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Robyn Webb
Chief Parliamentary Counsel
Dated 11 April 2022



TASMANIA

FORENSIC PROCEDURES ACT 2000

No. 101 of 2000

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FORENSIC PROCEDURES ACT 2000

No. 101 of 2000

An Act to provide for the carrying out of forensic procedures on people in relation to offences and for related purposes

[Royal Assent 20 December 2000]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Forensic Procedures Act 2000*.

2. Commencement

This Act commences on a day to be proclaimed.

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3. Interpretation

(1) In this Act, unless the contrary intention appears –

amend includes the following:

- (a) omit matter;
- (b) insert matter;
- (c) omit matter and substitute new matter;

appropriate authority means –

- (a) in relation to a participating jurisdiction other than the Australian Capital Territory –
 - (i) an authority performing and exercising, in relation to the police force of that jurisdiction, functions and powers corresponding to those of the Commissioner of Police; and
 - (ii) any other authority prescribed by the regulations; and
- (b) in relation to the Australian Capital Territory –

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(i) the Commissioner of the Australian Federal Police;
and

(ii) any other authority prescribed by the regulations;

authorised person, in respect of a forensic procedure, means a person authorised to carry out that forensic procedure under section 40;

charged person means a person who has been arrested and charged with a serious offence;

convicted includes –

- (a) found guilty, whether or not a conviction is recorded; and
- (b) found not guilty by reason of insanity;

corresponding law means a law that –

- (a) substantially corresponds to this Act; or
- (b) is prescribed by the regulations for the purposes of this definition;

crime scene means –

- (a) a place where a serious offence was, or is reasonably suspected of having been, committed; and

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- (b) a place or thing reasonably suspected of being associated with the commission of a serious offence;

crime scene index means an index of DNA profiles derived from forensic material found –

- (a) at any place (whether within or outside Australia) where a serious offence was, or is reasonably suspected of having been, committed; or
- (b) on or within the body of the victim, or a person reasonably suspected of being a victim, of a serious offence; or
- (c) on anything worn or carried by the victim, or a person reasonably suspected of being a victim, at the time when a serious offence was, or is reasonably suspected of having been, committed; or
- (d) on or within the body of any person, on any thing, or at any place, reasonably suspected of being associated with the commission of a serious offence;

dentist means a person registered under the Health Practitioner Regulation National Law (Tasmania) in the dental profession as a dentist;

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destroy has the meaning given by subsection (4);

DNA database system means an electronic database containing –

(a) the following indexes of DNA profiles:

- (i) a crime scene index;
- (ii) a missing persons index;
- (iii) an unknown deceased persons index;
- (iv) a serious offenders index;
- (v) a volunteers (unlimited purposes) index;
- (vi) a volunteers (limited purposes) index;
- (vii) a suspects index –

and information that may be used to identify the person from whose forensic material each DNA profile was derived; and

(b) a statistical index; and

(c) any other index prescribed by the regulations;

forensic material means –

- (a) samples; and

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(b) handprints, fingerprints,
footprints and toeprints; and

(c) photographs and video
recordings; and

(d) casts or impressions –

taken from or of a person's body;

forensic procedure means –

(a) an intimate forensic procedure;
and

(b) a non-intimate forensic
procedure;

forensic procedure application means an
application to a magistrate under
section 14 for a forensic procedure order;

forensic procedure order means an order
made by a magistrate under section 17
authorising the carrying out of a forensic
procedure;

function includes duty;

in custody means –

(a) under lawful arrest by warrant;
and

(b) under lawful arrest under section
27 of the *Criminal Code*; and

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- (c) otherwise in the lawful custody of a police officer under this or any other Act; and
- (d) on remand;

informed consent in relation to –

- (a) a suspect, charged person or the parent of a suspect or charged person, has the meaning given by section 8(4); and
- (ab) a parent of a young child, has the meaning given by section 34D(2); and
- (b) a volunteer or a volunteer's parent, has the meaning given by section 29(3);

interim forensic procedure order means an interim forensic procedure order made under section 19;

intimate forensic procedure means –

- (a) an external examination of the genital or anal area, the buttocks or, in the case of a female, the breasts; and
- (b) an internal examination of a body cavity other than the mouth; and
- (c) the taking of a sample of pubic hair; and

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- (d) the taking of a sample by swab or washing from the external genital or anal area, the buttocks or, in the case of a female, the breasts; and
- (e) the taking of a sample by vacuum suction, by scraping or by lifting by tape from the external genital or anal area, the buttocks or, in the case of a female, the breasts; and
- (f) the taking of a sample by swab or washing from a body cavity other than the mouth; and
- (g) the taking of an X-ray of a part of the body; and
- (h) the taking of a dental impression; and
- (i) the taking of a photograph of, or an impression or cast from, the external genital or anal area, the buttocks or, in the case of a female, the breasts; and
- (j) any other procedure prescribed by the regulations as an intimate forensic procedure;

member of the Police Service means –

- (a) a person who holds the rank of Trainee or Junior Constable

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specified in section 4(2) of the
Police Service Act 2003; or

- (b) an ancillary constable within the meaning of the *Police Service Act 2003*;

missing persons index means an index of DNA profiles derived from forensic material of –

- (a) persons who are missing; and
- (b) volunteers who are relatives by blood of missing persons;

non-intimate forensic procedure means –

- (a) the taking of a sample of blood; and
- (b) the taking of a sample of saliva; and
- (c) the taking of a sample by buccal swab; and
- (d) an external examination of a part of the body, other than the external genital or anal area, the buttocks or, in the case of a female, the breasts, that requires the touching of the body or the removal of clothing; and
- (e) an internal examination of the mouth; and

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- (f) the taking of a sample of hair other than pubic hair; and
- (g) the taking of a sample from a nail or under a nail; and
- (h) the taking of a sample by swab or washing from any external part of the body other than the genital or anal area, the buttocks or, in the case of a female, the breasts; and
- (i) the taking of a sample by vacuum suction, by scraping or by lifting by tape from any external part of the body other than the genital or anal area, the buttocks or, in the case of a female, the breasts; and
- (j) the taking of a handprint, fingerprint, footprint or toeprint; and
- (k) the taking of a photograph of a person or an external part of a person other than the external genital or anal area, the buttocks or, in the case of a female, the breasts; and
- (l) the taking of an impression or cast from a part of the body other than the genital or anal area, the buttocks or, in the case of a female, the breasts; and

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- (m) any other procedure prescribed by the regulations as a non-intimate forensic procedure –

but does not include an intrusion into any body cavity of a person other than the mouth;

nurse means a registered nurse;

Officer of Police means a commissioned police officer;

parent means –

- (a) a person who has parental responsibility for a child or for a young child; and
- (b) a guardian of a child or of a young child; and
- (c) a foster parent of a child or of a young child;

parental responsibility means all the duties, powers, responsibilities and authority which, by law, parents have in relation to their children;

part of the body includes a prosthesis;

participating jurisdiction means the Commonwealth, a State or a Territory if there is a corresponding law in force in that jurisdiction;

prescribed offender means –

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- (a) a person who has been convicted of a serious offence and –
 - (i) is serving a sentence of imprisonment or detention in a prison; or
 - (ii) after serving part of such a sentence in a prison is on release on parole under the *Corrections Act 1997*; and
- (b) a person who is subject to a restriction order under the *Criminal Justice (Mental Impairment) Act 1999*;

prison means –

- (a) a prison within the meaning of the *Corrections Act 1997*; and
- (b) a detention centre within the meaning of the *Youth Justice Act 1997*;

regulations means regulations made and in force under section 65;

responsible Minister, in relation to a participating jurisdiction, means a Minister of that jurisdiction who is responsible for the administration of a corresponding law;

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responsible person, in relation to a DNA database system, means the person nominated by the Commissioner of Police to be responsible for the care, control and management of the system;

sampling procedure, in relation to a young child, means –

- (a) the taking of a sample of saliva from the young child; and
- (b) the taking of a sample from the young child by buccal swab;

serious offence means an offence –

- (a) under the law of this State or of a participating jurisdiction that is punishable on indictment even though in some instances it may be dealt with summarily; or
- (ab) against section 8, 9 or 10 of the *Animal Welfare Act 1993*; or
- (b) against section 13A, 13B, 13C, 21, 21A, 34B, 35, 37, 37AA(1), 37B, 38B or 39 of the *Police Offences Act 1935*; or
- (ba) against section 9(1), 74(1), 107A(1), 111(1), 112, 113(2) or 114(1) of the *Firearms Act 1996*; or

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- (c) against section 20, 21, 22A, 26, 27 or 27AA of the *Misuse of Drugs Act 2001*; or
- (d) against section 11A(1) or (2A) of the *Police Powers (Vehicle Interception) Act 2000*;

serious offender means a person who has been convicted of a serious offence;

serious offenders index means an index of DNA profiles derived from forensic material taken –

- (a) from prescribed offenders in accordance with Part 3 or under a corresponding law of a participating jurisdiction; and
- (b) from suspects and charged persons who have been convicted of a serious offence;

statistical index means an index of information that –

- (a) is obtained from the analysis of forensic material taken from persons in accordance with this Act or under a corresponding law of a participating jurisdiction; and
- (b) has been compiled for statistical purposes; and

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-
- (c) cannot be used to discover the identity of persons from whom the forensic material was taken;

suspect means a person whom a police officer suspects on reasonable grounds has committed a serious offence but who has not been arrested and charged with the serious offence;

suspects index means an index of DNA profiles derived from forensic material taken in accordance with Part 2 or under a corresponding law of a participating jurisdiction from suspects and charged persons;

unknown deceased persons index means an index of DNA profiles derived from forensic material of deceased persons whose identities are unknown;

volunteer means a person who volunteers to a police officer to undergo a forensic procedure;

volunteers (limited purposes) index means an index of DNA profiles derived from forensic material taken in accordance with Part 4 or under a corresponding law of a participating jurisdiction from volunteers who have been informed that information obtained will be used only for a purpose specified to them under section 30 or under a provision of a

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corresponding law that has substantially the same effect as section 30;

volunteers (unlimited purposes) index means an index of DNA profiles derived from material taken –

- (a) in accordance with Part 4 or under a corresponding law of a participating jurisdiction from volunteers who have been informed under section 30 or under a provision of that corresponding law that has substantially the same effect as section 30 that information obtained may be used for the purpose of a criminal investigation or any other purpose for which the DNA database system may be used under Part 8 or under that corresponding law; and
- (b) from deceased persons whose identity is known;

young child means a person under the age of 10 years.

- (2) In this Act, a reference to a sample taken from a person includes a reference to a sample taken from the person that consists of or includes matter from another person.
- (3) In this Act, a reference to informing a person of a matter is a reference to informing the person of

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the matter, through an interpreter if necessary, in language (including sign language or braille) in which the person is able to communicate with reasonable fluency.

- (4) For the purposes of this Act, a person destroys forensic material taken from another person by a forensic procedure, or forensic material taken from a young child by a sampling procedure, and the information obtained from the analysis of the material if the person –
- (a) physically destroys the forensic material; and
 - (b) removes any means of identifying the person or young child from whom the forensic material was taken with the information obtained from the analysis of the material from searchable electronic databases, including the DNA database system (except as allowed for in the statistical index).

4. Prohibition on application of Act to children under age of 10 years except in limited circumstances

- (1) Nothing in this Act authorises the carrying out of a forensic procedure on a person who is a young child.
- (2) A sampling procedure may be carried out, in accordance with Part 4B of this Act, on a person who is a young child.

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5. Non-application of Act to victims

Nothing in Parts 2, 3, 4, 5, 6 and 7 applies to the carrying out of a forensic procedure on a person because that person is alleged to be the victim of an offence.

6. Non-application of Act to surveillance photographs and video recordings

Nothing in this Act applies to photographs and video recordings obtained in the course of a police surveillance operation.

7. Application of other Acts not limited

- (1) This Act is not intended to limit or exclude the operation of another law of the State relating to –
 - (a) the carrying out of forensic procedures, including procedures not referred to in this Act; or
 - (b) without limiting paragraph (a), the carrying out of breath analysis or a breath test or the production of samples of blood and urine to determine the level of alcohol or drugs, if any, present in a person's body; or
 - (c) the taking of forensic samples, including samples not referred to in this Act; or
 - (d) the carrying out of searches of the person.

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- (2) To avoid any doubt, it is declared that even if another law of the State provides a power to do one or more of the things referred to in subsection (1), a similar power conferred by this Act may be exercised despite the existence of the power under the other law.

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Part 2 – Forensic Procedures on Suspects and Charged Persons

**PART 2 – FORENSIC PROCEDURES ON SUSPECTS
AND CHARGED PERSONS**

*Division 1 – Circumstances for carrying out forensic
procedures on suspects and charged persons*

8. Circumstances for carrying out forensic procedure

- (1) Where a suspect is 15 years old or older –
 - (a) an intimate forensic procedure may be carried out on the suspect in accordance with this Act –
 - (i) if the suspect has given informed consent to the carrying out of the forensic procedure; or
 - (ii) on the order of a magistrate; and
 - (b) a non-intimate forensic procedure may be carried out on the suspect in accordance with this Act –
 - (i) if the suspect has given informed consent to the carrying out of the forensic procedure; or
 - (ii) on the order of an Officer of Police.
- (2) Where a charged person is 15 years or older –
 - (a) an intimate forensic procedure may be carried out on the charged person in accordance with this Act –

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- (i) if the charged person has given informed consent to the carrying out of the forensic procedure; or
 - (ii) on the order of a magistrate; and
- (b) a non-intimate forensic procedure may be carried out on the charged person in accordance with this Act –
 - (i) on the order of any police officer if the charged person is in custody; or
 - (ii) on the order of an Officer of Police if the charged person is not in custody.
- (3) Where a suspect or charged person is between 10 and 14 years of age (both years inclusive), a forensic procedure may be carried out on the suspect or charged person in accordance with this Act –
 - (a) if both the suspect or charged person and his or her parent have given informed consent to the carrying out of the forensic procedure; or
 - (b) on the order of a magistrate.
- (4) For the purposes of this section, a suspect, charged person or parent gives informed consent to the carrying out of a forensic procedure if the suspect, charged person or parent consents to the carrying out of the forensic procedure after a police officer has –

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- (a) requested the suspect, charged person or parent to consent to the procedure; and
- (b) informed the suspect, charged person or parent about the procedure –
 - (i) in accordance with section 10; and
 - (ii) through an interpreter if necessary, in a language (including sign language or braille) in which the suspect, charged person or parent is able to communicate with reasonable fluency.

Division 2 – Consent to forensic procedure

9. Police request for consent to forensic procedure

A police officer may request a suspect, charged person or parent to consent to the carrying out of a forensic procedure on that suspect or charged person.

10. Information to be provided before giving consent to forensic procedure

If a police officer requests a suspect, charged person or parent to consent to the carrying out of a forensic procedure on that suspect or charged person, the police officer must inform the suspect, charged person or parent of the following matters:

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- (a) the way in which the forensic procedure is to be carried out;
 - (b) that the forensic procedure may produce evidence relating to the suspect or charged person that might be used in a court of law;
 - (c) that the forensic procedure will be carried out by an authorised person;
 - (d) if relevant, that the suspect or charged person may have present during the carrying out of an intimate forensic procedure a medical practitioner of his or her choice;
 - (e) if relevant, that the suspect or charged person may have present during the taking of a dental impression a dentist of his or her choice;
 - (f) that the suspect, charged person or parent may refuse to consent to the carrying out of the forensic procedure and that the refusal to consent to the forensic procedure may result in an Officer of Police making an order, or a police officer applying to a magistrate to make an order, authorising the carrying out of the forensic procedure, as the case requires;
 - (g) that information obtained from the analysis of forensic material obtained from the forensic procedure may be placed on the DNA database system.

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Part 2 – Forensic Procedures on Suspects and Charged Persons

***Division 3 – Non-intimate forensic procedure on order of
police officer***

11. Application of Division 3

This Division applies in respect of a suspect or charged person who is 15 years old or older.

12. Circumstances in which police officer may order non-intimate forensic procedure

- (1) A police officer may make an order authorising the carrying out of a non-intimate forensic procedure on a charged person who is in custody.
- (2) An Officer of Police may make an order authorising the carrying out of a non-intimate forensic procedure on a suspect or charged person who is not in custody, if the Officer of Police is satisfied there are reasonable grounds to suspect that the forensic procedure may produce evidence tending to confirm or disprove that the suspect or charged person committed a serious offence.
- (3) An order authorising the carrying out of a non-intimate forensic procedure –
 - (a) on a charged person who is in custody may be made verbally; or
 - (b) on a suspect or charged person who is not in custody must be made in writing.

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- (4) A written order must include the date and time when the order is made and the reasons for making the order.
 - (5) Despite subsection (3)(b), if, in the opinion of an Officer of Police, making the order in writing is not reasonably practicable in the circumstances or would cause a delay in carrying out the forensic procedure that may result in evidence relating to the commission of a serious offence being lost or destroyed, that Officer of Police may make the order by communicating it to another police officer by means of telephone, radio, electronic mail or other electronic means.
 - (6) An Officer of Police who makes an order by a means referred to in subsection (5) must –
 - (a) make a written record of the order and the time and date it was made; and
 - (b) sign that record; and
 - (c) provide that record or a copy of it to the police officer to whom the order was communicated.
 - (7) A police officer to whom an order made by an Officer of Police is communicated by a means referred to in subsection (5) must, at the time the order is communicated –
 - (a) make a written record of the order and the time and date the order was communicated; and
 - (b) sign the record.

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- (8) A record of an order that is made by a police officer under subsection (7) is taken to be the order.

13. Custody of suspect or charged person for purpose of carrying out non-intimate forensic procedure

- (1) If an Officer of Police makes an order authorising the carrying out of a non-intimate forensic procedure on a suspect or charged person who is not in custody, a police officer may, after showing the order or a copy of it to the suspect or charged person, take into custody and detain the suspect or charged person for so long as is reasonably necessary to enable the carrying out of that procedure.
- (2) If a suspect or charged person is taken into custody under subsection (1) –
- (a) the suspect or charged person is not in custody for the purposes of the provisions, other than section 6, of the *Criminal Law (Detention and Interrogation) Act 1995*; and
 - (b) section 6 of that Act applies as if the suspect or charged person were in custody for the purposes of participating in an investigation as referred to in section 4(2) of that Act.

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Division 4 – Forensic procedure on order of magistrate

14. Application for forensic procedure order

- (1) A police officer may apply to a magistrate for an order authorising the carrying out of –
 - (a) an intimate forensic procedure on a suspect or charged person who is 10 years old or older; and
 - (b) a non-intimate forensic procedure on a suspect or charged person who is between 10 and 14 years of age (both years inclusive).
- (2) A forensic procedure application must –
 - (a) be in writing; and
 - (b) be supported by evidence on oath or by affidavit dealing with the matters referred to in section 17(1)(a) and (b); and
 - (c) specify the type of forensic procedure sought to be carried out.

15. Securing the presence at hearing of a suspect or charged person who is under 15 and not in custody

- (1) This section applies to a suspect or charged person who is between 10 and 14 years of age (both years inclusive) and is not in custody.
- (2) On the application of a police officer, a magistrate may –

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- (a) issue a summons for the appearance of a suspect or charged person at the hearing of a forensic procedure application; or
 - (b) issue a warrant for the arrest of a suspect or charged person for the purpose of bringing the suspect or charged person before a magistrate for the hearing of a forensic procedure application.
- (3) A magistrate may issue a warrant only if satisfied –
 - (a) that the arrest of the suspect or charged person is necessary to ensure the appearance of the suspect or charged person at the hearing of the forensic procedure application; or
 - (b) that the suspect or charged person, or his or her parent, might destroy evidence that might be obtained by carrying out the forensic procedure; or
 - (c) that the issue of the warrant is otherwise justified.
- (4) The *Justices Act 1959* applies in respect of a summons issued under subsection (2).

16. Procedure at forensic procedure application hearing if suspect or charged person under 15

- (1) This section applies to a suspect or charged person who is between 10 and 14 years of age (both years inclusive).

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- (2) A forensic procedure order in respect of a suspect or charged person must be made in the presence of the suspect or charged person unless the magistrate otherwise orders.
 - (3) A suspect or charged person may be represented by an Australian legal practitioner.
 - (4) The suspect or charged person or his or her representative may –
 - (a) cross-examine the applicant for the order; and
 - (b) with the leave of the magistrate, call or cross-examine any other witnesses; and
 - (c) address the magistrate.
 - (5) A magistrate must not give leave under subsection (4)(b) unless the magistrate is of the opinion that there are substantial reasons why, in the interests of justice, the witness should be called or cross-examined.

17. Forensic procedure order

- (1) On the hearing of a forensic procedure application in respect of a suspect or charged person, a magistrate may make an order authorising the carrying out of a forensic procedure on the suspect or charged person if the magistrate is satisfied that –
 - (a) the person on whom the forensic procedure is to be carried out is a suspect or charged person; and

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- (b) the carrying out of the forensic procedure is justified in all the circumstances.
- (2) In determining whether the carrying out of the forensic procedure is justified in all the circumstances, the magistrate must balance the public interest in obtaining evidence tending to confirm or disprove that the suspect or charged person committed the offence concerned against the public interest in upholding the physical integrity of the suspect or charged person.
- (3) On making a forensic procedure order in respect of a suspect or charged person, the magistrate must –
 - (a) give reasons for making the order; and
 - (b) ensure that a written record of the order is kept and a copy of it provided to the applicant for the order; and
 - (c) inform the suspect or charged person, if present, that reasonable force may be used to ensure that he or she complies with the order.
- (4) A forensic procedure order in respect of a suspect or charged person may include directions as to the time, place and manner in which the forensic procedure is to be carried out.

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Division 5 – Interim forensic procedure order

18. Application for interim forensic procedure order

- (1) A police officer may apply to a magistrate for an interim forensic procedure order authorising the immediate carrying out of an intimate forensic procedure on a suspect or charged person who is 10 years old or older or a non-intimate forensic procedure on a suspect or charged person who is between 10 and 14 years of age (both years inclusive).
- (2) An application must –
 - (a) be supported by evidence dealing with the matters referred to in sections 17(1) and 19(1)(a); and
 - (b) specify the type of forensic procedure sought to be carried out.
- (3) An application may be made in person or, if that is not reasonably practicable, by telephone, radio, facsimile transmission, electronic mail or other electronic means.

19. Interim forensic procedure order

- (1) On receipt of an application under section 18, a magistrate may make an interim forensic procedure order authorising the carrying out of an intimate forensic procedure on a suspect or charged person who is 10 years old or older or a non-intimate forensic procedure on a suspect or charged person who is between 10 and 14 years

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of age (both years inclusive) if the magistrate is satisfied –

- (a) that evidence relating to the commission of a serious offence may be lost or destroyed if there is delay in carrying out the forensic procedure concerned; and
 - (b) there is sufficient evidence to indicate that a magistrate may be satisfied of the existence of the matters referred to in section 17(1) when the application is finally determined.
- (2) A magistrate may make any orders and give any directions in relation to the interim forensic procedure order as he or she could make or give in relation to a forensic procedure order.
- (3) On making an interim forensic procedure order, the magistrate in person or by telephone, radio, facsimile transmission, electronic mail or other electronic means must inform the police officer who applied for the order of –
 - (a) the making of the order; and
 - (b) the terms of the order; and
 - (c) any orders made or directions given under subsection (2).

20. Records of application and interim forensic procedure order

- (1) The police officer who applied for the interim forensic procedure order must, at the time of or

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as soon as practicable after applying for the order –

(a) make a record of –

- (i) the application; and
- (ii) the grounds for seeking the order; and
- (iii) the date and time when the order was made; and
- (iv) the terms of the order made and any orders made or directions given under section 19(2); and
- (v) the magistrate's name; and

(b) sign that record.

(2) The magistrate making an interim forensic procedure order must, at the time of or as soon as practicable after making the order –

(a) make a record of –

- (i) the date and time when the order was made; and
- (ii) the terms of the order and any orders made or directions given under section 19(2); and
- (iii) the reasons for making the order; and

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- (b) sign that record and provide a copy of it to the police officer who applied for the order.

21. Results of forensic procedure carried out under interim forensic procedure order

- (1) A sample taken under an interim forensic procedure order must not be analysed unless –
 - (a) the sample is likely to perish before a forensic procedure order in respect of the taking of that sample is made; or
 - (b) a forensic procedure order in respect of the taking of that sample is made confirming the interim forensic procedure order.
- (2) A person who conducts an analysis under subsection (1)(a) must not intentionally or recklessly disclose any information obtained from the analysis to any person –
 - (a) during the period before a forensic procedure order in respect of the taking of the sample is made; or
 - (b) if the application for the forensic procedure order in respect of the taking of the sample is refused.

Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 12 months, or both.

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Division 6 – Miscellaneous

22. Preventing destruction or contamination of evidence

- (1) A police officer, while waiting for an application for a forensic procedure order or an interim forensic procedure order to be determined, may use reasonable force to prevent the suspect or charged person, if in custody, destroying or contaminating any evidence that might be obtained by carrying out the forensic procedure concerned.
- (2) Subsection (1) does not authorise the carrying out of the forensic procedure.

23. Suspect or charged person may be taken into custody following forensic procedure order

- (1) If a magistrate makes a forensic procedure order or interim forensic procedure order in respect of a suspect or charged person who is not in custody, the suspect or charged person may, after being shown the order or a copy of it, be taken into custody and detained for so long as is reasonably necessary to carry out the forensic procedure.
- (2) A suspect or charged person taken into custody under subsection (1) is not in custody for the purposes of the *Criminal Law (Detention and Interrogation) Act 1995*.

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24. Restrictions on publication in respect of suspect

(1) Except where a suspect on whom a forensic procedure is carried out or proposed to be carried out in relation to an offence is later charged with the offence or the magistrate, by order, has authorised it, a person must not intentionally or recklessly publish in any report of a proceeding under Division 4 or 5 –

- (a) the name of the suspect; or
- (b) any information likely to enable the identification of the suspect.

Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 12 months, or both.

(2) Subsection (1) does not apply to a person who publishes a report of a proceeding in good faith –

- (a) in the performance or exercise, or the purported performance or exercise, of a function or power under this Act; or
- (b) in the administration or execution, or the purported administration or execution, of this Act; or
- (c) for the purposes of the investigation of an offence in relation to which the forensic procedure was authorised by the proceeding; or
- (d) for the purpose of a decision whether to institute proceedings for an offence in

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relation to which the forensic procedure
was authorised by the proceeding; or

- (e) for the purpose of proceedings for an
offence in relation to which the forensic
procedure was authorised by the
proceeding.

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Part 3 – Non-Intimate Forensic Procedures On Prescribed Offenders

**PART 3 – NON-INTIMATE FORENSIC PROCEDURES
ON PRESCRIBED OFFENDERS**

**25. Circumstances for non-intimate forensic procedure
on prescribed offender**

A non-intimate forensic procedure may be carried out on a prescribed offender in accordance with this Act if a police officer makes an order authorising it.

**26. Non-intimate forensic procedure on order of police
officer**

(1) In this section,

on parole means on release from prison on parole under the *Corrections Act 1997*.

(2) A police officer may make an order authorising the carrying out of a non-intimate forensic procedure on a prescribed offender.

(3) An order authorising the carrying out of a non-intimate forensic procedure –

(a) on a prescribed offender who is in prison or a secure mental health unit, within the meaning of the *Mental Health Act 2013*, may be made verbally; or

(b) on a prescribed offender who is on parole must be made in writing.

(4) A written order must include the date and time when the order is made.

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27. Custody of prescribed offender on parole for purposes of carrying out non-intimate forensic procedure

- (1) If a police officer makes an order authorising the carrying out of a non-intimate forensic procedure on a prescribed offender who is on parole, a police officer may, after showing the order or a copy of it to the offender, take into custody and detain the offender for so long as is reasonably necessary to enable the carrying out of the procedure.
- (2) If a prescribed offender is taken into custody under subsection (1) –
 - (a) the prescribed offender is not in custody for the purposes of the provisions, other than section 6, of the *Criminal Law (Detention and Interrogation) Act 1995*; and
 - (b) section 6 of that Act applies as if the prescribed offender were in custody for the purposes of participating in an investigation as referred to in section 4(2) of that Act.

28. Forensic procedure carried out in prison, &c.

- (1) If under this Part a non-intimate forensic procedure is authorised to be carried out on a prescribed offender –
 - (a) a police officer, an authorised person and any person helping in the carrying out of

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Part 3 – Non-Intimate Forensic Procedures On Prescribed Offenders

the forensic procedure as permitted by section 42 are authorised to attend on the offender in the prison or secure mental health unit, within the meaning of the *Mental Health Act 2013*, for the purpose of carrying out the forensic procedure; and

- (b) if the prescribed offender is on parole and the non-intimate forensic procedure is authorised by an order under section 26, a police officer may order the offender to attend at a police station or other place within the period or at the time specified by the police officer for the carrying out of the forensic procedure.

- (2) A prescribed offender must comply with an order under subsection (1)(b).

Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 12 months, or both.

- (3) If a prescribed offender contravenes or fails to comply with an order under subsection (1)(b), the police officer may, for the purpose of carrying out the non-intimate forensic procedure –

- (a) arrest the offender; and
- (b) convey the offender to the police station or other place where the procedure is to be carried out.

**PART 4 – FORENSIC PROCEDURES ON
VOLUNTEERS**

***Division 1 – Circumstances for carrying out forensic
procedures on volunteers***

**29. Circumstances for carrying out forensic procedures
on volunteers**

- (1) Where a volunteer is 15 years old or older, a forensic procedure may be carried out on the volunteer in accordance with this Act if the volunteer has given informed consent to the carrying out of the forensic procedure on the volunteer.
- (2) Where a volunteer is between 10 and 14 years of age (both years inclusive), a forensic procedure may be carried out on the volunteer in accordance with this Act if both the volunteer and the volunteer's parent have given informed consent to the carrying out of the forensic procedure on the volunteer.
- (3) For the purposes of this section, a volunteer or parent gives informed consent to the carrying out of a forensic procedure on the volunteer if the volunteer or parent gives consent after a police officer has informed the volunteer or parent about the forensic procedure –
 - (a) in accordance with section 30; and
 - (b) through an interpreter if necessary, in a language (including sign language or braille) in which the suspect, charged

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Part 4 – Forensic Procedures On Volunteers

person or parent is able to communicate
with reasonable fluency.

Division 2 – Consent to forensic procedure

30. Informing volunteer or parent of forensic procedure

On a volunteer volunteering to a police officer to undergo a forensic procedure, a police officer must inform the volunteer and, if the volunteer is between 10 and 14 years of age (both years inclusive), the volunteer's parent of the following matters:

- (a) the way in which the forensic procedure is to be carried out;
- (b) that the forensic procedure may produce evidence that might be used in a court of law;
- (c) to the extent that they are relevant, the following matters:
 - (i) that information obtained from the analysis of forensic material taken from a volunteer and as to the identity of the volunteer may be placed on the DNA database system on the volunteers (limited purposes) index or the volunteers (unlimited purposes) index and the purposes for which that index may be used;

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- (ii) that information placed on the DNA database system will be retained for the period agreed between the Commissioner of Police and the volunteer;
 - (iii) any other prescribed matter;
 - (d) that the volunteer or parent may at any time withdraw consent to one or more of the following:
 - (i) the forensic procedure;
 - (ii) retention of the forensic material taken or information obtained from the analysis of that material.

31. Withdrawal of consent to retention of forensic material

If, after the carrying out of a forensic procedure on a volunteer, the volunteer expressly and in writing provided to the Commissioner of Police withdraws consent to the retention of the forensic material taken or of information obtained from the analysis of that material, or both, the forensic material and any such information is, subject to any order made under section 34, to be destroyed as soon as practicable after the consent is withdrawn.

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Part 4 – Forensic Procedures On Volunteers

Division 3 – Order to retain forensic material, &c.

32. Application for order to retain forensic material, &c.

- (1) If a volunteer withdraws consent to the retention of forensic material taken from the volunteer during the carrying out of a forensic procedure or information obtained from the analysis of that material, or both, a police officer may apply to a magistrate for an order authorising the retention of that material or that information, or both.
- (2) An application must –
 - (a) be in writing; and
 - (b) be supported by evidence on oath or by affidavit; and
 - (c) specify what is sought to be retained under the order.
- (3) An application must be served on the volunteer who has withdrawn consent and, if the volunteer is between 10 and 14 years of age (both years inclusive), on his or her parent.
- (4) Service of a copy of an application may be proved in the same manner as service of a summons under the *Justices Act 1959*.

33. Procedure at hearing

- (1) At the hearing of an application under section 32 –

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- (a) the volunteer or parent may be represented by an Australian legal practitioner; and
 - (b) the volunteer or parent or his or her representative may –
 - (i) cross-examine the applicant for the order; and
 - (ii) with the leave of the magistrate, call or cross-examine any other witnesses; and
 - (iii) address the magistrate.
 - (2) A magistrate must not give leave under subsection (1)(b)(ii) unless the magistrate is of the opinion that there are substantial reasons why, in the interests of justice, the witness should be called or cross-examined.

34. Order for retention of forensic material, &c.

- (1) On receipt of an application under section 32, a magistrate may order that forensic material taken from a volunteer or information obtained from analysis of that forensic material, or both, be retained despite the withdrawal of consent to the retention by the volunteer or the volunteer's parent.
- (2) Before making an order under subsection (1), the magistrate must be satisfied that –
 - (a) during an investigation into the commission of a serious offence,

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material reasonably believed to be from the body of a person who committed the offence had been found –

- (i) at the scene of the offence; or
 - (ii) on the victim of the offence or anything reasonably believed to have been worn or carried by the victim when the offence was committed; or
 - (iii) on the volunteer or anything reasonably believed to have been worn or carried by the volunteer at the scene of the offence or when the offence was committed; or
 - (iv) on an object or person reasonably believed to have been associated with the commission of the offence; and
 - (b) there are reasonable grounds to believe that information obtained from analysis of the forensic material taken from the volunteer is likely to produce evidence of probative value in relation to the serious offence being investigated; and
 - (c) the retention of the forensic material taken from the volunteer is justified in all the circumstances.
- (3) The order may specify the period for which the forensic material obtained from carrying out the

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forensic procedure or information obtained from analysis of that forensic material, or both, may be retained.

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Part 4A – Non-intimate Forensic Procedures on Police Officers and
Members of the Police Service

**PART 4A – NON-INTIMATE FORENSIC
PROCEDURES ON POLICE OFFICERS AND
MEMBERS OF THE POLICE SERVICE**

34A. Police officers may volunteer to undergo non-intimate forensic procedures

- (1) A police officer may volunteer to undergo one or more of the following non-intimate forensic procedures carried out in accordance with this Act for the purpose of differentiating the officer's forensic material from other forensic material found at crime scenes generally or, if so specified by the officer, only at a particular crime scene:
 - (a) the taking of a sample of saliva;
 - (b) the taking of a sample by buccal swab.
- (2) The information obtained from an analysis of the forensic material taken from a police officer under subsection (1) may be used –
 - (a) with regard to crime scenes generally; or
 - (b) if so specified by the officer when volunteering to undergo the non-intimate forensic procedures under that subsection, with regard to the specified particular crime scene only.

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Part 4A – Non-intimate Forensic Procedures on Police Officers and Members
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34B. Requiring police officers and members of the Police Service to undergo non-intimate forensic procedures

- (1) The Commissioner of Police may require a police officer or member of the Police Service to undergo one or more of the following non-intimate forensic procedures carried out in accordance with this Act for the purpose of differentiating the police officer's or member's forensic material from other forensic material found at a particular crime scene specified by the Commissioner and which the officer or member has attended in the course of his or her duties:
 - (a) the taking of a sample of saliva;
 - (b) the taking of a sample by buccal swab.
- (2) A requirement under subsection (1) may be made even if the Commissioner of Police has made such a requirement in respect of that police officer or member of the Police Service previously.
- (3) The Commissioner of Police may require a member of the Police Service who was appointed as such after the commencement of this section to undergo one or more of the following non-intimate forensic procedures carried out in accordance with this Act for the purpose of differentiating the member's forensic material from other forensic material found at crime scenes generally:
 - (a) the taking of a sample of saliva;

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Part 4A – Non-intimate Forensic Procedures on Police Officers and
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(b) the taking of a sample by buccal swab.

34C. Limit on use, &c., of forensic material taken under this Part

(1) Despite any other provision of this Act –

- (a) if forensic material is taken from a police officer under section 34A(1) for the purpose of differentiating the officer's forensic material from forensic material found at a particular crime scene, as specified by the officer under that section, information obtained from an analysis of the officer's forensic material must not be matched with any information obtained from an analysis of any forensic material other than information obtained from an analysis of forensic material found at that particular crime scene; or
- (b) if forensic material is taken from a police officer under section 34A(1), or from a member of the Police Service under section 34B(3), for the purpose of differentiating the officer or member's forensic material from forensic material found at crime scenes generally, information obtained from an analysis of the officer or member's forensic material must not be matched with any information obtained from an analysis of any forensic material other than

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information obtained from an analysis of
forensic material found at a crime scene.

- (2) Despite any other provision of this Act, information obtained from the analysis of forensic material taken from a police officer or member of the Police Service under section 34B(1) must not be matched with any information obtained from an analysis of any forensic material other than information obtained from the analysis of forensic material found at the particular crime scene specified by the Commissioner under that section.
- (3) Forensic material taken from a police officer or member of the Police Service under section 34A or 34B, and any information obtained from an analysis of such forensic material –
 - (a) must not be used for the purposes of an internal Police Service investigation; and
 - (b) may not be received or admitted as evidence in any disciplinary proceeding, or proceeding for an offence, against the police officer or member of the Police Service.

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Part 4B – Sampling Procedures on Children Under Age of 10 Years

**PART 4B – SAMPLING PROCEDURES ON CHILDREN
UNDER AGE OF 10 YEARS**

**34D. Circumstances for carrying out sampling
procedures on young children**

- (1) A sampling procedure may be carried out on a young child in accordance with this Act, for a purpose referred to in section 34J(1) –
 - (a) if a parent of the young child has given informed consent to the carrying out of the sampling procedure on the young child; or
 - (b) on the order of a magistrate.
- (2) For the purposes of this Part, a parent of a young child gives informed consent to the carrying out of a sampling procedure on the young child if the parent consents to the carrying out of the sampling procedure after a police officer has –
 - (a) requested the parent to consent to the sampling procedure under section 34E(1); and
 - (b) informed the parent in accordance with section 34E(2).

34E. Police request for consent to sampling procedure

- (1) A police officer may request a parent of a young child to consent to the carrying out of a sampling procedure on the young child.

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Part 4B – Sampling Procedures on Children Under Age of 10 Years

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- (2) If a police officer makes a request under subsection (1), the police officer must inform the parent of the young child of the following matters:
- (a) the purpose for which the sampling procedure is to be carried out;
 - (b) the way in which the sampling procedure is to be carried out;
 - (c) that the sampling procedure may produce evidence that might be used in a court of law;
 - (d) that the sampling procedure will be carried out by a person who is authorised under section 34K(2) to carry out the procedure;
 - (e) that the parent may refuse to consent to the carrying out of the sampling procedure and that the refusal to consent to the sampling procedure may result in a police officer applying to a magistrate to make an order authorising the carrying out of the sampling procedure;
 - (f) that the parent may withdraw his or her informed consent to the carrying out of the sampling procedure on the young child.

34F. Withdrawal of consent to sampling procedure

- (1) A parent of a young child may inform –

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Part 4B – Sampling Procedures on Children Under Age of 10 Years

(a) the police officer to whom the parent gave his or her informed consent to the carrying out of a sampling procedure on the young child; or

(b) an Officer of Police –

that the parent withdraws his or her informed consent to the carrying out of a sampling procedure on the young child.

- (2) If a police officer or an Officer of Police is informed of a withdrawal of informed consent under subsection (1), the police officer or Officer of Police is to immediately notify the person authorised under this Act to carry out the sampling procedure on the young child to whom the withdrawal of informed consent relates that the consent has been withdrawn.
- (3) If a person authorised under this Act to carry out a sampling procedure on a young child is notified of a withdrawal of informed consent under subsection (2), the person must not commence, or continue to carry out, the sampling procedure on the young child to whom the withdrawal of informed consent relates.
- (4) Despite this section, a sampling procedure may be carried out on a young child in accordance with this Act, for a purpose referred to in section 34J(1), on the order of a magistrate.

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Part 4B – Sampling Procedures on Children Under Age of 10 Years

s. 34G

34G. Application for order of magistrate authorising sampling procedure

- (1) For the purposes of section 34D(1), a police officer may apply to a magistrate for an order authorising the carrying out of a sampling procedure on a young child.
- (2) An application under subsection (1) must –
 - (a) be in writing; and
 - (b) be supported by evidence on oath, or an affidavit, dealing with the matters referred to in section 34I(7); and
 - (c) specify the purpose or purposes, as set out in section 34J(1), for which the sampling procedure is required to be carried out on the young child; and
 - (d) specify the type of sampling procedure sought to be carried out on the young child.

34H. Notice of hearing of application

After an application is made to a magistrate under section 34G, a copy of the application and notice of the time and place of the hearing of the application must be served on a parent of the young child to whom the application relates.

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Part 4B – Sampling Procedures on Children Under Age of 10 Years

34I. Procedure at sampling procedure application hearing

- (1) The hearing of an application under section 34G for an order in respect of a young child must be held in a closed court.
- (2) A young child may be represented, at the hearing of an application under section 34G for an order in respect of the young child, by an Australian legal practitioner.
- (3) If a young child is not represented by an Australian legal practitioner under subsection (2) and a magistrate considers such representation to be in the best interests of the young child, the magistrate may appoint an Australian legal practitioner to represent the young child at the hearing of an application under section 34G for an order in respect of the young child.
- (4) The Australian legal practitioner is to act in the best interests of the young child, having regard to any evidence reasonably available to the Australian legal practitioner.
- (5) The Australian legal practitioner, or a parent of the young child, may –
 - (a) cross-examine the applicant for the order; and
 - (b) with the leave of the magistrate, call or cross-examine any other witnesses; and
 - (c) address the magistrate.

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- (6) A magistrate must not give leave under subsection (5)(b) unless the magistrate is of the opinion that there are substantial reasons why, in the interests of justice, the witness should be called or cross-examined.
- (7) Before a magistrate makes an order authorising the carrying out of a sampling procedure on a young child, the magistrate is to take into account the following matters:
- (a) the age of the young child;
 - (b) the best interests of the young child;
 - (c) so far as can be ascertained, whether the young child understands what will be involved in carrying out the sampling procedure and any wishes of the young child with regard to whether the sampling procedure should be carried out;
 - (d) the purpose for which the sampling procedure is required;
 - (e) whether the carrying out of the sampling procedure is justified in all the circumstances.

34J. Sampling procedure order

- (1) On the hearing of a sampling procedure application in respect of a young child, a magistrate may make an order authorising the carrying out of a sampling procedure on the

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young child if the magistrate is satisfied that it is necessary for a sampling procedure to be carried out on the young child for one or more of the following purposes:

- (a) to identify the young child, if a police officer is of the opinion that the young child is lost or abandoned;
 - (b) to identify a deceased person, if the young child is the only person available to provide DNA for the purpose of identifying the deceased person;
 - (c) to identify or locate a missing person, if the young child is the only person available to provide DNA for the purpose of identifying or locating the missing person;
 - (d) to establish the young child's parentage, if the young child is not a victim of a crime to which the sampling procedure application relates but the young child's DNA may provide evidence of the commission of that crime;
 - (e) to differentiate the young child's forensic material from other forensic material found at a particular crime scene.
- (2) On making an order under subsection (1) in respect of a young child, the magistrate must –
- (a) give reasons for making the order; and

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-
- (b) ensure that a written record of the order is kept and a copy of it is provided to the applicant for the order and a parent of the young child.
 - (3) An order under subsection (1) in respect of a young child may include directions as to the time and place at which, and manner in which, the sampling procedure is to be carried out on the young child.
 - (4) On his or her own initiative or on the application of an Officer of Police or a police officer, a magistrate may order a parent of a young child to make the young child available, as specified in an order under subsection (1) authorising a sampling procedure to be carried out on the young child, for the purpose of carrying out that sampling procedure.
 - (5) A parent of a young child provided with a copy of an order under subsection (2)(b) must comply with an order under subsection (4).

Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 2 years, or both.

34K. General rules for carrying out sampling procedures

- (1) A sampling procedure –
 - (a) must be carried out by a person who is authorised to carry out a sampling procedure; and

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- (b) must be carried out in circumstances affording reasonable privacy to the young child undergoing the procedure; and
 - (c) is to be carried out in a manner consistent with appropriate medical or other relevant professional standards.
- (2) For the purposes of this Act, the following persons are authorised to carry out a sampling procedure:
 - (a) a medical practitioner;
 - (b) a dentist;
 - (c) a nurse;
 - (d) a police officer.
- (3) A person authorised to carry out a sampling procedure under subsection (2) may ask another person to help him or her carry out the procedure.
- (4) A person who is asked to help carry out a sampling procedure need not be –
 - (a) a medical practitioner; or
 - (b) a dentist; or
 - (c) a nurse; or
 - (d) a police officer.

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34L. Presence of parent or witness while sampling procedure is carried out

(1) In this section –

independent witness means a person who is 18 years old or older and is neither a police officer nor a parent of the young child undergoing a sampling procedure;

unavailable, in relation to a parent of a young child on whom a sampling procedure is to be carried out, means that the parent –

- (a) has declined to be present during the carrying out of the sampling procedure; or
 - (b) has been notified by an Officer of Police, under subsection (5), that he or she is not to be present during the carrying out of the sampling procedure; or
 - (c) cannot be located after a reasonable attempt has been made to locate the parent; or
 - (d) has died; or
 - (e) does not have the mental capacity to be able to consent.
- (2) Except as provided in subsection (3), a sampling procedure may be carried out on a young child only if there is present during the carrying out of the procedure –

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- (a) at least one of the young child's parents;
or
 - (b) if the young child's parents are
unavailable, an independent witness.
- (3) If a parent of a young child, or an independent
witness, unreasonably interferes with, or
obstructs, the carrying out of a sampling
procedure on the young child –
 - (a) the parent or independent witness may be
excluded from the place where the
sampling procedure is being carried out;
and
 - (b) the carrying out of the sampling
procedure may then proceed in the
absence of that parent or independent
witness.
- (4) A parent of a young child, or an independent
witness, must not unreasonably interfere with, or
obstruct, the carrying out of a sampling
procedure on the young child.

Penalty: Fine not exceeding 50 penalty units or
imprisonment for a term not exceeding
2 years, or both.

- (5) If an Officer of Police believes a conflict of
interest may exist between a young child who is
to undergo a sampling procedure and a parent of
that young child or that a parent of a young child
may unreasonably interfere with, or obstruct, the
carrying out of a sampling procedure on the

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young child, the Officer of Police is to notify the parent, in writing, that –

- (a) the parent is not to be present during the carrying out of the sampling procedure on the young child; and
 - (b) an independent witness will be present during the carrying out of the sampling procedure on the young child.
- (6) A parent who is notified under subsection (5)(a) must comply with the notification.

Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 2 years, or both.

34M. Presence of police officers during sampling procedure

Police officers may be present during the carrying out of a sampling procedure on a young child for the purposes of safety, security, continuity of evidence, investigation and the effective carrying out of the procedure in accordance with this Act.

34N. Limit on use of forensic material taken under this Part

Despite any other provision of this Act, information obtained from the analysis of forensic material taken from a young child under section 34D(1) may only be matched with other information, whether or not that information, or

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that other information, is on the DNA database system, if that matching is for the purpose or purposes for which the forensic material was taken from the young child.

PART 5 – CARRYING OUT FORENSIC PROCEDURES

Division 1 – General provisions

35. General rules for carrying out forensic procedure

A forensic procedure –

- (a) must be carried out in circumstances affording reasonable privacy to the person undergoing the procedure; and
- (b) is to be carried out in a manner consistent with appropriate medical or other relevant professional standards.

36. Use of force in carrying out forensic procedure

If the carrying out of a forensic procedure on a person is authorised under this Act, authorised persons and police officers may use reasonable force –

- (a) to enable the forensic procedure to be carried out; and
- (b) to prevent loss, destruction or contamination of any sample.

37. Taking samples of hair

An authorised person is authorised to take a sample of hair from a person undergoing a forensic procedure by removing the root of the hair only if –

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- (a) the authorised person takes only so much hair as he or she believes is necessary for analysis of the sample, or other examination of the hair, to be carried out; and
- (b) each strand of hair is taken individually using the least painful technique known and available to the authorised person.

38. Withdrawal of consent

- (1) This section applies in respect of a forensic procedure the carrying out of which is authorised under this Act because the person who is to undergo, or is undergoing, the procedure and, if that person is between 10 and 14 years of age (both years inclusive), that person's parent have given informed consent to the carrying out of the procedure.
- (2) If, before or during the carrying out of a forensic procedure, a person who has consented to the carrying out of the forensic procedure withdraws that consent either expressly or by behaving in such a way that it can reasonably be inferred that consent is withdrawn –
 - (a) the forensic procedure is to be treated from the time of the withdrawal of consent as a forensic procedure for which informed consent has been refused; and
 - (b) the forensic procedure is not to proceed.

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- (3) Subsection (2) does not prevent the making of an order in accordance with this Act by a police officer or magistrate authorising the carrying out of a forensic procedure on the refusal of a person or parent to consent to the forensic procedure.

Division 2 – Who may carry out and be present during forensic procedures

39. Forensic procedure carried out by authorised person only

A forensic procedure may be carried out only by an authorised person.

40. Authorised persons and persons who may be present during forensic procedure

- (1) In this section,

approved person, in relation to a forensic procedure, means a person approved by the Commissioner of Police, in writing, to carry out that kind of forensic procedure.

- (2) For the purpose of carrying out the forensic procedure specified in column 1 of the following table –

- (a) the person specified in column 2 of the table adjacent to that procedure is an authorised person; and
- (b) the person specified in column 3 of the table adjacent to that procedure is

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authorised to be present at the request of
the person undergoing the procedure:

Table

Column 1	Column 2	Column 3
Forensic procedure	Authorised persons	Persons whose presence may be requested
1. External examination of the genital or anal area, the buttocks or, in the case of a female, the breasts	Medical practitioner Nurse	Medical practitioner
2. Internal examination of a body cavity other than the mouth	Medical practitioner Nurse	Medical practitioner
3. The taking of a sample of blood	Medical practitioner Nurse	Medical practitioner
4. The taking of a sample of pubic hair	Medical practitioner Nurse	Medical practitioner

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5.	The taking of a sample by swab or washing from the external genital or anal area, the buttocks or, in the case of a female, the breasts	Medical practitioner Nurse	Medical practitioner
6.	The taking of a sample by vacuum suction, scraping or lifting by tape from the external genital or anal area, the buttocks or, in the case of a female, the breasts	Medical practitioner Nurse	Medical practitioner
7.	The taking of a sample by swab or washing from a body cavity other than the mouth	Medical practitioner Nurse	Medical practitioner
8.	The taking of an X-ray	Medical practitioner Dentist	No one
9.	The taking of a dental impression	Medical practitioner Dentist	Dentist
10.	Internal examination of the mouth	Medical practitioner Nurse Police Officer Approved person	No one
11.	The taking of a sample of saliva, or a sample by buccal swab	Medical practitioner Dentist Nurse Police Officer Approved person	No one

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12.	The taking of a photograph of the genital or anal area, the buttocks or, in the case of a female, the breasts	Medical practitioner Nurse Police Officer Approved person	Medical practitioner
13.	The taking of an impression or cast from the genital or anal area, the buttocks or, in the case of a female, the breasts	Medical practitioner Nurse Police Officer Approved person	Medical practitioner
14.	External examination of a part of the body, other than the genital or anal area, the buttocks or, in the case of a female, the breasts, that requires touching of the body or removal of clothing	Medical practitioner Nurse Police Officer Approved person	No one
15.	The taking of a sample of hair other than pubic hair	Medical practitioner Nurse Police Officer Approved person	No one
16.	The taking of a sample from a nail or from under a nail	Medical practitioner Nurse Police Officer Approved person	No one
17.	The taking of a sample by swab or washing from any external part of the body other than the genital or anal area, the buttocks or, in the case of a female, the breasts	Medical practitioner Nurse Police Officer Approved person	No one

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18.	The taking of a sample by vacuum suction, scraping or lifting by tape from any external part of the body other than the genital or anal area, the buttocks or, in the case of a female, the breasts	Medical practitioner Nurse Police Officer Approved person	No one
19.	The taking of a handprint, fingerprint, footprint or toeprint	Police Officer Approved person	No one
20.	The taking of a photograph of, or an impression or cast from, an external part of the body other than the genital or anal area, the buttocks or, in the case of a female, the breasts	Medical practitioner Nurse Police Officer Approved person	No one
21.	The taking of a photograph of a person	Medical practitioner Nurse Police Officer Approved person	No one

(3) A person undergoing a forensic procedure specified in item 11 in the table in subsection (2)(b) may carry out that procedure on himself or herself under the supervision of a person specified in column 2 of that item.

(4) The Governor, by order, may –

- (a) amend the table set out in subsection (2); and
- (b) omit that table and substitute a new table.

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41. Certain forensic procedures generally to be carried out by person of same sex

- (1) If practicable, an intimate forensic procedure (other than the taking of a dental impression or an X-ray) is to be carried out by a person of the same sex as the person undergoing the procedure.
- (2) If practicable, a non-intimate forensic procedure for which the person undergoing the procedure is required to remove clothing other than his or her overcoat, coat, jacket, gloves, socks, shoes and hat is to be carried out by a person of the same sex as the person undergoing the procedure.
- (3) If practicable, a person asked under section 42 to help carry out a forensic procedure covered by subsection (1) or (2) is to be a person of the same sex as the person undergoing the procedure.

42. Person may get help to carry out forensic procedure

- (1) An order made by a police officer or magistrate authorising the carrying out of a forensic procedure also authorises –
 - (a) the authorised person who is to carry out the procedure to ask another person to help him or her to carry out the procedure; and
 - (b) that other person to give that help.

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- (2) A person who is asked to help carry out a forensic procedure need not be an authorised person.
 - (3) A person who is asked to help carry out a forensic procedure may use reasonable force to enable the forensic procedure to be carried out.

43. Presence of medical practitioner or dentist of choice

- (1) A person undergoing an intimate forensic procedure (other than the taking of a dental impression or an X-ray) is entitled to request a medical practitioner of his or her choice to be present while the procedure is carried out.
- (2) A person undergoing a forensic procedure is entitled to request a dentist of his or her choice to be present while a dental impression is taken.
- (3) If a person undergoing a forensic procedure requests the presence of a medical practitioner or dentist of his choice, the medical practitioner or dentist chosen must be present at the carrying out of the forensic procedure unless he or she is unable, or does not wish, to attend or cannot be contacted within the following time:
 - (a) if the forensic procedure is carried out under the authority of a forensic procedure order or interim forensic procedure order which specifies a time within which the procedure must be carried out, that time;

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- (b) in any other case, a reasonable time or, if relevant, the time in which the person responsible for the effective carrying out of the forensic procedure considers the procedure should be carried out if it is to be effective in affording evidence of any relevant offence.

44. Presence of parent or witness while forensic procedure is carried out

- (1) In this section –

independent witness means a person who has attained the age of 18 years and is not a police officer or a parent of the person undergoing a forensic procedure;

unavailable, in relation to a parent of a person on whom a forensic procedure is to be carried out, means that the parent –

- (a) has declined to be present during the carrying out of the forensic procedure; or
 - (b) cannot be located after a reasonable attempt has been made to do so.
- (2) Except as provided in subsection (3), a forensic procedure may be carried out on a person who is between 10 and 14 years of age (both years inclusive) only if there is present during the carrying out of the procedure –

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- (a) the person's parent; or
 - (b) if all parents of the person are unavailable, an independent witness.
 - (3) If a parent or independent witness unreasonably interferes with, or obstructs, the carrying out of a forensic procedure on a person who is between 10 and 14 years of age (both years inclusive) –
 - (a) the parent or witness may be excluded from the place where the procedure is being carried out; and
 - (b) the carrying out of the procedure may then proceed in the absence of that parent or witness.
 - (4) Subsection (3) does not apply to a parent of a person who is between 10 and 14 years of age (both years inclusive) if –
 - (a) the carrying out of the forensic procedure is authorised because that parent and that person gave informed consent to the carrying out of the procedure; and
 - (b) the unreasonable interference with, or obstruction of, the carrying out of the procedure is a withdrawal of consent within the meaning of section 38.

45. Presence of police officers during forensic procedure

- (1) Police officers may be present during the carrying out of a forensic procedure for the

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purposes of safety, security, continuity of evidence, investigation and the effective carrying out of the procedure in accordance with this Act.

- (2) The number of police officers that may be present during the carrying out of a forensic procedure must not exceed that which is reasonably necessary for the purposes specified in subsection (1).
- (3) A police officer who is of the opposite sex to that of the person undergoing the forensic procedure may only be present during the carrying out of the procedure if –
 - (a) it would not be reasonably practicable to carry out the procedure without the presence of the police officer; and
 - (b) at the time the forensic procedure must be carried out, there is no police officer of the same sex as the person available to be present instead of the police officer of the opposite sex.
- (4) Subsections (2) and (3) do not apply to any non-intimate forensic procedure that may be carried out without requiring the person undergoing the procedure to remove any clothing except his or her overcoat, coat, jacket, gloves, socks, shoes and hat.

PART 6 – ADMISSIBILITY OF EVIDENCE

46. Rules of evidence apply to evidence obtained illegally, &c.

The rules of evidence relating to illegally, unfairly or improperly obtained evidence apply to evidence obtained under this Act.

47. Admissibility of evidence relating to consent to forensic procedures

Evidence of a person's refusal or failure to consent, or withdrawal of consent, to a forensic procedure is not admissible in proceedings against the person except to establish or rebut an allegation that a police officer investigating the commission of the offence concerned acted contrary to law in carrying out the investigation.

48. Obstructing, &c., the carrying out of forensic procedure

- (1) This section applies if a police officer or magistrate has made an order authorising the carrying out of a forensic procedure on a suspect or charged person under Part 2.
- (2) Evidence that the suspect or charged person –
 - (a) refused to comply with any reasonable direction in connection with the carrying out of the forensic procedure; or

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- (b) obstructed, resisted, hindered, used violence against, threatened or intimidated a person in connection with the carrying out of the forensic procedure –

is admissible in any proceedings against the suspect or charged person in respect of the offence in relation to which the forensic procedure was carried out.

- (3) Evidence described in subsection (2) is not admissible unless it is established that the suspect or charged person –

- (a) had been informed by a police officer, through an interpreter if necessary, in language (including sign language or braille) in which the suspect or charged person is able to communicate with reasonable fluency; or

- (b) otherwise knew –

that the fact of refusing to comply with the direction, or obstructing, resisting, hindering, using violence against, threatening or intimidating the person, in connection with the carrying out of the forensic procedure might be used in evidence against the suspect or charged person.

- (4) The court or jury may draw such inferences from the evidence described in subsection (2) as appear to the court or jury to be proper in the circumstances, having regard to any evidence

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given by or on behalf of the suspect or charged person.

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Part 7 – Destruction of Forensic Material

PART 7 – DESTRUCTION OF FORENSIC MATERIAL

49. Destruction of forensic material if interim forensic procedure order disallowed

If after an interim forensic procedure order is made the application for the forensic procedure order is refused, all forensic material obtained as a result of the carrying out of the forensic procedure under that order and information obtained from an analysis of that forensic material must be destroyed as soon as practicable after that disallowance.

50. Destruction of certain forensic material obtained by court order

If an order for the retention of forensic material under section 34 specifies a period for which forensic material obtained as a result of the carrying out of the forensic procedure or information obtained from an analysis of the material, or both, may be retained, the forensic material or information, or both, is to be destroyed as soon as practicable after the end of the period.

51. Destruction of suspect's or charged person's forensic material after 12 months

- (1) This section applies where forensic material has been taken from a suspect or charged person by a forensic procedure carried out under Part 2 and the only use for it or information obtained from

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its analysis is the identification of that suspect or charged person in relation to an offence.

(2) If –

- (a) forensic material has been taken from a suspect or charged person; and
- (b) a period of 12 months has elapsed since the forensic material was taken; and
- (c) in the case of –
 - (i) a suspect or charged person who was not in custody at the time the forensic material was taken, proceedings in respect of all offences for which the forensic material was obtained have not been instituted or have been discontinued; or
 - (ii) a charged person who was in custody at the time the forensic material was taken, proceedings in respect of any offence have not been instituted or all proceedings instituted in respect of offences have been discontinued –

the forensic material, and any information obtained from an analysis of the forensic material, must be destroyed as soon as practicable unless a warrant for the apprehension of the suspect or charged person has been issued.

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- (3) If a warrant for the apprehension of the suspect or charged person is issued during the period of 12 months after the forensic material was taken, the forensic material, and any information obtained from an analysis of the forensic material, must be destroyed as soon as practicable after –
 - (a) the warrant lapses; or
 - (b) if no proceedings in relation to any offence have been commenced in respect of the suspect or charged person, the end of a period of 12 months after the suspect or charged person is apprehended.
- (4) If forensic material has been taken from a person who was a suspect or charged person and –
 - (a) in the case of a person who was not in custody at the time the forensic material was taken, the person is acquitted of all offences to which the forensic material relates; and
 - (b) in the case of a person who was in custody at the time the forensic material was taken, the person is acquitted of all offences in respect of which proceedings have been instituted; and
 - (c) either –
 - (i) no appeal is lodged against the acquittal; or

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- (ii) an appeal is lodged against the acquittal and the acquittal is confirmed or the appeal is withdrawn –

the forensic material, and any information obtained from an analysis of the forensic material, must be destroyed as soon as practicable unless an investigation into, or a proceeding against the suspect or charged person for, another offence to which the forensic material relates is pending or in progress.

- (5) On the application of a police officer or the Director of Public Prosecutions, a magistrate may extend for a period not exceeding 12 months the period for which forensic material and any information obtained from an analysis of the material may be retained under this section if the magistrate is satisfied that there are special reasons for doing so.
- (6) A magistrate must not make an extension under subsection (5) unless –
 - (a) the person from whom the forensic material was taken and the parent of any such person who is under the age of 15 years have been notified by the applicant for the extension that the application has been made; and
 - (b) the person, that parent and the legal representative of the person and that parent have been given an opportunity to

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speak to or make a submission to the
magistrate concerning the extension.

- (7) An extension under subsection (5) in relation to particular forensic material and any information obtained from an analysis of that material may be given on more than one occasion.
- (8) The person who applied for an extension under subsection (5) must ensure that the responsible person in relation to the DNA database system is notified of any such extension given.

51A. Destruction of forensic material taken under section 34A or 34B

- (1) Forensic material, and any information obtained from an analysis of forensic material, taken from a police officer under section 34A or 34B must be destroyed as soon as practicable after that police officer ceases to be a police officer.
- (2) Forensic material, and any information obtained from an analysis of forensic material, taken from a member of the Police Service under section 34B must be destroyed as soon as practicable –
 - (a) after that member ceases to be a member of the Police Service; or
 - (b) if the member ceases to be a member of the Police Service because he or she is appointed as a police officer, after he or she ceases to be a police officer.

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- (3) Forensic material, and any information obtained from an analysis of forensic material, taken from a police officer or member of the Police Service under section 34A or 34B must be destroyed as soon as practicable after the officer or member has requested, in writing, the destruction of the forensic material.
 - (4) Forensic material, and any information obtained from an analysis of forensic material, taken from a police officer or member of the Police Service under section 34A or 34B must be destroyed as soon as practicable after it is no longer required for the purpose for which it was taken.

51B. Destruction of forensic material taken under Part 4B

Forensic material, and any information obtained from an analysis of forensic material, taken from a young child under Part 4B must be destroyed as soon as practicable after it is no longer required for the purpose or purposes for which it was taken.

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Part 8 – DNA Database System

PART 8 – DNA DATABASE SYSTEM

52. Supply of forensic material

(1) In this section –

approved forensic material means forensic material –

- (a) found at a crime scene; or
- (b) taken in accordance with Part 2 from a suspect or charged person in relation to a serious offence or under a corresponding law of a participating jurisdiction; or
- (c) taken in accordance with Part 3 or 4 from a prescribed offender or a volunteer or under a corresponding law of a participating jurisdiction; or
- (d) taken from the body of a deceased person; or
- (e) that is from the body of a missing person; or
- (f) taken from a volunteer who is a relative by blood of a deceased or missing person;

prohibited analysis means analysis for the purpose of deriving a DNA profile for inclusion on an index of the DNA database system when the forensic

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material is required to be destroyed by Part 7 or under a corresponding law of a participating jurisdiction.

- (2) A person must not intentionally or recklessly cause forensic material taken from any person under this Act (or under a corresponding law of a participating jurisdiction) to be supplied to any person for prohibited analysis.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 2 years, or both.

- (3) A person must not intentionally or recklessly cause forensic material, other than approved forensic material, to be supplied to any person for analysis for the purpose of deriving a DNA profile for inclusion on an index of the DNA database system.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 2 years, or both.

53. Use of information on DNA database system

- (1) A person must not access information stored on the DNA database system unless the information is accessed in accordance with this section.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 2 years, or both.

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Part 8 – DNA Database System

- (2) A person may access information stored on the DNA database system for one or more of the following purposes:
- (a) the purpose of forensic comparison permitted under section 54;
 - (b) the purpose of making the information available, in accordance with the regulations, to the person to whom the information relates;
 - (c) the purpose of administering the DNA database system;
 - (d) the purpose of an arrangement made under section 57 or 58;
 - (e) the purpose of, and in accordance with, the *Mutual Assistance in Criminal Matters Act 1987* of the Commonwealth or the *Extradition Act 1988* of the Commonwealth;
 - (f) the purpose of a coronial inquest or inquiry;
 - (g) the purpose of investigation of a complaint by the Ombudsman;
 - (h) the purpose of a forensic comparison permitted under Part 4A;
 - (i) the purpose of forensic comparison with forensic material obtained under Part 4B.

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- (3) This section does not apply to information that cannot be used to discover the identity of any person.

54. Permissible matching of DNA profiles

- (1) A matching of a DNA profile on an index of the DNA database system specified in Column 1 of the following table with a DNA profile on another index of the system specified in Column 2, 3, 4, 5, 6, 7 or 8 of the following table is not permitted if –
- (a) “no” is shown in relation to the index specified in Column 2, 3, 4, 5, 6, 7 or 8 opposite the index specified in Column 1; or
 - (b) “only if within purpose” is shown in relation to the index specified in Column 2, 3, 4, 5, 6, 7 or 8 opposite the volunteers (limited purposes) index specified in Column 1 and the matching is carried out for a purpose other than a purpose for which the DNA profile placed on the volunteers (limited purposes) index specified in Column 1 was so placed.

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Part 8 – DNA Database System

Profile to be matched	Is matching permitted?						
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
	crime scene	suspects	volunteers (limited purposes)	volunteers (unlimited purposes)	serious offenders	missing persons	unknown deceased persons
crime scene	yes	yes	only if within purpose	yes	yes	yes	yes
suspects	yes	yes	only if within purpose	yes	yes	yes	yes
volunteers (limited purposes)	only if within purpose	only if within purpose	only if within purpose	only if within purpose	only if within purpose	only if within purpose	only if within purpose
volunteers (unlimited purposes)	yes	yes	only if within purpose	yes	yes	yes	yes
serious offenders	yes	yes	only if within purpose	yes	yes	yes	yes
missing persons	yes	yes	only if within purpose	yes	yes	yes	yes
unknown deceased persons	yes	yes	only if within purpose	yes	yes	yes	yes

- (2) A person must not intentionally or recklessly cause a matching of DNA profiles that, by reason of subsection (1), is not permitted.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 2 years, or both.

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- (3) A person whose conduct causes a matching of DNA profiles that, by reason of subsection (1), is not permitted is not guilty of an offence against subsection (2) if the sole purpose of the matching is the administration of the DNA database system.
- (4) The Governor, by order, may –
- (a) amend the table set out in subsection (1); and
 - (b) omit that table and substitute a new table.

55. Recording, retention and removal of identifying information on DNA database system

- (1) In this section –

identifying information means any information that could be used –

- (a) to discover the identity of the person from whose forensic material the DNA profile was derived; or
- (b) to get information about an identifiable person;

identifying period for a DNA profile means the following:

- (a) except as provided by paragraphs (b) and (c), the period of 12 months after the DNA

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profile is placed on the DNA database system;

- (b) if the DNA profile is derived from forensic material taken from a volunteer, such period after the DNA profile is placed on the DNA database system as is agreed by the Commissioner of Police and the volunteer;
 - (c) if the DNA profile is derived from forensic material taken from a deceased person (not being a person who was a volunteer) whose identity is known, such period as the Commissioner of Police orders the responsible person to retain identifying information relating to the profile.
- (2) A person must not intentionally or recklessly, at any time after this Act requires forensic material taken from another person under this Act to be destroyed, cause to be recorded or retained in a DNA database system any identifying information about that other person obtained from that forensic material.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 2 years, or both.

- (3) The responsible person must ensure that any identifying information relating to a person from

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whose forensic material a DNA profile on the volunteers (unlimited purposes) index or volunteers (limited purposes) index of the DNA database system was derived is removed from the system as soon as practicable after the end of the identifying period for the profile.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 2 years, or both.

- (4) The responsible person must ensure that any identifying information relating to a DNA profile of an offender on the serious offenders index of the DNA database system is removed from the system as soon as practicable after becoming aware that the offender has been pardoned or acquitted of the offence concerned or if the conviction has been quashed.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 2 years, or both.

56. Inclusion on DNA database system of information from material obtained before this Act

- (1) A DNA profile derived from forensic material found, or obtained from the carrying out of a forensic procedure, before the commencement of this Act may be placed on the appropriate index of the DNA database system.
- (2) Despite subsection (1), information obtained from analysis of forensic material taken from a volunteer before the commencement of this Act

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must not be placed on the DNA database system unless the volunteer and, if the volunteer is under the age of 15 years, the volunteer's parent have been informed of the matters set out in section 30(c).

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Part 8A – Use of Information from Forensic Material of Police Officer or
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**PART 8A – USE OF INFORMATION FROM FORENSIC
MATERIAL OF POLICE OFFICER OR MEMBER OF
THE POLICE SERVICE**

**56A. Other use of information from forensic material of
police officer or member of the Police Service**

Information obtained from an analysis of forensic material taken from a police officer or member of the Police Service under section 34A or 34B may only be matched with other information obtained from a crime scene, whether or not that other information is in a database, if that matching is for the purpose of differentiating the forensic material of the officer or member from other forensic material found at any crime scene or a particular crime scene, being the purpose for which the forensic material was taken or directed to be taken from the officer or member.

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PART 9 – MISCELLANEOUS

Division 1 – Interstate enforcement

57. Registration of orders

(1) In this section,

certified copy, in relation to an order, means a copy of the order which has been certified by the person who made the order as a true copy of the order;

order means an order authorising the carrying out of forensic procedures.

(2) The Minister may enter into an arrangement with the responsible Minister of a participating jurisdiction, providing for and in relation to –

(a) the registration in this State of orders made under a corresponding law of that participating jurisdiction; or

(b) the registration in that participating jurisdiction of orders made under this Act.

(2A) For the purposes of subsection (2)(a), the Commissioner of Police may establish and maintain a register of orders.

(3) An order made under a corresponding law of a participating jurisdiction is registered in this State when a certified copy of the order is registered, in accordance with the relevant

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arrangement entered into under subsection (2), in the register maintained under subsection (2A).

- (4) If an order made under a corresponding law of a participating jurisdiction is registered in this State, the forensic procedure authorised by the order may be carried out in this State in accordance with Part 5 as if the order had been made in this State.
- (5) An application for registration of an order in this State, or for the cancellation of registration of an order, may be made by an appropriate authority.

58. Database information

- (1) The Minister may enter into arrangements with a responsible Minister of a participating jurisdiction under which –
 - (a) information from the DNA database system of this State may be transmitted to a participating jurisdiction for the purposes of –
 - (i) forensic requirements, identifying a deceased person, identifying or locating a missing person, criminal investigation or criminal proceedings in that participating jurisdiction; or
 - (ii) subsequent transmission by that participating jurisdiction to, and at the request of, another participating jurisdiction for the

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purposes of forensic requirements, identifying a deceased person, identifying or locating a missing person, criminal investigation or criminal proceedings in that other participating jurisdiction; and

(b) information from a DNA database of a participating jurisdiction may be transmitted to the Commissioner of Police for the purposes of –

(i) forensic requirements, identifying a deceased person, identifying or locating a missing person, criminal investigation or criminal proceedings in this State; or

(ii) subsequent transmission by the State to, and at the request of, a participating jurisdiction for the purposes of forensic requirements, identifying a deceased person, identifying or locating a missing person, criminal investigation or criminal proceedings in that participating jurisdiction.

(1A) For the purposes of implementing arrangements entered into under subsection (1), the Minister may enter into arrangements with –

(a) the Australian Crime Commission; and

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- (b) any other prescribed person, or prescribed agency, in a participating jurisdiction.
- (2) Information that is transmitted under this section must not be recorded or maintained in any database of information that may be used to discover the identity of a person or to obtain information about an identifiable person at any time after this Act or a corresponding law of a participating jurisdiction requires the forensic material to which it relates to be destroyed.
- (3) This section does not apply to information obtained from an analysis of forensic material taken from a police officer or member of the Police Service under section 34A or 34B.
- (4) Any arrangement entered into with CrimTrac under subsection (1A)(a) before the day on which the *Australian Crime Commission Legislation (Miscellaneous Amendments) Act 2018* commences and in force on that day, is taken to be an arrangement entered into with the Australian Crime Commission under subsection (1A)(a).
- (5) In this section –

Australian Crime Commission means the Australian Crime Commission established by section 7 of the *Australian Crime Commission Act 2002* of the Commonwealth;

CrimTrac means the CrimTrac Agency established on 1 July 2000 as an

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Executive Agency by the Governor-General of the Commonwealth under section 65 of the *Public Service Act 1999* of the Commonwealth.

Division 2 – Miscellaneous

59. Carrying out second forensic procedure

If a forensic procedure has been carried out on a person under this Act and a police officer believes on reasonable grounds that there is a need to repeat that procedure –

- (a) the carrying out of the first procedure does not preclude the carrying out of the repeat procedure; but
- (b) the consent or order authorising the carrying out of the first procedure does not authorise the carrying out of the repeat procedure and the repeat procedure may only be carried out under the authority of a fresh consent or order obtained or made under this Act.

60. Powers and rights of legal representatives

- (1) A request that may be made by a suspect or charged person under this Act may be made on his or her behalf by his or her legal representative.
- (2) If a suspect's or charged person's legal representative is present while the suspect or charged person is being given information in

accordance with a requirement of this Act but in a language in which the legal representative is not reasonably fluent, the legal representative must be given that information in a language in which he or she is reasonably fluent.

61. Liability for forensic procedures

No civil or criminal liability is incurred by any person, including a police officer, who carries out, or helps to carry out, a forensic procedure under this Act in respect of any thing done by the person in carrying out, or helping to carry out, the forensic procedure if –

- (a) the person believed on reasonable grounds that –
 - (i) informed consent had been given to the carrying out of the forensic procedure; or
 - (ii) the carrying out of the forensic procedure without informed consent had been duly authorised by an order made by a police officer or magistrate under this Act; and
- (b) the thing was done in good faith; and
- (c) the doing of the thing done was reasonable in all the circumstances.

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62. Authorised persons not obliged to carry out forensic procedures

Nothing in this Act requires an authorised person to carry out a forensic procedure.

63. Disclosure of information

- (1) Except as otherwise provided by this section, a person who has access –
- (a) to any information stored on the DNA database system; or
 - (b) to any other information revealed by a forensic procedure carried out on a person under this Act or a corresponding law –

must not intentionally or recklessly disclose, or cause the disclosure of, that information.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 2 years, or both.

- (2) A person may only disclose information stored on the DNA database system for one or more of the following purposes:
- (a) the purpose of forensic comparison in the course of a criminal investigation by a police officer or other prescribed person;
 - (b) the purpose of making the information available, in accordance with the

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- regulations, to the person to whom the information relates;
- (c) the purpose of administering the DNA database system;
 - (d) the purpose of an arrangement made under section 57 or 58;
 - (e) the purpose of, and in accordance with, the *Mutual Assistance in Criminal Matters Act 1987* of the Commonwealth or the *Extradition Act 1988* of the Commonwealth;
 - (f) the purpose of a coronial inquest or inquiry;
 - (fa) the purpose of identifying a deceased person or identifying or locating a missing person;
 - (g) the purpose of investigation of a complaint by the Ombudsman.
- (3) A person may only disclose information revealed by the carrying out of a forensic procedure as follows:
- (a) if the person is the person to whom the information relates;
 - (b) if the information is already publicly known;
 - (c) in accordance with any other provision of this Act;

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- (d) in accordance with the *Mutual Assistance in Criminal Matters Act 1987* of the Commonwealth or the *Extradition Act 1988* of the Commonwealth;
- (e) for the purposes of the investigation of any offence or offences generally;
- (f) for the purpose of a decision whether to institute proceedings for any offence;
- (g) for the purpose of proceedings for any offence;
- (h) for the purpose of a coronial inquest or inquiry;
- (i) for the purpose of civil proceedings (including disciplinary proceedings) that relate to the way in which the procedure was carried out;
- (j) for the purpose of the medical treatment of the person to whom the information relates;
- (k) for the purpose of the medical treatment of a victim of an offence which there are reasonable grounds to believe was committed by the suspect or charged person on whom the forensic procedure in relation to the offence was carried out;
- (l) if the person to whom the information relates consents in writing to the disclosure.

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- (4) Subsection (1) does not apply to information that cannot be used to discover the identity of any person.

64. Taking, retention and use of forensic material and information

- (1) Nothing in this Act affects the taking, retention or use of forensic material, or information obtained from forensic material, if the taking, retention or use of the material or information is authorised by or under another law of the State or a law of the Commonwealth.
- (2) Forensic material, or information obtained from forensic material, that is taken in accordance with the law of another State, a Territory or the Commonwealth may be retained or used in this State for investigative, evidentiary or statistical purposes even if its retention or use would, but for this subsection, constitute a contravention of any provision of this Act relating to the carrying out of forensic procedures.
- (3) Forensic material, or information obtained from forensic material, that is lawfully taken in this or another State or a Territory before the commencement of this subsection may be retained or used in this State for investigative, evidentiary or statistical purposes even if its retention or use would, but for this subsection, constitute a contravention of any provision of this Act relating to the carrying out of forensic procedures.

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65. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Regulations may be made so as to apply differently according to the matters, limitations or restrictions specified in the regulations.
- (3) The regulations may –
 - (a) provide that a contravention of any of the regulations is an offence; and
 - (b) in respect of such an offence, provide for the imposition of a fine not exceeding 5 penalty units and, in the case of a continuing offence, a further fine not exceeding 0.5 penalty units for each day during which the offence continues.
- (4) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.
- (5) A provision referred to in subsection (4) may take effect on and from the day on which this Act commences or a later day.

66. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

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- (a) the administration of this Act is assigned to the Minister for Justice and Industrial Relations; and
 - (b) the department responsible to the Minister for Justice and Industrial Relations in relation to the administration of this Act is the Department of Justice and Industrial Relations.

66A. Savings and transitional provision

If before the commencement of the *Forensic Procedures Amendment Act 2008* a police officer or member of the Police Service had forensic material taken for the purpose of differentiating that forensic material from other forensic material found at a particular crime scene or crime scenes generally, that forensic material is taken to have been taken under section 34A or 34B for that purpose.

67. *The amendments effected by this section have been incorporated into the authorised version of the Police Offences Act 1935.*

68. Acts repealed

The Acts specified in Schedule 1 are repealed.

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SCHEDULE 1 – ACTS REPEALED

Section 68

Criminal Process (Identification and Search Procedures) Act
1976 (No. 30 of 1976)

Criminal Process (Identification and Search Procedures)
Amendment Act 1985 (No. 66 of 1985)

Criminal Process (Identification and Search Procedures)
Amendment Act 1995 (No. 42 of 1995)

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NOTES

The foregoing text of the *Forensic Procedures Act 2000* comprises those instruments as indicated in the following table. Any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 18 March 2022 are not specifically referred to in the following table of amendments.

Act	Number and year	Date of commencement
<i>Forensic Procedures Act 2000</i>	No. 101 of 2000	1.1.2001
<i>Dental Practitioners Registration Act 2001</i>	No. 20 of 2001	3.10.2001
<i>Misuse of Drugs (Consequential Amendments) Act 2001</i>	No. 95 of 2001	1.6.2002
<i>Forensic Procedures Amendment Act 2003</i>	No. 29 of 2003	4.6.2003
<i>Police Service (Consequential Amendments) Act 2003</i>	No. 76 of 2003	1.1.2004
<i>Justice and Related Legislation (Miscellaneous Amendments) Act 2004</i>	No. 44 of 2004	16.11.2004
<i>Misuse of Drugs Amendment Act 2005</i>	No. 77 of 2005	15.12.2005
<i>Mental Health Amendment (Secure Mental Health Unit) Act 2005</i>	No. 72 of 2005	20.2.2006
<i>Forensic Procedures Order 2006</i>	S.R. 2006, No. 151	27.12.2006
<i>Police Offences Amendment Act 2007</i>	No. 39 of 2007	21.11.2007
<i>Forensic Procedures Amendment Act 2008</i>	No. 34 of 2008	19.11.2008
<i>Legal Profession (Miscellaneous and Consequential Amendments) Act 2007</i>	No. 66 of 2007	31.12.2008
<i>Police Miscellaneous Amendments Act 2009</i>	No. 49 of 2009	12.11.2009
<i>Health Practitioner Regulation National Law (Tasmania) (Consequential Amendments) Act 2010</i>	No. 3 of 2010	1.7.2010
<i>Mental Health (Transitional and Consequential Provisions) Act 2013</i>	No. 69 of 2013	17.2.2014
<i>Forensic Procedures Amendment Act 2014</i>	No. 28 of 2014	17.12.2014
<i>Police Offences Amendment Act 2014</i>	No. 15 of 2014	19.12.2014

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Act	Number and year	Date of commencement
<i>Firearms (Miscellaneous Amendments) Act 2015</i>	No. 14 of 2015	4.11.2015
<i>Justice and Related Legislation (Miscellaneous Amendments) Act 2018</i>	No. 29 of 2018	10.12.2018
<i>Australian Crime Commission Legislation (Miscellaneous Amendments) Act 2018</i>	No. 28 of 2018	10.12.2018
<i>Justice and Related Legislation (Miscellaneous Amendments) Act 2022</i>	No. 2 of 2022	18.3.2022

TABLE OF AMENDMENTS

Provision affected	How affected
Section 3	Amended by No. 20 of 2001, Sched. 6, No. 95 of 2001, Sched. 2, No. 29 of 2003, s. 4, No. 76 of 2003, Sched. 1, No. 77 of 2005, s. 14, No. 39 of 2007, s. 21, No. 34 of 2008, s. 4, No. 49 of 2009, s. 16, No. 3 of 2010, Sched. 1, No. 15 of 2014, s. 57, No. 28 of 2014, s. 4, No. 14 of 2015, s. 64, No. 29 of 2018, s. 34 and No. 2 of 2022, Sched. 1
Section 4	Substituted by No. 28 of 2014, s. 5
Section 5	Amended by No. 29 of 2003, s. 5
Section 8	Amended by No. 28 of 2014, s. 6
Section 10	Amended by No. 20 of 2001, Sched. 6
Section 12	Amended by No. 28 of 2014, s. 7
Section 14	Amended by No. 28 of 2014, s. 8
Section 15	Amended by No. 28 of 2014, s. 9
Section 16	Amended by No. 66 of 2007, Sched. 1 and No. 28 of 2014, s. 10
Section 18	Amended by No. 28 of 2014, s. 11
Section 19	Amended by No. 28 of 2014, s. 12
Section 26	Amended by No. 72 of 2005, s. 118 and No. 69 of 2013, Sched. 1
Section 28	Amended by No. 72 of 2005, s. 119 and No. 69 of 2013, Sched. 1
Section 29	Amended by No. 28 of 2014, s. 13
Section 30	Amended by No. 28 of 2014, s. 14
Section 32	Amended by No. 28 of 2014, s. 15
Section 33	Amended by No. 66 of 2007, Sched. 1
Section 34A	Inserted by No. 34 of 2008, s. 5
Section 34B	Inserted by No. 34 of 2008, s. 5
Section 34C	Inserted by No. 34 of 2008, s. 5
Section 34D	Inserted by No. 28 of 2014, s. 16

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Provision affected	How affected
Section 34E	Inserted by No. 28 of 2014, s. 16
Section 34F	Inserted by No. 28 of 2014, s. 16
Section 34G	Inserted by No. 28 of 2014, s. 16
Section 34H	Inserted by No. 28 of 2014, s. 16
Section 34I	Inserted by No. 28 of 2014, s. 16
Section 34J	Inserted by No. 28 of 2014, s. 16
Section 34K	Inserted by No. 28 of 2014, s. 16
Section 34L	Inserted by No. 28 of 2014, s. 16
Section 34M	Inserted by No. 28 of 2014, s. 16
Section 34N	Inserted by No. 28 of 2014, s. 16
Section 38	Amended by No. 28 of 2014, s. 17
Section 44	Amended by No. 28 of 2014, s. 18
Section 51A	Inserted by No. 34 of 2008, s. 6
Section 51B	Inserted by No. 28 of 2014, s. 19
Section 53	Amended by No. 29 of 2003, s. 6, No. 34 of 2008, s. 7 and No. 28 of 2014, s. 20
Section 54	Amended by S.R. 2006, No. 151
Section 56A	Inserted by No. 34 of 2008, s. 8
Section 57	Amended by No. 44 of 2004, s. 30
Section 58	Amended by No. 29 of 2003, s. 7, No. 34 of 2008, s. 9, No. 28 of 2014, s. 21 and No. 28 of 2018, s. 9
Section 63	Amended by No. 29 of 2003, s. 8 and No. 28 of 2014, s. 22
Section 66A	Inserted by No. 34 of 2008, s. 10
