

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the Crimes (Forensic Procedures) Act 2000 (the Principal Act) so as:

- (a) to authorise the conduct of forensic procedures on persons who have previously been convicted of serious indictable offences in circumstances in which they are subsequently charged with the commission of an indictable offence, and
- (b) to make provision with respect to numerous other matters more particularly described in the Outline of provisions below.

The Bill also amends the Law Enforcement (Powers and Responsibilities) Act 2002 so as to ensure that time spent in carrying out forensic procedures does not form part of any investigation period during which a person may be detained under that Act.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the Crimes (Forensic Procedures) Act 2000 set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the Law Enforcement (Powers and Responsibilities) Act 2002 set out in Schedule 2.

Clause 5 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent. Section 30 of the Interpretation Act 1987 provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Crimes (Forensic Procedures) Act 2000

Conduct of forensic procedures on former serious indictable offenders who have not previously been tested

Schedule 1 [4], [9], [84], [95], [96], [103] and [104] insert a new Part 7A, and consequentially amend sections 3, 90, 91 and 98 so as to authorise the conduct of forensic procedures on persons who have previously been convicted of serious indictable offences in circumstances in which they are subsequently charged with the commission of an indictable offence. The provisions of proposed Part 7A, which parallel those of Part 7 (which deals with forensic procedures carried out after a person while serving a sentence of imprisonment for a serious indictable offence) include the following:

- (a) a provision that prescribes the procedures and offenders to which the Part applies (**proposed section 75A**),
- (b) a provision that authorises a non-intimate forensic procedure to be carried out on an untested former offender with the offender's consent or on the order of a senior police officer or a court (**proposed section 75B**),
- (c) a provision that authorises an intimate forensic procedure to be carried out on an untested former offender with the offender's consent or on the order of a court (**proposed section 75C**),
- (d) a provision that requires a police officer to ascertain whether an untested former offender on whom a forensic procedure is proposed to be carried out identifies as an Aboriginal person or Torres Strait Islander (**proposed section 75D**),
- (e) a provision that a forensic procedure carried out under the Part is to be carried out in accordance with the requirements of Part 6 (**proposed section 75E**),
- (f) a provision that prescribes the requirements for informed consent for the purposes of the Part (**proposed section 75F**),
- (g) a provision that authorises a police officer to request an untested former offender to consent to the carrying out of a forensic procedure (**proposed section 75G**),
- (h) a provision that prescribes the information to be given to an untested former offender before a forensic

procedure is carried out (**proposed section 75H**),

(i) a provision that prescribes the circumstances in which a senior police officer may order that a forensic procedure be carried out on an untested former offender (**proposed section 75I**),

(j) a provision that prescribes the form in which a consent must be given for the purposes of the Part (**proposed section 75J**),

(k) a provision that prescribes the records to be kept by a senior police officer by whom a forensic procedure is ordered to be carried out (**proposed section 75K**),

(l) a provision that authorises a police officer to apply to a court for an order requiring a forensic procedure to be carried out on an untested former offender (**proposed section 75L**),

(m) a provision that prescribes the matters to be done by a court that makes an order for the carrying out of a forensic procedure (**proposed section 75M**),

(n) a provision that authorises the carrying out of a forensic procedure pursuant to an order under the Part, and makes it an offence (punishable by a fine of 50 penalty units or 12 months imprisonment, or both) for an untested former offender to refuse or fail to permit the procedure to be carried out (**proposed sections 75N and 75O**).

Forensic procedures on children in detention

Section 74 sets out the procedure for obtaining an order from a court directing an offender who is detained in a correctional centre or other place of detention to submit to a forensic procedure if the offender is detained in relation to a serious indictable offence. **Schedule 1 [81]** amends section 74 so as to remove an ambiguity that can be construed as permitting such an order to be made in respect of a child who is detained otherwise than in relation to such an offence.

Forensic procedures on child volunteers

Schedule 1 [85], [86], [88]–[90], [92] and [93] amend sections 76, 77 and 80 so as to provide that a forensic procedure may be carried out on a child volunteer only with the informed consent of the child. Section 77 sets out what constitutes informed consent for this purpose.

Aboriginal persons and Torres Strait Islander status

Schedule 1 [1], [15], [16], [18]–[21], [24], [44], [45], [48]–[50], [59], [62], [71], [87] and [105]–[108] amend sections 3, 4, 6, 8, 9, 10, 13, 30, 33, 55, 57, 99, 100 and 106, and insert proposed sections 64A and 76B, so as to provide that a person has merely to identify as, and does not have to demonstrate that he or she actually is, an Aboriginal person or Torres Strait Islander in order to gain the protections available to Aboriginal persons and Torres Strait Islanders.

Presence of independent person while forensic procedure carried out

Schedule 1 [22], [30] and [63] amend sections 10, 15 and 57 so as to enable a suspect to waive his or her right to have an independent person present while a forensic procedure is carried out, subject to the right of the police officer carrying out the procedure to insist that an independent person be present.

Video-recording of forensic procedures

Schedule 1 [60] and [61] amend section 57 so as to abolish the requirement for the video-recording of a forensic procedure that consists solely of the taking of a suspect's photograph.

Magistrate's determination as to whether or not to order forensic procedure

Schedule 1 [39], [40], [46] and [47] substitute section 24, repeal section 25, and consequentially amend sections 26 and 32, so as to provide further guidance to Magistrates as to what they should have regard to when determining whether or not to make an order for the carrying out of a forensic procedure.

Intimate and non-intimate forensic procedures

Schedule 1 [3], [5], [6], [10], [13], [17], [25], [27]–[29], [31], [34], [36], [53], [55], [56], [58], [65]–[70], [72] and [73] amend sections 3, 5, 13, 17, 21, 50, 53, 61, 62, 63, 65 and 69, insert proposed section 51A and repeal sections 19, 49A and 64 so as to incorporate self-administered and

other-administered buccal swabs in the definitions of non-intimate and intimate forensic procedure, respectively, and to further clarify the meanings of those definitions.

Destruction of forensic material

Schedule 1 [14], [94] and [98] amend sections 3 and 94, and substitute section 87, so as to clarify what a person must do in order to comply with a requirement to destroy forensic material.

Hair samples as against buccal swabs

Schedule 1 [33], [76] and [79] amend sections 18, 69 and 70 so as to clarify the circumstances in which a senior police officer may order the taking of a hair sample from a suspect rather than a buccal swab.

Communication of DNA information to other jurisdictions

Schedule 1 [102] amends section 97 so as to facilitate the communication to other jurisdictions of information on the State's DNA database system including, in particular, the communication of such information for the purpose of identifying missing or deceased persons.

Identification of person responsible for DNA database system

Schedule 1 [12] amends the definition of responsible person in section 3 (1) so as to enable the regulations to identify which person is taken to be the person responsible for the State's DNA database system. Schedule 1 [97] makes a consequential amendment to section 92.

Matters to be taken into account by police officer considering non-intimate forensic procedure

Schedule 1 [75], [77], [78] and [80] amend sections 69 and 70, and repeal section 71, so as to omit provisions that currently specify what a senior police officer must take into account in determining whether or not to order the carrying out of a non-intimate forensic procedure.

Second and subsequent forensic procedures carried out after initial order by Magistrate

Schedule 1 [41]–[43] amend section 27 so as to ensure that an application may be made to a Magistrate for the carrying out of not only a second, but also a subsequent, forensic procedure after a first has been ordered. Information to be given to suspect in relation to analysis of forensic sample

Schedule 1 [64] substitutes section 60 so as to clarify that a suspect from whom a forensic sample has been obtained is entitled to be given a copy of the DNA profile derived from the sample and a statement as to whether a match has been found between that DNA profile and any other DNA profile on the State's DNA database system. The new section also makes it clear that it is not necessary to supply the suspect with anything while it would be a source of embarrassment to a victim of any offence.

Information to be given to persons as to use of information from forensic sample for comparison with interstate information

Schedule 1 [26], [74] and [91] amend sections 13, 69 and 77 so as to ensure that persons from whom forensic samples are to be taken are informed that information from the sample may be compared with information from interstate DNA database systems.

Use of force in connection with carrying out of forensic procedures

Schedule 1 [51] and [57] amend sections 47 and 52 so as to ensure that force may not be used in connection with forensic procedures carried out on persons who volunteer to provide forensic samples.

Circumstances in which police officer may seek suspect's consent to forensic procedure

Schedule 1 [23] substitutes section 11 and repeals section 12 so as to clarify the circumstances in which a police officer may seek the consent of a suspect to the carrying out of a forensic procedure.

Circumstances in which police officer may order non-intimate forensic procedure on suspect

Schedule 1 [35] substitutes section 20 so as to clarify the circumstances in which a police officer may order the carrying out of a non-intimate forensic procedure on a suspect.

Savings and transitional provisions

Schedule 1 [110] amends clause 1 of Schedule 2 so as to enable the Governor to make savings and transitional regulations consequent on the enactment of the proposed Act.

Schedule 1 [111] inserts proposed Part 4 into Schedule 2 so as to enact specific savings and transitional provisions.

Minor, consequential and ancillary provisions

Schedule 1 [2], [7], [8], [11], [32], [37], [38], [52], [54], [82], [83], [99], [100], [101]

and [109] amend sections 3, 17, 23, 49, 50, 74, 95 and 96 and the headings to Part 5 and section 112, and substitute section 75 with proposed sections 74A and 75, by way of law revision.

Schedule 2 Amendment of Law Enforcement (Powers and Responsibilities) Act 2002

Schedule 2 [1] amends section 117 of the Law Enforcement (Powers and Responsibilities) Act 2002 so as to ensure that time reasonably required to carry out a forensic procedure on a person under the Principal Act, or to prepare, make and dispose of an application for an order for the carrying out of such a procedure, do not form part of any investigation period during which the person may be detained under Part 9.

Use of forensic procedures to establish suspect's identity

Schedule 2 [2] amends section 133 of the Law Enforcement (Powers and Responsibilities) Act 2002 so as to make it clear that the section does not authorise a police officer to take samples of tissue for the purpose of establishing a suspect's identity under that section. The proposed amendment will not affect any power to take samples of tissue, or to require the provision of samples of tissue, for the purposes of, and in accordance with the requirements of, any other Act or law (such as the Crimes (Forensic Procedures) Act 2000).