



# Criminal Investigations (Bodily Samples) Amendment Regulations 2015

Jerry Mateparae, Governor-General

## Order in Council

At Wellington this 23rd day of November 2015

Present:

His Excellency the Governor-General in Council

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

### Contents

		Page
1	Title	1
2	Commencement	2
3	Principal regulations	2
4	Schedule, new forms 8A and 9A inserted	2
	<b>Schedule</b>	<b>3</b>
	<b>New forms 8A and 9A inserted</b>	

### Regulations

#### 1 Title

These regulations are the Criminal Investigations (Bodily Samples) Amendment Regulations 2015.

**2 Commencement**

These regulations come into force on 26 November 2015.

**3 Principal regulations**

These regulations amend the Criminal Investigations (Bodily Samples) Regulations 2004 (the **principal regulations**).

**4 Schedule, new forms 8A and 9A inserted**

In the Schedule, insert in their appropriate alphanumerical order the forms set out in the Schedule of these regulations.

## Schedule

### New forms 8A and 9A inserted

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#### 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.

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*].

## 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.

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*].

Michael Webster,  
Clerk of the Executive Council.

### Explanatory note

*This note is not part of the regulations, but is intended to indicate their general effect.*

These regulations, which come into force on 26 November 2015, amend the Criminal Investigations (Bodily Samples) Regulations 2004 (the **principal regulations**) to insert forms for databank compulsion notices authorised by section 14 of the Returning Offenders (Management and Information) Act 2015.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 26 November 2015.

These regulations are administered by the Ministry of Justice.