

Second Reading

The Hon. TONY KELLY (Minister for Police, Minister for Lands, and Minister for Rural Affairs) [11.50 a.m.]: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

I am pleased to introduce the Crimes (Forensic Procedures) Amendment Bill 2009.

The purpose of the bill is further to refine laws concerning the conduct of forensic procedures by law enforcement agencies in New South Wales.

The bill contains important protections for certain classes of people who provide their DNA to the Police to assist with capturing offenders, finding missing persons and identifying deceased persons whose identity is unknown.

The key change in the bill concerns the introduction of a legislative scheme to govern the conduct of forensic procedures on children under 10 years of age. Presently, children under 10 are excluded from the provisions of the Crimes (Forensic Procedures) Act 2000.

Schedule 1 [9] provides for a two part scheme concerning the conduct of forensic procedures on children under 10. The first part operates with the consent of a person who has parental responsibility for a child under 10, or a close relative of the child where a parent is unavailable. Where a parent is suspected of committing an offence against the child, that parent cannot consent on his or her behalf, only another parent or close relative can consent in this situation.

Consent can be given only for a forensic procedure that is required to exclude the child's forensic material from a crime scene, or if the child under 10 is a victim of an offence against his or her person.

The second part of this scheme allows a magistrate, on application, to order that a child under 10 undergo a forensic procedure for a particular purpose. The purposes for which an order can be made are limited to assisting in the identification or location of a missing person, assisting in the identification of a deceased person or the investigation of an offence. A magistrate may also make an order where a parent or guardian cannot consent or refuses to consent to a procedure.

These orders are designed to assist law enforcement activities. They do not aim to allow, nor do they empower, the police to investigate or act against children under 10 in any way. Built into the scheme are certain protections, such as the requirement that a parent, guardian or lawyer be present at the time the procedure is carried out if practicable. A magistrate must allow a child's parent, guardian, or lawyer the opportunity to be heard before making an order.

Forensic material obtained under the part must be destroyed within 12 months of being acquired, unless being used in the ongoing investigation of the offence for which it was obtained. Also contained in the children under 10 provisions set out in schedule 1 [9] are protections which mirror protections granted to other classes of people under the principal Act.

I now turn to the detail of other parts of the bill.

Schedule 1 [3] is a clarifying amendment, in the nature of statute law revision, to the definition of destruction in the principal Act.

Schedule 1 [6] provides that in order for a person, who is not a suspect, to validly volunteer to undergo a forensic procedure under the Act, the person must be told that the procedure might produce evidence, which could be used against them in court.

Schedule 1 [7] clarifies the Act to ensure that the procedures relating to magisterial orders apply in appropriate circumstances after the withdrawal of consent by a volunteer or their parents or guardians. Schedule 1 [8] makes an amendment consequential to this.

Schedule 1 [10] clarifies the Act so as to require the destruction of forensic material, unless there is a pending investigation, when, after a successful appeal against a conviction there is no reasonable prospect of a retrial. Previously, the application of the Act to this situation was not clear.

Schedule 1 [15] amends the Act so as to limit the usage of DNA profiles belonging to children or incapable persons who volunteer their DNA under the Act. The amendment ensures that the DNA can only be used for the purpose for which it was acquired, unless a magistrate orders otherwise.

The bill represents this Government's commitment to empowering police to conduct forensic procedures while maintaining the appropriate protections for the rights of those from whom DNA and other information is collected.

I commend the bill to the House.