether you want another mouth swab taken in order to have your own analysis done.

If you do want another mouth swab taken,—

- the suitably qualified person will take the mouth swab or, if you choose (and you do not have a disability or injury that means you are unable to take a mouth swab yourself), will give you the means to take a second mouth swab yourself; and
- the buccal sample will be given to you or, if you are in custody, to a person you have nominated.

*Blood sample from vein*

If you choose (or a Judge has specified) a blood sample from a vein, you will be asked by the suitably qualified person who takes the sample whether you want to have part of the blood sample in order to have your own analysis done. If you do want to have your own analysis done, the sample will be divided into 2 parts. One part of the blood sample will be given to you or, if you are in custody, to a person you have nominated.

*Blood sample from fingerprick*

If you choose (or a Judge has specified) a blood sample from a fingerprick, you will be asked by the suitably qualified person who takes your fingerprick sample whether you want to have another fingerprick sample taken in order to have your own analysis done.

If you do want another fingerprick sample taken,—

- the suitably qualified person will take another fingerprick sample; and
- the blood sample will be given to you or, if you are in custody, to a person you have nominated.

**How is the bodily sample dealt with once it is taken?**

The answer to this differs depending on which method you choose (or a Judge has specified) for the taking of the bodily sample.

*Buccal sample (mouth swab)*

In this situation, the constable who supervises you taking a mouth swab or the suitably qualified person who takes the mouth swab will—

- seal the buccal sample in a container once it has dried; or
- place it in a container in a way that allows it to dry.

*Blood sample from vein*

In this situation, the suitably qualified person who takes the blood sample from a vein will place it in a sealable container and may add a substance to it that ensures the blood remains in the best condition for testing.

*Blood sample from fingerprick*

In this situation, the suitably qualified person who takes the blood sample from a fingerprick will seal the sample in a container as soon as practicable after it has dried.

**Can a court vary this notice?**

You may apply to the District Court to have the date or place, or date and place, specified in this notice varied. However, you may not apply to have a date or place, or date and place, that has been varied by agreement between you and the Police varied by the court.

If you want to apply to the District Court for this notice to be varied, talk to your lawyer.

**Are there any controls on the use of information on a DNA profile databank?**

Yes, there are controls. No one may have access to, or may disclose information stored on, a DNA profile databank except for 1 or more of the following purposes:

- comparing a DNA profile on the databank with another DNA profile, in the course of a criminal investigation by the Police:
- making your information available to you in accordance with the Privacy Act 1993:
- administering the DNA profile databank:
- responding to a request by a foreign country under the Mutual Assistance in Criminal Matters Act 1992 for assistance to investigate or prosecute a criminal offence in that country, but only if the offence corresponds to an offence in New Zealand punishable by a term of imprisonment of more than 1 year.

Information stored on a DNA profile databank may also be used—

- in applying for certain orders and issuing certain notices under the Criminal Investigations (Bodily Samples) Act 1995:
- in prosecuting people who commit certain offences against that Act.

.....  
Signature of constable of or above  
the level of position of inspector

.....  
Printed name of constable of or above  
the level of position of inspector

.....  
Date

**Note:** The telephone number of the Police station where the constable who issued this notice may be contacted is [*number*].

Schedule form 8A: inserted, on 26 November 2015, by regulation 4 of the Criminal Investigations (Bodily Samples) Amendment Regulations 2015 (LI 2015/286).

Schedule form 8A: amended, on 4 February 2016, by regulation 12 of the Criminal Investigations (Bodily Samples) Amendment Regulations (No 2) 2015 (LI 2015/302).

Form 9

Databank compulsion notice (for person under the age of 17 years)

*Sections 39A and 39B, Criminal Investigations (Bodily Samples) Act 1995*

**To** *[full name of person to whom this databank compulsion notice relates]*

You are required to give a bodily sample for a DNA profile databank because you have been convicted of the offence of *[specify offence]*, which is an imprisonable offence or an offence against any of the provisions listed in Part 3 of the Schedule of the Criminal Investigations (Bodily Samples) Act 1995.

This notice is issued by *[name of constable of or above the level of position of inspector who is issuing this notice]* who is stationed at *[name place]*.

You must attend to give a bodily sample *(or if this is a further databank compulsion notice then insert the type of bodily sample to be taken that has been specified by the Judge)*—

at *[specify place]* on *[specify date]* unless you and a constable agree to vary the place or vary the date to an earlier date, or both.

**Note:** If you are detained in custody (in a manner referred to in section 46(1) of the Criminal Investigations (Bodily Samples) Act 1995 (for example, in a prison)), an agreement reached between you and the Police to vary the date, place, or date and place for the taking of the bodily sample is of no effect unless it has been approved by the person who has the custody of, or responsibility for, you.

**or**

*[If the person to whom this notice relates is serving a sentence by way of home detention]*

- (a) at the place where you are detained on home detention being *[specify address]*, which may not be varied by agreement between you and the Police; and
- (b) on *[specify date]* unless you and a constable agree to vary that date to an earlier date (which must be approved by your supervising probation officer).

**or**

*[If the person to whom this notice relates is serving a sentence by way of home detention, but because of the person's state of health the constable issuing this notice is of the view that it is necessary for the person to give the sample at a place other than where the person is detained]*

- (a) at *[specify place]*, being a place other than the residence at which you are detained on home detention, which may not be varied by agreement with the Police; and
- (b) on *[specify date]*, unless you and a constable agree to vary that date to an earlier date (which must be approved by your supervising probation officer).

**Read the following carefully—it contains important information you should know**

**If there is anything you do not understand about this notice, talk to your lawyer**

**What can I or my parent do if we think this notice is incorrect?**

If there is any matter that you or your parent\* or the person who has the care of you wish to bring to the attention of the Police (for example, you have never been convicted of an offence) call the number at the end of this notice and ask to speak to the constable who issued this notice.

If you or your parent, or the person who has the care of you, do not think the correct procedure has been followed by the Police, you or your parent, or the person who has the care of you, may request a databank compulsion notice hearing before the date specified at the beginning of this notice.

\*For the purposes of this notice, a **parent**—

- (a) means a parent or guardian; and
- (b) includes a step-parent; and
- (c) includes, if no parent or guardian can be found with reasonable diligence or is capable of consenting to the taking of a bodily sample, a person in New Zealand who is acting in the place of a parent.

You or your parent, or the person who has the care of you, may request a databank compulsion notice hearing under section 41(1) and (3) of the Criminal Investigations (Bodily Samples) Act 1995 on any of the following grounds:

- the offence in relation to which this notice has been issued is not an imprisonable offence or an offence against any of the provisions in Part 3 of the Schedule of the Criminal Investigations (Bodily Samples) Act 1995:
- the conviction for the offence in relation to which this notice has been issued is not a conviction to which Part 3 of the Criminal Investigations (Bodily Samples) Act 1995 applies:
- the conviction for the offence in relation to which this notice has been issued—
  - was quashed before this notice was issued; or
  - was quashed after this notice was issued but the bodily sample has not yet been taken and the Police have not notified you that the notice is of no effect:
- that all 3 methods available for the taking of a bodily sample (buccal sample (mouth swab), blood sample from a vein, blood sample from a fingerprick) will cause serious harm to your health if taken on the date specified at the beginning of this notice on which you must attend to give a bodily sample:
- that the date specified at the beginning of this notice on which you must attend to give a bodily sample is a date on or before the date that is 14 days after the date on which this notice was served on you:

- that the date specified at the beginning of this notice on which you must attend to give a bodily sample is,—
  - if you are not detained under a sentence of imprisonment (as defined in section 4A of the Criminal Investigations (Bodily Samples) Act 1995) for the offence in relation to which this notice is issued at the time this notice is served, a date that is on or after the date 6 months after the date of which conviction for the offence to which this notice relates was entered; or
  - if you are detained under a sentence of imprisonment for the offence in relation to which this notice is issued at the time this notice is served, a date that is on or after the later of the 2 following dates:
    - the date you are released from being detained under a sentence of imprisonment for the offence to which this notice relates; or
    - the date 6 months after the date your conviction for the offence to which this notice relates was entered:
- you were not served with this notice:
- that all reasonable steps have not been taken to serve one of your parents or the person who has the care of you with a copy of this notice.

#### **How will the bodily sample be taken?**

Unless a Judge has specified the method by which a bodily sample is to be taken you may choose whether you want the bodily sample to be taken by any of the following methods:

- a buccal sample (a mouth swab); or
- a blood sample from a vein; or
- a blood sample from a fingerprick (taken from the tip of your finger or thumb).

If a Judge has not specified the method by which the bodily sample is to be taken, the Police may tell you that they prefer that the bodily sample be taken by a particular method, but the final decision is yours. However, if you do not choose a particular method and you do not have a preference as to which method is to be used, the Police may choose a method for the taking of the bodily sample.

If you agree to give a bodily sample in compliance with this notice, the sample will be taken by the method you choose (*or* specified by the Judge).

#### **What will the bodily sample be used for?**

Your bodily sample will be—

- analysed on behalf of the Police to obtain a DNA profile; and
- the DNA profile will be stored on a DNA profile databank maintained by or on behalf of the Police.

**Who will take the bodily sample?**

The answer to this differs depending on the method you choose (*or* a Judge has specified) for the taking of the bodily sample.

*Buccal sample (mouth swab)*

If you choose (*or* a Judge has specified) a buccal sample (mouth swab) you may—

- take a mouth swab yourself under the supervision of a constable\*; or
- have a mouth swab taken by a suitably qualified person (being a medical practitioner, nurse, medical technologist, or phlebotomist); or
- if you are under the age of 14 years, have a mouth swab taken by a parent, under the supervision of a constable.

\*If you have a disability or injury that means you are unable to take a mouth swab yourself, the mouth swab must be taken by a suitably qualified person or, if you are under the age of 14 years, you may choose whether the mouth swab is to be taken by a suitably qualified person or by a parent.

*Blood sample from vein*

If you choose (*or* a Judge has specified) a blood sample from a vein, it must be taken by a suitably qualified person.

*Blood sample from fingerprick*

If you choose (*or* a Judge has specified) a blood sample taken from a fingerprick, it must be taken by a suitably qualified person.

**Can I be forced to give a bodily sample?**

If you refuse to give a bodily sample in compliance with this notice, a constable may use or cause to be used reasonable force to assist a suitably qualified person to take a bodily sample. If you are in a prison, a prison officer may also assist the constable.

If force is used, the sample will be taken by a blood sample from a fingerprick.

**What if my parent or the person who has the care of me is not notified?**

A bodily sample must not be taken unless all reasonable steps have been taken to serve a copy of this notice on your parent or the person who has the care of you.

**Can I have someone with me when I give the bodily sample?**

Yes, you may have a parent, or the person who has the care of you, with you when the bodily sample is taken.

You may also have the bodily sample taken in the presence of one other person of your choice. That person may be your lawyer, but it may be any other person. You may choose that person yourself or have your parent, or the person who has the care of you, choose for you.



**What information will I get about the analysis done on behalf of the Police?**

When the bodily sample has been analysed on behalf of the Police, a copy of the record of that analysis will be made available to you or your lawyer.

**Is it against the law to refuse to give a bodily sample?**

Yes, if you refuse to allow a bodily sample to be taken and as a result no sample is taken, you are committing an offence. The offence carries a maximum penalty of 3 months' imprisonment or a fine of \$2,000, or both.

**Can I get my own analysis done?**

Yes, but if you do want your own analysis done, you have to make your own arrangements for this. The procedure for getting a sample for your own analysis differs depending on which method you choose (*or* a Judge has specified) for the taking of the bodily sample.

*Buccal sample (mouth swab) taken by you (or by parent if you are under the age of 14 years)*

If you choose (*or* a Judge has specified) a mouth swab and you choose to take it yourself (*or* to have it taken by a parent), you will be asked by the constable who supervises you (*or* your parent) taking the mouth swab whether you want to take (*or* have your parent take) another mouth swab to have your own analysis done.

If you do want to take (*or* have your parent take) another mouth swab—

- a constable will give you (*or* your parent) the means to take a second mouth swab; and
- the buccal sample will be given to you or, if you are in custody, to a person you have nominated.

*Buccal sample (mouth swab) taken by suitably qualified person*

If you choose (*or* a Judge has specified) a mouth swab and you choose to have it taken by a suitably qualified person (*or* a mouth swab is taken by a suitably qualified person because you have a disability or injury that means you are unable to take a mouth swab yourself), you will be asked by the suitably qualified person who takes the mouth swab whether you want to have another mouth swab taken in order to have your own analysis done.

If you do want another mouth swab taken—

- the suitably qualified person will take another mouth swab from you, or if you choose (and you do not have a disability or injury that means you are unable to take a mouth swab yourself) will give you the means to take a second mouth swab yourself (*or* if you are under the age of 14 years and choose, give your parent the means to take a second mouth swab); and
- the buccal sample will be given to you or, if you are in custody, to a person you have nominated.

*Blood sample from vein*

If you choose (*or* a Judge has specified) a blood sample from a vein, you will be asked by the suitably qualified person who takes the blood sample whether you want to have part of the blood sample in order to have your own analysis done. If you do want to have your own analysis done, the sample will be divided into 2 parts. One part of the blood sample will be given to you or, if you are in custody, to a person you have nominated.

*Blood sample from fingerprick*

If you choose (*or* a Judge has specified) a blood sample from a fingerprick, you will be asked by the suitably qualified person who takes the fingerprick sample whether you want to have another fingerprick sample taken in order to have your own analysis done.

If you do want another fingerprick sample taken—

- the suitably qualified person will take another fingerprick sample; and
- the blood sample will be given to you or, if you are in custody, to a person you have nominated.

**How is the bodily sample dealt with once it is taken?**

The answer to this differs depending on which method you choose (*or* a Judge has specified) for the taking of the bodily sample.

*Buccal sample (mouth swab)*

In this situation the constable who supervises you (*or* your parent) taking a mouth swab or the suitably qualified person who takes the mouth swab will—

- seal the buccal sample in a container once it has dried; or
- place it in a container in a way that allows it to dry.

*Blood sample from vein*

In this situation the suitably qualified person who takes the blood sample from a vein will place it in a sealable container and may add a substance to it to ensure the blood remains in the best condition for testing.

*Blood sample from fingerprick*

In this situation the suitably qualified person who takes the blood sample from a fingerprick will seal the blood sample in a container as soon as practicable after it has dried.

**Can a court vary this notice?**

You may apply to the court before which you were sentenced, or are to be sentenced, for the offence specified at the beginning of this notice, to have the date or place, or date and place, specified in this notice varied. However, you may not apply to have a

date or place, or date and place, that has been varied by agreement between you and the Police varied by the court.

If you want to apply to a court for this notice to be varied, talk to your lawyer.

**Are there any controls on the use of information on a DNA profile databank?**

Yes, there are controls. No one may have access to, or may disclose information stored on, a DNA profile databank, except for 1 or more of the following purposes:

- comparing a DNA profile on the databank with another DNA profile, in the course of a criminal investigation by the Police:
- making your information available to you in accordance with the Privacy Act 1993:
- administering the DNA profile databank:
- responding to a request by a foreign country under the Mutual Assistance in Criminal Matters Act 1992 for assistance to investigate or prosecute a criminal offence in that country, but only if the offence corresponds to an offence in New Zealand punishable by a term of imprisonment of more than 1 year.

Information stored on a DNA profile databank may also be used—

- in applying for certain orders and issuing certain notices under the Criminal Investigations (Bodily Samples) Act 1995:
- in prosecuting people who commit certain offences against that Act.

.....  
Signature of constable of or above  
the level of position of inspector

.....  
Printed name of constable of or above  
the level of position of inspector

.....  
Date

**Note:** The phone number of the Police station where the officer who issued this notice may be contacted is [*specify number*].

Schedule form 9: amended, on 4 February 2016, by regulation 13(1) of the Criminal Investigations (Bodily Samples) Amendment Regulations (No 2) 2015 (LI 2015/302).

Schedule form 9: amended, on 4 February 2016, by regulation 13(2) of the Criminal Investigations (Bodily Samples) Amendment Regulations (No 2) 2015 (LI 2015/302).

Schedule form 9: amended, on 4 February 2016, by regulation 13(3) of the Criminal Investigations (Bodily Samples) Amendment Regulations (No 2) 2015 (LI 2015/302).

Schedule form 9: amended, on 5 December 2011, by regulation 4 of the Criminal Investigations (Bodily Samples) Amendment Regulations 2011 (SR 2011/314).

Schedule form 9: amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

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Schedule form 9: amended, on 1 October 2008, pursuant to section 116(b) of the Policing Act 2008 (2008 No 72).

Schedule form 9: amended, on 15 December 2005, by section 6 of the Criminal Investigations (Bodily Samples) Amendment Act 2005 (2005 No 98).

Schedule form 9: amended, on 1 June 2005, pursuant to section 235(1) of the Corrections Act 2004 (2004 No 50).

Form 9A

Databank compulsion notice (for returning offender under the age of 17 years)

*Section 14, Returning Offenders (Management and Information) Act 2015*

To [full name of person to whom this databank compulsion notice relates]

You are required to give a bodily sample for a DNA profile databank because—

- you have been convicted in [country] of the offence of [offence] for conduct that constitutes an imprisonable offence in New Zealand; and
- your conviction would, if entered in a New Zealand court, be a conviction to which Part 3 of the Criminal Investigations (Bodily Samples) Act 1995 applies; and
- your conviction was a ground of your removal or deportation from [country] to New Zealand.

This notice is issued by [name of constable of or above the level of position of inspector who is issuing this notice] who is stationed at [place].

You must attend to give a bodily sample (or if this is a further databank compulsion notice then insert the type of bodily sample to be taken that has been specified by the Judge)—

at [place] on [date] unless you and a constable agree to vary the place or vary the date to an earlier date, or both.

**Note:** If you are detained in custody (in a manner referred to in section 46(1) of the Criminal Investigations (Bodily Samples) Act 1995 (for example, in a prison)), an agreement reached between you and the Police to vary the date or place, or date and place, for the taking of the bodily sample is of no effect unless it has been approved by the person who has the custody of, or responsibility for, you.

**Read the following carefully—it contains important information you should know**

**If there is anything you do not understand about this notice, talk to your lawyer**

**What can I or my parent do if we think this notice is incorrect?**

If there is any matter that you or your parent\* or the person who has the care of you wish to bring to the attention of the Police (for example, you have never been convicted of an offence) call the number at the end of this notice and ask to speak to the constable who issued this notice.

If you or your parent, or the person who has the care of you, do not think the correct procedure has been followed by the Police, you or your parent, or the person who has the care of you, may request a databank compulsion notice hearing before the date specified at the beginning of this notice as the date on which you must attend to give a bodily sample.

\*For the purposes of this notice, a **parent**—

- (a) means a parent or guardian; and

- (b) includes a step-parent; and
- (c) includes, if no parent or guardian can be found with reasonable diligence or is capable of consenting to the taking of a bodily sample, a person in New Zealand who is acting in the place of a parent.

You or your parent, or the person who has the care of you, may request a databank compulsion notice hearing under section 41(1) and (3) of the Criminal Investigations (Bodily Samples) Act 1995 on any of the following grounds:

- the conduct relating to the conviction in relation to which this notice has been issued does not constitute an imprisonable offence in New Zealand;
- the conviction in relation to which this notice has been issued would not, if entered in a New Zealand court, be a conviction to which Part 3 of the Criminal Investigations (Bodily Samples) Act 1995 applies;
- the conviction in relation to which this notice has been issued was not a ground of your removal or deportation to New Zealand;
- the conviction in relation to which this notice has been issued—
  - was quashed before this notice was issued; or
  - was quashed after this notice was issued but the bodily sample has not yet been taken and the Police have not notified you that the notice is of no effect;
- all 3 methods available for the taking of a bodily sample (buccal sample (mouth swab), blood sample from a vein, blood sample from a fingerprick) will cause serious harm to your health if taken on the date specified at the beginning of this notice on which you must attend to give a bodily sample;
- the date specified at the beginning of this notice on which you must attend to give a bodily sample is a date on or before the date that is 14 days after the date on which this notice was served on you (unless you have agreed with the constable to give the bodily sample immediately on your return to New Zealand);
- the date specified at the beginning of this notice on which you must attend to give a bodily sample is later than 6 months after the date on which you returned to New Zealand;
- you were not served with this notice;
- that all reasonable steps have not been taken to serve one of your parents or the person who has the care of you with a copy of this notice.

#### **How will the bodily sample be taken?**

Unless a Judge has specified the method by which a bodily sample is to be taken you may choose whether you want the bodily sample to be taken by any of the following methods:

- a buccal sample (a mouth swab); or
- a blood sample from a vein; or
- a blood sample from a fingerprick (taken from the tip of your finger or thumb).

If a Judge has not specified the method by which the bodily sample is to be taken, the Police may tell you that they prefer that the bodily sample be taken by a particular method, but the final decision is yours. However, if you do not choose a particular method and you do not have a preference as to which method is to be used, the Police may choose a method for the taking of the bodily sample.

If you agree to give a bodily sample in compliance with this notice, the sample will be taken by the method you choose (or specified by the Judge).

### **What will the bodily sample be used for?**

Your bodily sample will be—

- analysed on behalf of the Police to obtain a DNA profile; and
- the DNA profile will be stored on a DNA profile databank maintained by or on behalf of the Police.

### **Who will take the bodily sample?**

The answer to this differs depending on the method you choose (or a Judge has specified) for the taking of the bodily sample.

#### *Buccal sample (mouth swab)*

If you choose (or a Judge has specified) a buccal sample (mouth swab) you may—

- take a mouth swab yourself under the supervision of a constable\*; or
- have a mouth swab taken by a suitably qualified person (being a medical practitioner, nurse, medical technologist, or phlebotomist); or
- if you are under the age of 14 years, have a mouth swab taken by a parent, under the supervision of a constable.

\*If you have a disability or injury that means you are unable to take a mouth swab yourself, the mouth swab must be taken by a suitably qualified person or, if you are under the age of 14 years, you may choose whether the mouth swab is to be taken by a suitably qualified person or by a parent.

#### *Blood sample from vein*

If you choose (or a Judge has specified) a blood sample from a vein, it must be taken by a suitably qualified person.

#### *Blood sample from fingerprick*

If you choose (or a Judge has specified) a blood sample from a fingerprick, it must be taken by a suitably qualified person.

### **Can I be forced to give a bodily sample?**

If you refuse to give a bodily sample in compliance with this notice, a constable may use or cause to be used reasonable force to assist a suitably qualified person to take a bodily sample. If you are in a prison, a prison officer may also assist the constable.

If force is used, the sample will be taken by a blood sample from a fingerprick.

**What if my parent or the person who has the care of me is not notified?**

A bodily sample must not be taken unless all reasonable steps have been taken to serve a copy of this notice on your parent or the person who has the care of you.

**Can I have someone with me when I give the bodily sample?**

Yes, you may have a parent, or the person who has the care of you, with you when the bodily sample is taken.

You may also have the bodily sample taken in the presence of 1 other person of your choice. That person may be your lawyer, but it may be any other person. You may choose that person yourself or have your parent, or the person who has the care of you, choose for you.

**What information will I get about the analysis done on behalf of the Police?**

When the bodily sample has been analysed on behalf of the Police, a copy of the record of that analysis will be made available to you or your lawyer.

**Is it against the law to refuse to give a bodily sample?**

Yes, if you refuse to allow a bodily sample to be taken and as a result no sample is taken, you are committing an offence. The offence carries a maximum penalty of 3 months' imprisonment or a fine of \$2,000, or both.

**Can I get my own analysis done?**

Yes, but if you do want your own analysis done, you have to make your own arrangements for this. The procedure for getting a sample for your own analysis differs depending on which method you choose (or a Judge has specified) for the taking of the bodily sample.

*Buccal sample (mouth swab) taken by you (or by parent if you are under the age of 14 years)*

If you choose (or a Judge has specified) a mouth swab and you choose to take it yourself (or to have it taken by a parent), you will be asked by the constable who supervises you (or your parent) taking the mouth swab whether you want to take (or have your parent take) another mouth swab to have your own analysis done.

If you do want to take (or have your parent take) another mouth swab,—

- a constable will give you (or your parent) the means to take a second mouth swab; and
- the buccal sample will be given to you or, if you are in custody, to a person you have nominated.

*Buccal sample (mouth swab) taken by suitably qualified person*

If you choose (or a Judge has specified) a mouth swab and you choose to have it taken by a suitably qualified person (or a mouth swab is taken by a suitably qualified person because you have a disability or injury that means you are unable to take a



mouth swab yourself), you will be asked by the suitably qualified person who takes the mouth swab whether you want to have another mouth swab taken in order to have your own analysis done.

If you do want another mouth swab taken,—

- the suitably qualified person will take another mouth swab from you, or if you choose (and you do not have a disability or injury that means you are unable to take a mouth swab yourself) will give you the means to take a second mouth swab yourself (or if you are under the age of 14 years and choose, give your parent the means to take a second mouth swab); and
- the buccal sample will be given to you or, if you are in custody, to a person you have nominated.

*Blood sample from vein*

If you choose (*or* a Judge has specified) a blood sample from a vein, you will be asked by the suitably qualified person who takes the blood sample whether you want to have part of the blood sample in order to have your own analysis done. If you do want to have your own analysis done, the sample will be divided into 2 parts. One part of the blood sample will be given to you or, if you are in custody, to a person you have nominated.

*Blood sample from fingerprick*

If you choose (*or* a Judge has specified) a blood sample from a fingerprick, you will be asked by the suitably qualified person who takes the fingerprick sample whether you want to have another fingerprick sample taken in order to have your own analysis done.

If you do want another fingerprick sample taken,—

- the suitably qualified person will take another fingerprick sample; and
- the blood sample will be given to you or, if you are in custody, to a person you have nominated.

**How is the bodily sample dealt with once it is taken?**

The answer to this differs depending on which method you choose (*or* a Judge has specified) for the taking of the bodily sample.

*Buccal sample (mouth swab)*

In this situation, the constable who supervises you (*or* your parent) taking a mouth swab or the suitably qualified person who takes the mouth swab will—

- seal the buccal sample in a container once it has dried; or
- place it in a container in a way that allows it to dry.

*Blood sample from vein*

In this situation, the suitably qualified person who takes the blood sample from a vein will place it in a sealable container and may add a substance to it to ensure the blood remains in the best condition for testing.

*Blood sample from fingerprick*

In this situation, the suitably qualified person who takes the blood sample from a fingerprick will seal the blood sample in a container as soon as practicable after it has dried.

**Can a court vary this notice?**

You may apply to the District Court to have the date or place, or date and place, specified in this notice varied. However, you may not apply to have a date or place, or date and place, that has been varied by agreement between you and the Police varied by the court.

If you want to apply to the District Court for this order to be varied, talk to your lawyer.

**Are there any controls on the use of information on a DNA profile databank?**

Yes, there are controls. No one may have access to, or may disclose information stored on, a DNA profile databank, except for 1 or more of the following purposes:

- comparing a DNA profile on the databank with another DNA profile, in the course of a criminal investigation by the Police;
- making your information available to you in accordance with the Privacy Act 1993;
- administering the DNA profile databank;
- responding to a request by a foreign country under the Mutual Assistance in Criminal Matters Act 1992 for assistance to investigate or prosecute a criminal offence in that country, but only if the offence corresponds to an offence in New Zealand punishable by a term of imprisonment of more than 1 year.

Information stored on a DNA profile databank may also be used—

- in applying for certain orders and issuing certain notices under the Criminal Investigations (Bodily Samples) Act 1995;
- in prosecuting people who commit certain offences against that Act.

.....  
Signature of constable of or above  
the level of position of inspector

.....  
Printed name of constable of or above  
the level of position of inspector

.....  
Date

**Note:** The telephone number of the Police station where the officer who issued this notice may be contacted is [*specify number*].

Schedule form 9A: inserted, on 26 November 2015, by regulation 4 of the Criminal Investigations (Bodily Samples) Amendment Regulations 2015 (LI 2015/286).

Schedule form 9A: amended, on 4 February 2016, by regulation 14 of the Criminal Investigations (Bodily Samples) Amendment Regulations (No 2) 2015 (LI 2015/302).

## Form 10

## Notice of request for databank compulsion notice hearing

*Section 41B(1), Criminal Investigations (Bodily Samples) Act 1995*

**To** the Registrar  
[specify court]  
at [place]

I am filing this notice of request for a databank compulsion notice hearing because on [specify date] I [or specify name of other constable] received a request for a databank compulsion notice hearing from [specify full name of person who made a request for databank compulsion notice hearing] on the ground(s) that: [specify ground(s) relied on by the requester].

The databank compulsion notice was issued on [specify date].

.....  
Constable

.....  
Date

Schedule form 10: amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Form 11

Order that databank compulsion notice of no effect

*Sections 42 and 43B, Criminal Investigations (Bodily Samples) Act 1995*

Case No:.....

**To** [full name of person who requested databank compulsion notice hearing]  
[constable who applied for databank compulsion notice hearing]

[Specify name of Judge] orders that the databank compulsion notice issued in relation to [specify full name of person in relation to whom the databank compulsion notice was issued] is of no effect because—

\*the offence in relation to which the databank compulsion notice was issued is not an imprisonable offence or an offence against any of the provisions in Part 3 of the Schedule of the Criminal Investigations (Bodily Samples) Act 1995.

\*the offence in relation to which the databank compulsion notice was issued is not a offence to which Part 3 of the Criminal Investigations (Bodily Samples) Act 1995 applies.

\*the conviction for the offence in relation to which the databank compulsion notice was issued was quashed before the databank compulsion notice was issued.

\*the conviction for the offence in relation to which the databank compulsion notice was issued was quashed after the notice was issued, but before the bodily sample was taken and the Police have not notified the above-named person that the notice is of no effect.

\*all 3 methods for the taking of a bodily sample will cause serious harm to the above-named person's health on the date specified in the databank compulsion notice and the state of the above-named person's health is unlikely to change.

\*the latest permissible date which could be specified in the databank compulsion notice as a date on which the above-named person could attend to give a bodily sample had passed when the databank compulsion notice was served.

\*[specify any other ground in the Criminal Investigations (Bodily Samples) Act 1995 in relation to which the Judge has made an order that the databank compulsion notice is of no effect.]

\*Delete if inapplicable.

The effect of this order is that a bodily sample must not be taken pursuant to the databank compulsion notice issued on [date].

Dated at [place] this [date] day of [month] 20

.....  
(Deputy) Registrar

Schedule form 11: amended, on 4 February 2016, by regulation 15(1) of the Criminal Investigations (Bodily Samples) Amendment Regulations (No 2) 2015 (LI 2015/302).

Schedule form 11: amended, on 4 February 2016, by regulation 15(2) of the Criminal Investigations (Bodily Samples) Amendment Regulations (No 2) 2015 (LI 2015/302).

Schedule form 11: amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Form 12  
Part 3 order

*Sections 42 and 43, Criminal Investigations (Bodily Samples) Act 1995*

Case No: .....

**To** [full name of person who requested databank compulsion notice hearing]  
[constable who applied for databank compulsion notice hearing]

[Specify name of Judge] orders that a bodily sample is to be taken from [specify full name of person in relation to whom the databank compulsion notice was issued] in accordance with the databank compulsion notice that was issued in relation to that person on [specify date].

This order is made on the basis that—

- no ground has been established under the Criminal Investigations (Bodily Samples) Act 1995 that requires an order to be made that the databank compulsion notice is of no effect; and
- no other matter in the Criminal Investigations (Bodily Samples) Act 1995 precludes this order being made.

The databank compulsion notice is varied in the following way:

the above-named person is to attend to give a bodily sample on [specify date].

*or*

the above-named person is to attend to give a bodily sample at [specify place].

*or*

the above-named person is to attend to give a bodily sample on [specify date] and [specify place].

*or*

the above-named person is to attend to give a bodily sample on [specify date] and the bodily sample is to be taken by way of a buccal sample (or a blood sample from a vein) (or a blood sample from a fingerprick)\*.

†The Judge also orders that the following conditions are imposed on the databank compulsion notice: [specify any other conditions the Judge imposes on the databank compulsion notice].

\*An independent medical practitioner must certify that the taking of a bodily sample by this method and on this date will not cause serious harm to the person's health.

†Delete if inapplicable.

Dated at *[place]* this *[date]* day of *[month]* 20

.....  
(Deputy) Registrar

Schedule form 12: amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).



Form 13

Warrant to arrest and detain under compulsion order or databank compulsion notice

*Section 45A, Criminal Investigations (Bodily Samples) Act 1995*

Case No: .....

To every constable

A compulsion order was made under the Criminal Investigations (Bodily Samples) Act 1995 on [date] in the [court] at [place] requiring [full name of respondent], of [address], [occupation], to give a bodily sample.

*or*

A databank compulsion notice was issued under the Criminal Investigations (Bodily Samples) Act 1995 on [date] at [place] requiring [full name], of [address], [occupation], to give a bodily sample.

A Judge of the High Court (*or* a District Court Judge) has directed the issue of a warrant to arrest that person and detain him (*or* her) to enable a bodily sample to be taken in accordance with the compulsion order (*or* databank compulsion notice).

[*Applicable if the warrant is issued before the date specified in the compulsion order (*or* databank compulsion notice) on which the person is to attend to give a bodily sample has been reached.*]

This warrant is issued on the basis that the Judge is satisfied by evidence given on oath that the above-named person is unlikely to attend on the date specified in the compulsion order (*or* databank compulsion notice) to give a bodily sample on the date specified in the compulsion order (*or* databank compulsion notice) because he (*or* she) has absconded (*or* there are reasonable grounds to believe he (*or* she) may abscond).

*or*

[*Applicable if the warrant is issued on or after the date specified in the compulsion order (*or* databank compulsion notice) on which the person was to attend to give a bodily sample.*]

This warrant is issued on the basis that the Judge is satisfied by evidence given on oath that the above-named person has failed to attend to give a bodily sample on the date specified in the compulsion order (*or* databank compulsion notice).

This warrant authorises you—

- to arrest [full name]; and
- to detain him (*or* her) for as long as is reasonably necessary to take a bodily sample from him (*or* her), but in no case longer than 24 hours.

This warrant expires immediately after a bodily sample is taken from the above-named person to whom the compulsion order (*or* databank compulsion notice) relates.

The power to arrest and detain pursuant to this warrant may be exercised on one occasion only.

**Note:** The bodily sample need not be taken at the place, on the date, or at the place and on the date specified in the compulsion order (*or* databank compulsion notice).

Dated at [*place*] this [*date*] day of [*month*] 20

.....  
(Deputy) Registrar

Form 14

Warrant to arrest and detain young person until bodily sample taken

*Section 50C, Criminal Investigations (Bodily Samples) Act 1995*

No:

**To** every constable

A notice given under section 50B(2) or (6) of the Criminal Investigations (Bodily Samples) Act 1995 by a constable required [*full name, address, and occupation of person to be arrested and detained*] to attend [*place, time, date*] to give a bodily sample.

This warrant is issued on the basis that the Judge is satisfied by evidence given on oath that [*full name*] failed to attend as specified in the notice to give a bodily sample.

This warrant authorises you—

- to arrest [*full name*]; and
- to detain him/her\* for as long as is reasonably necessary to take a bodily sample from him/her\*, but in no case longer than 24 hours.

\*Select one.

This warrant expires immediately after a bodily sample is taken from [*full name*].

The power to arrest and detain under this warrant may be exercised on 1 occasion only.

**Note:** The bodily sample need not be taken at the place, on the date, or at the place and on the date specified in the section 50B notice).

Dated at [*place/date*].

Signature:

\*Registrar/Deputy Registrar

\*Select one.

Schedule form 14: added, on 6 September 2010, by regulation 4(b) of the Criminal Investigations (Bodily Samples) Amendment Regulations 2010 (SR 2010/221).

Diane Morcom,  
Clerk of the Executive Council.

## Reprints notes

### 1 *General*

This is a reprint of the Criminal Investigations (Bodily Samples) Regulations 2004 that incorporates all the amendments to those regulations as at the date of the last amendment to them.

### 2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### 3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### 4 *Amendments incorporated in this reprint*

Courts Matters Act 2018 (2018 No 50): section 119

Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31): section 149

Criminal Investigations (Bodily Samples) Amendment Regulations (No 2) 2015 (LI 2015/302)

Criminal Investigations (Bodily Samples) Amendment Regulations 2015 (LI 2015/286)

Criminal Procedure Act 2011 (2011 No 81): section 413

Criminal Investigations (Bodily Samples) Amendment Regulations 2011 (SR 2011/314)

Criminal Investigations (Bodily Samples) Amendment Regulations (No 2) 2010 (SR 2010/305)

Criminal Investigations (Bodily Samples) Amendment Regulations 2010 (SR 2010/221)

Policing Act 2008 (2008 No 72): section 116(a)(ii), (vii), (b), (d)

Criminal Investigations (Bodily Samples) Amendment Act 2005 (2005 No 98): section 6

Corrections Act 2004 (2004 No 50): section 235(1), (3)