

Passed by both Houses



New South Wales

Crimes (Forensic Procedures) Bill 2000

Contents

	Page
Part 1 Preliminary	
1 Name of Act	2
2 Commencement	2
3 Interpretation	2
4 Interview friends	10
Part 2 Authority and time limits for forensic procedures on suspects: summary of rules	
5 How forensic procedures may be authorised in different circumstances	12
6 Time limits for carrying out forensic procedures	13
Part 3 Forensic procedures on suspect by consent	
7 Forensic procedure may be carried out with informed consent of suspect	15
8 People who cannot consent to forensic procedures	15
9 Informed consent to forensic procedures—general	15

Contents

	Page
10 Informed consent to forensic procedures—Aboriginal persons and Torres Strait Islanders	16
11 Police officer may request suspect to consent to forensic procedure	18
12 Matters to be considered by police officer before requesting consent to forensic procedure	18
13 Matters that suspect must be informed of before giving consent	20
14 Withdrawal of consent	23
15 Recording of giving information and suspect's responses	23
16 Time for carrying out forensic procedure—suspect not under arrest	23
Part 4 Non-intimate forensic procedures on suspects by order of senior police officer	
17 Non-intimate forensic procedure may be carried out by order of senior police officer	24
18 Circumstances in which senior police officer may order non-intimate forensic procedure	24
19 Sample of hair may be taken by order of senior police officer if consent to take sample by buccal swab refused	25
20 Matters to be considered by senior police officer before ordering non-intimate forensic procedure	25
21 Making and recording senior police officer's order	26
Part 5 Forensic procedures by order of Magistrate	
Division 1 General	
22 Forensic procedure may be carried out by order of Magistrate	27
23 Circumstances in which Magistrate may order forensic procedure	27
Division 2 Final orders	
24 Final order for carrying out of forensic procedure	27
25 Matters to be considered by Magistrate before ordering forensic procedure	27
26 Application for order	29
27 Application and order for repeated forensic procedure	29
28 Securing the presence of suspect at hearing—suspect under arrest	30

Contents

	Page
29 Securing the presence of suspect at hearing—suspect not under arrest	30
30 Procedure at hearing of application for order	31
31 Making of order	32
Division 3 Interim orders	
32 Interim order for carrying out of a forensic procedure	33
33 Application for interim order	33
34 Procedure at hearing of application for interim order	34
35 Making of interim order	35
36 Records of application and interim order	35
37 Suspect may be prevented from destroying or contaminating evidence	36
38 Results of forensic procedure carried out under interim order	36
Division 4 Time limits for forensic procedures ordered by Magistrate	
39 Application	37
40 Time for carrying out forensic procedure—suspect not under arrest	37
41 Arrest of suspect not under arrest	37
42 Time for carrying out forensic procedure—suspect under arrest	38
Division 5 Reports of proceedings under Act	
43 Restrictions on publication	38
Part 6 Carrying out forensic procedures on suspects	
Division 1 General	
44 General rules for carrying out forensic procedures	39
45 No questioning during forensic procedure	39
46 Suspect must be cautioned before forensic procedure starts	40
47 Use of force in carrying out forensic procedures	40
48 Forensic procedures not to be carried out in cruel, inhuman or degrading manner	40
49 Taking of samples of hair	40

	Page
Division 2 Persons involved in forensic procedures	
50 Persons who may carry out forensic procedures	41
Division 3 Further provisions about who may carry out forensic procedures	
51 Certain forensic procedures generally to be carried out by person of same sex as suspect	45
52 Person may get help to carry out forensic procedures	46
Division 4 Presence of other people while forensic procedure is carried out	
53 Medical practitioner or dentist of suspect's choice may be present for some forensic procedures	47
54 Presence of interview friend or legal representative—children and incapable persons	48
55 Presence of interview friend or legal representative—Aboriginal persons and Torres Strait Islanders	48
56 Presence of police officers	49
Division 5 Recording of forensic procedure	
57 Recording of forensic procedure	50
Division 6 Procedure after forensic procedure is carried out	
58 Samples—sufficient material to share	50
59 Photographs	51
60 Results of analysis	51
Part 7 Carrying out of certain forensic procedures after conviction of serious indictable offenders	
61 Forensic procedures and offenders to which Part applies	52
62 Non-intimate forensic procedures authorised to be carried out on serious indictable offenders	52
63 Intimate forensic procedures authorised to be carried out on serious indictable offenders	53
64 Authority to take buccal swabs from serious indictable offenders	53

Contents

	Page
65 Application of Part 6	53
66 Scope of authorisation	53
67 Informed consent to forensic procedures	54
68 Police officer may request offender to consent to forensic procedure	54
69 Matters that offender must be informed of before giving consent	54
70 Circumstances in which police officer may order non-intimate forensic procedures	56
71 Matters to be taken into account by police officer	56
72 Form of consent	56
73 Record of police officer's order	57
74 Court order for carrying out forensic procedure on serious indictable offender	57
75 Carrying out of forensic procedure following conviction	58
 Part 8 Carrying out of forensic procedures on volunteers and certain other persons	
76 Carrying out of forensic procedures on volunteers	59
77 Informed consent of volunteer or parent or guardian of volunteer	60
78 Form of consent	61
79 Withdrawal of consent	61
80 Circumstances in which Magistrate may order the carrying out of forensic procedure on child or incapable person	62
81 Retention of forensic material by order of a Magistrate after parent or guardian of child or incapable person withdraws consent	63
 Part 9 Admissibility of evidence	
 Division 1 Forensic evidence	
82 Inadmissibility of evidence from improper forensic procedures	65
83 Inadmissibility of evidence where forensic material required to be destroyed	67
 Division 2 Other evidence	
84 Admissibility of evidence relating to consent to forensic procedure	67

	Page
85 Admissibility of evidence relating to carrying out of forensic procedure	67
Part 10 Destruction of forensic material	
86 Destruction of forensic material where interim order disallowed or specified retention period ended	69
87 Destruction of forensic material taken from offender after conviction quashed	69
88 Destruction of forensic material after 12 months	69
89 Destruction of forensic material where related evidence is inadmissible	71
Part 11 DNA database system	
90 Definitions	72
91 Supply of forensic material for DNA database system purposes	74
92 Use of information on DNA database system	75
93 Permissible matching of DNA profiles	76
94 Recording, retention and removal of identifying information on DNA database system	78
Part 12 Interstate enforcement	
95 Definitions	80
96 Registration of orders	80
97 Database information	81
Part 13 General provisions relating to operation of this Act	
98 Interpreters	82
99 Powers and entitlements of legal representatives and interview friends	82
100 Obligation of investigating police officers relating to recordings	83
101 Material required to be made available to suspect, offender or volunteer	84
102 No charge to be made for material or viewing video	84
103 Proof of belief or suspicion	85
104 Proof of impracticability	85
105 Proof that time should be disregarded	85
106 Proof of voluntary waiver of certain rights	85
107 Liability for forensic procedures	85
108 Experts not obliged to carry out forensic procedures	86
109 Disclosure of information	86

Contents

	Page
110 Retention of electronic recordings	88
Part 14 Operation of this Act and effect on other laws	
111 Act does not apply to persons under 10	89
112 Relationship with sections 353A and 353AA of the Crimes Act 1900 and section 63 of the Crimes (Sentencing Procedure) Act 1999	89
113 Relationship with Part 10A of the Crimes Act 1900	89
114 Application of other laws	89
115 Taking, retention and use of forensic material	90
Part 15 Miscellaneous	
116 Lists of interview friends	91
117 Proceedings for offences	91
118 Regulations	91
119 Amendments	92
120 Savings, transitional and other provisions	92
121 Monitoring of operation of Act by Ombudsman	92
122 Review of Act	93
123 Inquiry by Standing Committee on Law and Justice	93
Schedules	
1 Amendments	95
2 Savings, transitional and other provisions	96

I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2000*



New South Wales

Crimes (Forensic Procedures) Bill 2000

Act No , 2000

An Act to make provision with respect to the powers to carry out forensic procedures on certain persons and to make provision with respect to a DNA database system; to make a related amendment to the *Justices Act 1902* and consequential amendments to the *Crimes Act 1900*; and for other purposes.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Crimes (Forensic Procedures) Act 2000*.

2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).
- (2) Section 121 commences on the date of assent.

3 Interpretation

(1) Definitions

In this Act:

Aboriginal legal aid organisation means an organisation that provides legal assistance to Aboriginal persons or Torres Strait Islanders, being an organisation prescribed by the regulations for the purposes of this definition.

Aboriginal person means a person who:

- (a) is a member of the Aboriginal race of Australia, and
- (b) identifies as an Aboriginal, and
- (c) is accepted by the Aboriginal community as an Aboriginal.

adult means a person of or above 18 years of age.

appropriately qualified, in relation to carrying out a forensic procedure, means:

- (a) having suitable professional qualifications or experience to carry out the forensic procedure, or
- (b) qualified under the regulations to carry out the forensic procedure.

authorised applicant for an order for the carrying out of a forensic procedure on a suspect means:

- (a) the police officer in charge of a police station, or
- (b) a custody manager within the meaning of section 355 of the *Crimes Act 1900*, or

- (c) the investigating police officer in relation to an offence, or
- (d) the Director of Public Prosecutions.

child means a person who is at least 10 years of age but under 18 years of age.

Note. The Act does not authorise the carrying out of a forensic procedure on a person who is under 10 years of age (see section 111).

correctional centre medical officer, in relation to a correctional centre or other place of detention, means any person appointed or acting as medical officer for the correctional centre or other place of detention.

corresponding law is defined in section 95.

crime scene index is defined in section 90.

dentist means a person registered, or taken to be registered, as a dentist under the *Dentists Act 1989*.

destroy is explained in subsection (5).

DNA database system is defined in section 90.

exercise a function includes perform a duty.

forensic material means:

- (a) samples, or
- (b) hand prints, finger prints, foot prints or toe prints, or
- (c) photographs, or
- (d) casts or impressions,

taken from or of a person's body.

forensic procedure means:

- (a) an intimate forensic procedure, or
- (b) a non-intimate forensic procedure, or
- (c) the taking of a sample by buccal swab,

but does not include:

- (d) any intrusion into a person's body cavities except the mouth, or
- (e) the taking of any sample for the sole purpose of establishing the identity of the person from whom the sample is taken.

Note. Paragraph (e) makes it clear that the Act only applies to samples taken for forensic purposes and not to samples taken purely to establish the identity of a person.

function includes a power, authority or duty.

incapable person means an adult who:

- (a) is incapable of understanding the general nature and effect of a forensic procedure, or
- (b) is incapable of indicating whether he or she consents or does not consent to a forensic procedure being carried out.

inform is explained in subsection (4).

informed consent in relation to:

- (a) a suspect—is defined in section 9, and
- (b) a serious indictable offender—is defined in section 67, and
- (c) a volunteer or parent or guardian of a volunteer—is defined in section 77.

interview friend is explained in section 4.

intimate forensic procedure means the following forensic procedures:

- (a) an external examination of:
 - (i) the genital or anal area or the buttocks, or
 - (ii) the breasts of a female or a transgender person who identifies as a female,
- (b) the taking of a sample of blood,
- (c) the taking of a sample of saliva (otherwise than by buccal swab),
- (d) the taking of a sample of pubic hair,
- (e) the taking of a sample by swab or washing from:
 - (i) the external genital or anal area or the buttocks, or
 - (ii) the breasts of a female or a transgender person who identifies as a female,
- (f) the taking of a sample by vacuum suction, by scraping or by lifting by tape from:
 - (i) the external genital or anal area or the buttocks, or
 - (ii) the breasts of a female or a transgender person who identifies as a female,
- (g) the taking of a dental impression,
- (h) the taking of a photograph of:
 - (i) the genital or anal area or the buttocks, or
 - (ii) the breasts of a female or a transgender person who identifies as a female,

-
- (i) the taking of an impression or cast of a wound from:
 - (i) the genital or anal area or the buttocks, or
 - (ii) the breasts of a female or a transgender person who identifies as a female.

investigating police officer means the police officer in charge of the investigation of the commission of an offence in relation to which a forensic procedure is carried out or proposed to be carried out.

legal representative of a suspect means a legal practitioner acting for the suspect.

non-intimate forensic procedure means the following forensic procedures:

- (a) an external examination of a part of the body other than:
 - (i) the genital or anal area or the buttocks, or
 - (ii) the breasts of a female or a transgender person who identifies as a female,that requires touching of the body or removal of clothing,
- (b) the taking of a sample of hair other than pubic hair,
- (c) the taking of a sample from a nail or under a nail,
- (d) the taking of a sample by swab or washing from any external part of the body other than:
 - (i) the genital or anal area or the buttocks, or
 - (ii) the breasts of a female or a transgender person who identifies as a female,
- (e) the taking of a sample by vacuum suction, by scraping or by lifting by tape from any external part of the body other than:
 - (i) the genital or anal area or the buttocks, or
 - (ii) the breasts of a female or a transgender person who identifies as a female,
- (f) the taking of a hand print, finger print, foot print or toe print,
- (g) the taking of a photograph of a part of the body other than:
 - (i) the genital or anal area or the buttocks, or
 - (ii) the breasts of a female or a transgender person who identifies as a female,
- (h) the taking of an impression or cast of a wound from a part of the body other than:
 - (i) the genital or anal area or the buttocks, or

- (ii) the breasts of a female or a transgender person who identifies as a female,
- (i) the taking of physical measurements (whether or not involving marking) for biomechanical analysis of an external part of the body other than:
 - (i) the genital or anal area or the buttocks, or
 - (ii) the breasts of a female or a transgender person who identifies as a female.

offender means:

- (a) a serious indictable offender, or
- (b) a prescribed offender.

order means:

- (a) order of a Magistrate under section 24, or
- (b) order of a Magistrate under section 27, or
- (c) interim order of a Magistrate under section 32, or
- (d) order of a court under section 74 or 75, or
- (e) order of a Magistrate under section 80 or 81.

parent of a child means a person who has parental responsibility for the child.

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

participating jurisdiction is defined in section 95.

police station includes:

- (a) a police station of a State or Territory, and
- (b) a building that is occupied by members of the Police Service and that is nominated by the Commissioner of Police for the purposes of this paragraph, and
- (c) a building occupied by the Australian Federal Police.

prescribed offence means:

- (a) an indictable offence, or
- (b) any other offence under a law of the State prescribed by the regulations for the purposes of this paragraph.

prescribed offender means a person who is convicted of a prescribed offence.

recognised transgender person means a person the record of whose sex is altered under Part 5A of the *Births, Deaths and Marriages Registration Act 1995* or under the corresponding provisions of a law of another Australian jurisdiction.

recording includes audio recording and video recording.

responsible person, in relation to the DNA database system, means the person responsible for the care, control and management of the system.

sample has a meaning affected by subsection (3).

senior police officer means a police officer of or above the rank of sergeant.

serious indictable offence means:

- (a) an indictable offence under a law of the State or of a participating jurisdiction that is punishable by imprisonment for life or a maximum penalty of 5 or more years imprisonment, or
- (b) an indictable offence under a law of the State that is punishable by a maximum penalty of less than 5 years imprisonment, being an offence the elements constituting which (disregarding territorial considerations) are the same as an offence under a law of a participating jurisdiction that is punishable by a maximum of 5 or more years imprisonment.

serious indictable offender means a person who has been convicted of a serious indictable offence.

suspect means the following:

- (a) a person whom a police officer suspects on reasonable grounds has committed an offence,
- (b) a person charged with an offence,
- (c) a person who has been summoned to appear before a court in relation to an offence alleged to have been committed by the person,
- (d) a person who has been served with an attendance notice issued under section 100AB of the *Justices Act 1902* in relation to an offence.

time out means:

- (a) the time (if any) that is reasonably required to convey a suspect from the place where the suspect presents himself or herself to the investigating police officer to the nearest premises where facilities for carrying out a forensic procedure in accordance with this Act are available to the investigating police officer,
- (b) any time that is reasonably spent waiting for an investigating police officer or appropriately qualified person who is to carry out the forensic procedure to arrive at the place where the procedure is to be carried out,
- (c) any time that is reasonably spent waiting for facilities or equipment that are needed to carry out the procedure to become available,
- (d) any time during which carrying out the procedure is suspended or delayed to allow the suspect, or someone else on the suspect's behalf, to communicate with a legal practitioner, friend, relative, parent, guardian, interpreter, medical practitioner, dentist or other person as provided by this Act,
- (e) any time during which carrying out the procedure is suspended or delayed to allow such a legal practitioner, friend, relative, parent, guardian, interpreter, medical practitioner, dentist or other person to arrive at the place where the procedure is to be carried out,
- (f) any time during which carrying out the procedure is suspended or delayed to allow the suspect to consult with a legal practitioner, friend, relative, parent, guardian, interpreter, medical practitioner, dentist or other person at the place where the procedure is to be carried out as provided by this Act,
- (g) any time during which carrying out the procedure is suspended or delayed to allow the suspect to receive medical attention,
- (h) any time during which carrying out the procedure is suspended or delayed to allow the suspect to recover from the effects of intoxication due to alcohol or another drug (or both),
- (i) any time during which carrying out the procedure is suspended or delayed to allow the suspect to rest or receive refreshments or to give the suspect access to toilet and other facilities,
- (j) any time during which carrying out the procedure is suspended or delayed at the request of the suspect,

- (k) any time that is reasonably spent waiting for a senior police officer or Magistrate to make an order as provided by this Act.

Torres Strait Islander means a person who:

- (a) is a member of the Torres Strait Islander race, and
- (b) identifies as a Torres Strait Islander, and
- (c) is accepted by the Torres Strait Islander community as a Torres Strait Islander.

transgender person is defined in subsection (6).

under arrest is explained in subsection (2).

volunteer is defined in section 76.

volunteers (limited purposes) index is defined in section 90.

volunteers (unlimited purposes) index is defined in section 90.

(2) **Under arrest**

For the purposes of this Act, a person is ***under arrest*** if he or she is a person to whom Part 10A of the *Crimes Act 1900* applies.

(3) **Taking samples**

For the purposes of this Act, a ***sample*** taken from a person includes a sample taken from the person that consists of matter from another person's body.

(4) **Informs**

For the purposes of this Act, a person ***informs*** another person of a matter if the person informs the other person of the matter, through an interpreter if necessary, in a language (including sign language or braille) in which the other person is able to communicate with reasonable fluency.

(5) **Destroy forensic material or information**

For the purposes of this Act, a person ***destroys*** forensic material taken from another person by a forensic procedure, the results of the analysis of the material or other information gained from it (including information placed on the DNA database system) if the person destroys any means of identifying the forensic material or information with the person from whom it was taken or to whom it relates.

(6) **Transgender persons**

In this Act, a reference to a person being ***transgender*** or a ***transgender person*** is a reference to a person, whether or not the person is a recognised transgender person:

- (a) who identifies as a member of the opposite sex, by living, or seeking to live, as a member of the opposite sex, or
- (b) who has identified as a member of the opposite sex by living as a member of the opposite sex, or
- (c) who, being of indeterminate sex, identifies as a member of a particular sex by living as a member of that sex,

and includes a reference to the person being thought of as a transgender person, whether the person is, or was, in fact a transgender person.

(7) In this Act (other than subsection (6)), a reference:

- (a) to a member of the opposite sex of a person means, if the person is a transgender person, a member of the opposite sex to the sex with which the transgender person identifies, and
- (b) to a member of the same sex as a person means, if the person is a transgender person, a member of the same sex as the sex with which the transgender person identifies.

(8) Notes included in the text of this Act do not form part of this Act.

4 Interview friends

- (1) This section lists the people who may act as an *interview friend* of a suspect or serious indictable offender for the purposes of a provision of this Act referring to an interview friend. Different people may act as interview friends of a suspect or offender for the purposes of different provisions of this Act.
- (2) If the suspect or serious indictable offender is a child or an incapable person, the following people may act as *interview friends*:
 - (a) a parent or guardian, or other person, chosen by, or acceptable to, the suspect or offender,
 - (b) a legal representative of the suspect or offender,
 - (c) if the suspect or offender is an Aboriginal person or a Torres Strait Islander and none of the previously mentioned persons is available—a representative of an Aboriginal legal aid organisation or a person whose name is on the relevant list maintained under section 116 (1) who is chosen by, or acceptable to, the suspect or offender,

- (d) if none of the previously mentioned persons is available—a person who is not a police officer or in any way involved in the investigation of an offence in relation to which a forensic procedure is proposed to be carried out, or is carried out, on the suspect or offender.
- (3) Where the suspect or serious indictable offender is an Aboriginal person or a Torres Strait Islander not covered by subsection (2), the following people may act as *interview friends*:
 - (a) a relative or other person chosen by the suspect or offender,
 - (b) a legal practitioner acting for the suspect or offender,
 - (c) if none of the previously mentioned persons is available—a representative of an Aboriginal legal aid organisation, or a person whose name is included in the relevant list maintained under section 116 (1).
- (4) A suspect or serious indictable offender who has a legal representative may also have an interview friend who is not the suspect's or offender's legal representative.

Clause 5 Crimes (Forensic Procedures) Bill 2000

Part 2 Authority and time limits for forensic procedures on suspects: summary of rules

Part 2 Authority and time limits for forensic procedures on suspects: summary of rules

5 How forensic procedures may be authorised in different circumstances

The following table shows the circumstances in which a forensic procedure may be carried out on a suspect, and shows the provisions that authorise the carrying out of the procedure.

Authority for forensic procedures

Suspect's status	Intimate forensic procedure or buccal swab	Non-intimate forensic procedure	
			1
			2
			3
1 Adult not under arrest	With informed consent under Part 3	With informed consent under Part 3	4
			5
			6
	By order of a Magistrate under Part 5	By order of a Magistrate under Part 5	7
			8
2 Adult under arrest	With informed consent under Part 3	With informed consent under Part 3	9
			10
			11
	By order of a Magistrate under Part 5	By order of a senior police officer under Part 4	12
			13
3 Incapable person (whether or not under arrest)	By order of a Magistrate under Part 5	By order of a Magistrate under Part 5	14
			15
			16
4 Child at least 10 but under 18 (whether or not under arrest)	By order of a Magistrate under Part 5	By order of a Magistrate under Part 5	17
			18
			19

6 Time limits for carrying out forensic procedures

The following table sets out in general terms the time limits that apply to the carrying out of a forensic procedure on a suspect depending on the status of the suspect and the source of the authority to carry out the procedure.

Time limits for forensic procedures

Suspect's status	Procedure with suspect's consent (Part 3)	Procedure by order of a senior police officer (Part 4)	Procedure by order of a Magistrate (Part 5)	
1 Child or an incapable person, not under arrest	Not applicable	Not applicable	Procedure must be carried out within 2 hours after suspect presents to investigating police officer, disregarding "time out" (see section 40)	1 2 3 4 5 6 7 8 9 10 11 12 13 14
2 Suspect, including Aboriginal person or Torres Strait Islander (not a child or an incapable person), not under arrest	Procedure must be carried out within 2 hours after suspect presents to investigating police officer, disregarding "time out" (see section 16)	Not applicable	Procedure must be carried out within 2 hours after suspect presents to investigating police officer, disregarding "time out" (see section 40)	15 16 17 18 19 20 21 22 23 24

Clause 6 Crimes (Forensic Procedures) Bill 2000

Part 2 Authority and time limits for forensic procedures on suspects: summary of rules

	Suspect's status	Procedure with suspect's consent (Part 3)	Procedure by order of a senior police officer (Part 4)	Procedure by order of a Magistrate (Part 5)	
3	Child or an incapable person, under arrest	Not applicable	Not applicable	Procedure must be carried out not later than 2 hours after the end of the investigation period permitted under section 356D of the <i>Crimes Act 1900</i> , disregarding "time out" (see Division 4 of Part 5)	1 2 3 4 5 6 7 8 9 10 11
4	Suspect, including Aboriginal person or Torres Strait Islander (not a child or an incapable person), under arrest	Suspect may be detained in accordance with Part 10A of the <i>Crimes Act 1900</i> , for 2 hours after the end of the investigation period permitted under section 356D of the <i>Crimes Act 1900</i> , disregarding "time out" (see section 7 (3) and (4))	Suspect may be detained in accordance with Part 10A of the <i>Crimes Act 1900</i> , for 2 hours after the end of the investigation period permitted under section 356D of the <i>Crimes Act 1900</i> , disregarding "time out" (see section 17 (3) and (4))	Procedure must be carried out not later than 2 hours after the end of the investigation period permitted under section 356D of the <i>Crimes Act 1900</i> , disregarding "time out"	12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27

Part 3 Forensic procedures on suspect by consent

7 Forensic procedure may be carried out with informed consent of suspect

- (1) A person is authorised to carry out a forensic procedure on a suspect with the informed consent of the suspect. The person is authorised to carry out the procedure in accordance with Part 6 and not otherwise.
- (2) This Part does not authorise the carrying out of a forensic procedure on a suspect who is:
 - (a) a child, or
 - (b) an incapable person.
- (3) This Part does not authorise keeping a suspect under arrest, in order to carry out a forensic procedure, for more than 2 hours after the expiration of the investigation period provided for by section 356D of the *Crimes Act 1900*.
- (4) In working out any period of time for the purposes of subsection (3), any time out is to be disregarded.
- (5) Nothing in this Act or Part 10A of the *Crimes Act 1900* prevents the carrying out of a forensic procedure, with the informed consent of the suspect, during the investigation period provided for by section 356D of the *Crimes Act 1900*. However, neither carrying out the forensic procedure, nor any delays associated with carrying out the forensic procedure, operates to extend the investigation period provided for by section 356D of the *Crimes Act 1900*.

8 People who cannot consent to forensic procedures

- (1) A child cannot consent to a forensic procedure.
- (2) An incapable person cannot consent to a forensic procedure.

9 Informed consent to forensic procedures—general

- (1) This section applies where:
 - (a) a police officer intends to ask a suspect to consent to a forensic procedure, and
 - (b) the police officer does not believe on reasonable grounds that the suspect is an Aboriginal person or a Torres Strait Islander.

- (2) A suspect gives informed consent to a forensic procedure if the suspect consents after a police officer:
 - (a) asks the suspect to consent to the forensic procedure under section 11, and
 - (b) gives the suspect a written statement setting out:
 - (i) the information that the suspect must be given under section 13 (1) (a), (e), (f), (g), (i), (j) and (k), and
 - (ii) the nature of the information that the suspect must be given under section 13 (1) (b), (c) and (d) (but not the specific information that the suspect is to be given under these paragraphs in relation to the particular forensic procedure), and
 - (c) informs the suspect about the forensic procedure in accordance with section 13, and
 - (d) gives the suspect a reasonable opportunity to communicate, or attempt to communicate, with a legal practitioner of the suspect's choice and, subject to subsection (3), to do so in private.
- (3) If the suspect is under arrest, the police officer need not allow the suspect to communicate, or attempt to communicate, with the legal practitioner in private if the police officer suspects on reasonable grounds that the suspect might attempt to destroy or contaminate any evidence that might be obtained by carrying out the forensic procedure.

10 Informed consent to forensic procedures—Aboriginal persons and Torres Strait Islanders

- (1) This section applies where:
 - (a) a police officer intends to ask a suspect to consent to a forensic procedure, and
 - (b) the police officer believes on reasonable grounds that the suspect is an Aboriginal person or a Torres Strait Islander.
- (2) A suspect gives informed consent to a forensic procedure if the suspect consents after a police officer:
 - (a) asks the suspect to consent to the forensic procedure under section 11, and

-
- (b) gives the suspect a written statement setting out:
 - (i) the information that the suspect must be given under section 13 (1) (a), (e), (f), (g), (h), (i), (j) and (k), and
 - (ii) the nature of the information that the suspect must be given under section 13 (1) (b), (c) and (d) (but not the specific information that the suspect is to be given under these paragraphs in relation to the particular forensic procedure), and
 - (c) informs the suspect about the forensic procedure in accordance with section 13, and
 - (d) complies with the rest of this section.
- (3) The police officer must not ask the suspect to consent to the forensic procedure unless:
- (a) an interview friend is present, or
 - (b) the suspect has expressly and voluntarily waived his or her right to have an interview friend present.
- Note.** Section 106 relates to proving a waiver under paragraph (b).
- (4) Before asking the suspect to consent to a forensic procedure, the police officer must:
- (a) inform the suspect that a representative of an Aboriginal legal aid organisation will be notified that the suspect is to be asked to consent to a forensic procedure, and
 - (b) notify such a representative accordingly.
- (5) The police officer is not required to comply with subsection (4) if:
- (a) he or she is aware that the suspect has arranged for a legal practitioner to be present while the suspect is asked to consent to the forensic procedure, or
 - (b) subsection (3) (b) applies.
- (6) After asking a suspect covered by subsection (3) (b) to consent to a forensic procedure, the police officer must give the suspect a reasonable opportunity to communicate, or attempt to communicate, with a legal practitioner of the suspect's choice and, subject to subsection (8), to do so in private.

- (7) After asking a suspect not covered by subsection (3) (b) to consent to a forensic procedure, the police officer must allow the suspect to communicate with the interview friend (if any), and with the suspect's legal representative (if any), and, subject to subsection (8), to do so in private.
- (8) If a suspect covered by subsection (6) or (7) is under arrest, the police officer need not allow the suspect to communicate, or attempt to communicate, with the legal practitioner, or the suspect's interview friend or legal representative, in private if the police officer suspects on reasonable grounds that the suspect might attempt to destroy or contaminate any evidence that might be obtained by carrying out the forensic procedure.
- (9) An interview friend (other than a legal representative) of the suspect may be excluded from the presence of the police officer and the suspect if the interview friend unreasonably interferes with or obstructs the police officer in asking the suspect to consent to the forensic procedure, or in informing the suspect as required by section 13.

11 Police officer may request suspect to consent to forensic procedure

A police officer may request a suspect to undergo a forensic procedure if the police officer has complied with sections 9 and 10 and is satisfied as required by section 12.

12 Matters to be considered by police officer before requesting consent to forensic procedure

The police officer must be satisfied that:

- (a) the person on whom the procedure is proposed to be carried out is a suspect, and
- (b) the person on whom the procedure is proposed to be carried out is not a child or an incapable person, and
- (c) if the forensic procedure concerned is an intimate forensic procedure—there are reasonable grounds to believe that the forensic procedure might produce evidence tending to confirm or disprove that the suspect committed:
 - (i) a prescribed offence, or
 - (ii) another prescribed offence arising out of the same circumstances as that offence, or

- (iii) another prescribed offence in respect of which evidence likely to be obtained as a result of carrying out the procedure on the suspect is likely to have probative value, and

Note. *Prescribed offence* is defined in section 3 as an indictable offence or any other offence prescribed by the regulations.

- (d) if the forensic procedure concerned is a non-intimate forensic procedure other than the taking of a sample of hair other than pubic hair—there are reasonable grounds to believe that the forensic procedure might produce evidence tending to confirm or disprove that the suspect committed:
 - (i) an indictable or a summary offence, or
 - (ii) another indictable or summary offence arising out of the same circumstances as that offence, or
 - (iii) another indictable or summary offence in respect of which evidence likely to be obtained as a result of carrying out the procedure on the suspect is likely to have probative value, and
- (e) if the forensic procedure concerned is the taking of a sample of hair other than pubic hair—there are reasonable grounds to believe that the forensic procedure might produce evidence tending to confirm or disprove that the suspect committed:
 - (i) a prescribed offence, or
 - (ii) another prescribed offence arising out of the same circumstances as that offence, or
 - (iii) another prescribed offence in respect of which evidence likely to be obtained as a result of carrying out the procedure on the suspect is likely to have probative value, and
- (f) if the forensic procedure concerned is the taking of a sample by buccal swab—there are reasonable grounds to believe that the forensic procedure might produce evidence tending to confirm or disprove that the suspect committed:
 - (i) a prescribed offence, or
 - (ii) another prescribed offence arising out of the same circumstances as that offence, or
 - (iii) another prescribed offence in respect of which evidence likely to be obtained as a result of carrying out the procedure on the suspect is likely to have probative value, and

- (g) the request for consent to the forensic procedure is justified in all the circumstances.

13 Matters that suspect must be informed of before giving consent

- (1) The police officer must (personally or in writing) inform the suspect of the following matters:
 - (a) that the giving of information under this section, and the giving of consent (if any) by the suspect, is being or will be recorded by electronic means, or in writing, and that the suspect has a right to be given an opportunity to hear or view the recording as provided by section 100,
 - (b) the purpose for which the forensic procedure is required,
 - (c) the offence in relation to which the police officer wants the forensic procedure carried out,
 - (d) the way in which the forensic procedure is to be carried out,
 - (e) that the forensic procedure may produce evidence against the suspect that might be used in a court of law,
 - (f) that the forensic procedure will be carried out by an appropriately qualified police officer or person,
 - (g) if relevant, the matters specified in subsection (2),
 - (h) if the police officer believes on reasonable grounds that the suspect is an Aboriginal person or a Torres Strait Islander—that the suspect's interview friend may be present while the forensic procedure is carried out,
 - (i) that the suspect may refuse to consent to the carrying out of the forensic procedure,
 - (j) the consequences of not consenting, as specified in subsection (3), (4), (5), (6) or (7) (whichever is applicable),
 - (k) if the police officer intends forensic material obtained from the carrying out of the forensic procedure to be used for the purpose of deriving a DNA profile on the suspect—that information obtained from analysis of the forensic material obtained from carrying out the forensic procedure may be placed on the DNA database system and the rules that will apply under this Act to its disclosure and use.

(2) **Suspect's right to have medical practitioner or dentist present during some forensic procedures**

The police officer must inform the suspect that the suspect may ask that a medical practitioner or dentist (depending on the kind of forensic procedure) of his or her choice be present while the forensic procedure is carried out unless the forensic procedure is:

- (a) the taking of a hand print, finger print, foot print or toe print, or
- (b) the taking of a sample of saliva or a sample by buccal swab, or
- (c) the external examination of a part of the body other than:
 - (i) the genital or anal area or the buttocks, or
 - (ii) the breasts of a female or a transgender person who identifies as a female,that requires the touching of the body or removal of clothing, or
- (d) the taking of a sample of hair other than pubic hair, or
- (e) the taking of a sample from a nail or from under a nail, or
- (f) the taking of a sample by swab or washing from any external part of the body other than:
 - (i) the genital or anal area or the buttocks, or
 - (ii) the breasts of a female or a transgender person who identifies as a female, or
- (g) the taking of a sample by vacuum suction, scraping or lifting by tape from any external part of the body other than:
 - (i) the genital or anal area or the buttocks, or
 - (ii) the breasts of a female or a transgender person who identifies as a females, or
- (h) the taking of a photograph of an external part of the body other than:
 - (i) the genital or anal area or the buttocks, or
 - (ii) the breasts of a female or a transgender person who identifies as a female, or
- (i) the taking of physical measurements (whether or not involving marking) for biomechanical analysis of an external part of the body other than:
 - (i) the genital or anal area or the buttocks, or
 - (ii) the breasts of a female or a transgender person who identifies as a female.

(3) **Failure to consent to non-intimate forensic procedure—suspect under arrest**

If the suspect is under arrest and the forensic procedure is a non-intimate forensic procedure, the police officer must inform the suspect that, if the suspect does not consent, a senior police officer may order the carrying out of the forensic procedure under Part 4 if he or she is satisfied of the matters referred to in section 20.

(4) **Failure to consent to intimate forensic procedure—suspect under arrest**

If the suspect is under arrest in relation to a prescribed offence and the forensic procedure is an intimate forensic procedure, the police officer must inform the suspect that, if the suspect does not consent, an application may be made to a Magistrate for an order authorising the carrying out of the forensic procedure.

(5) **Failure to consent to intimate or non-intimate forensic procedure—suspect not under arrest**

If the suspect is not under arrest and the forensic procedure is a non-intimate forensic procedure or an intimate forensic procedure, the police officer must inform the suspect that, if the suspect does not consent, an application may be made to a Magistrate for an order authorising the carrying out of the forensic procedure.

(6) **Failure to consent to taking of sample by buccal swab—suspect under arrest**

If the suspect is under arrest for a prescribed offence and the forensic procedure is the taking of a sample by buccal swab, the police officer must inform the suspect that, if the suspect does not consent:

- (a) a senior police officer may order the taking of a sample of hair other than pubic hair under Part 4, or

Note. See section 19.

- (b) an application may be made to a Magistrate for an order authorising the taking of a sample by buccal swab or some other forensic procedure.

(7) **Failure to consent to taking of sample by buccal swab—suspect not under arrest**

If the suspect is not under arrest for a prescribed offence and the forensic procedure is the taking of a sample by buccal swab, the police officer must inform the suspect that, if the suspect does not consent, an application may be made to a Magistrate for an order authorising the taking of a sample by buccal swab or some other forensic procedure.

14 Withdrawal of consent

If a person expressly withdraws consent to the carrying out of a forensic procedure under this Part (or if the withdrawal of such consent can reasonably be inferred from the person's conduct) before or during the carrying out of the forensic procedure:

- (a) the forensic procedure is to be treated from the time of the withdrawal as a forensic procedure for which consent has been refused, and
- (b) the forensic procedure is not to proceed except by order of a senior police officer under Part 4 or a Magistrate under Part 5.

15 Recording of giving information and suspect's responses

- (1) The police officer must, if practicable, ensure that the giving of the information about the proposed forensic procedure and the suspect's responses (if any) are recorded by electronic means.
- (2) If recording the giving of the information and the suspect's responses (if any) by electronic means is not practicable, the police officer must ensure that a written record of the giving of the information and the suspect's responses (if any) is made, and that a copy of the record is made available to the suspect.

Note. Part 13 contains provisions about making copies of material (including copies of tapes) available to the suspect.

16 Time for carrying out forensic procedure—suspect not under arrest

- (1) If a suspect who is not under arrest:
 - (a) consents to a forensic procedure, and
 - (b) presents himself or herself to the investigating police officer to undergo the procedure,the procedure must be carried out as quickly as reasonably possible but in any case within 2 hours after the suspect so presents himself or herself.
- (2) In working out any period of time for the purposes of subsection (1), any time out is to be disregarded.

Part 4 Non-intimate forensic procedures on suspects by order of senior police officer

17 Non-intimate forensic procedure may be carried out by order of senior police officer

- (1) A person is authorised to carry out a non-intimate forensic procedure on a suspect by order of a senior police officer under section 18 or 19. The person is authorised to carry out the procedure in accordance with Part 6 and not otherwise.
- (2) This Part does not authorise the carrying out of a forensic procedure on a suspect who is:
 - (a) a child, or
 - (b) an incapable person.
- (3) This Part does not authorise keeping a suspect under arrest, in order to carry out a forensic procedure, for more than 2 hours after the expiration of the investigation period provided for by section 356D of the *Crimes Act 1900*.
- (4) In working out any period of time for the purposes of subsection (3), any time out is to be disregarded.
- (5) Nothing in this Act or Part 10A of the *Crimes Act 1900* prevents the carrying out of a forensic procedure, in accordance with a senior police officer's order under section 18 or 19, during the investigation period provided for by section 356D of the *Crimes Act 1900*. However, neither carrying out the forensic procedure, nor any delays associated with carrying out the forensic procedure, operate to extend the investigation period provided for by Part 10A of the *Crimes Act 1900*.

18 Circumstances in which senior police officer may order non-intimate forensic procedure

A senior police officer may order the carrying out of a non-intimate forensic procedure on a suspect who is under arrest if:

- (a) the suspect has been asked under Part 3 to consent to the carrying out of the forensic procedure, and
- (b) the suspect has not consented, and
- (c) the senior police officer is satisfied as required by section 20.

19 Sample of hair may be taken by order of senior police officer if consent to take sample by buccal swab refused

A senior police officer may order the taking of a sample of hair other than pubic hair from a suspect who is under arrest for a prescribed offence if:

- (a) the suspect has been asked under Part 3 to consent to the taking of a sample by buccal swab, and
- (b) the suspect has not consented, and
- (c) the senior police officer is satisfied as required by section 20.

20 Matters to be considered by senior police officer before ordering non-intimate forensic procedure

A senior police officer who makes an order under section 18 or 19 must be satisfied that:

- (a) the suspect is under arrest, and
- (b) the suspect is not a child or an incapable person, and
- (c) there are reasonable grounds to believe that the suspect committed:
 - (i) an offence, or
 - (ii) another offence arising out of the same circumstances as that offence, or
 - (iii) another offence in respect of which evidence likely to be obtained as a result of carrying out the procedure on the suspect is likely to have probative value, and
- (d) there are reasonable grounds to believe that the forensic procedure might produce evidence tending to confirm or disprove that the suspect committed such an offence, and
- (e) the carrying out of the forensic procedure without consent is justified in all the circumstances.

21 Making and recording senior police officer's order

- (1) The senior police officer may make an order under section 18 or 19 in person or, if that is not practicable, by telephone, radio, telex, facsimile or other means of transmission.
- (2) If an order is made by radio or other form of oral communication, the senior police officer must ensure that:
 - (a) the suspect or the suspect's legal representative, if any, and
 - (b) the suspect's interview friend, if any,are given an opportunity to speak to the police officer.
- (3) If the order is made by telex, facsimile or other form of written communication, the senior police officer must ensure that:
 - (a) the suspect or the suspect's legal representative, if any, and
 - (b) the suspect's interview friend, if any,are given an opportunity to make a written submission to the senior police officer, or to speak to the senior police officer by telephone, radio or other form of oral communication.
- (4) The senior police officer must, at the time of, or as soon as practicable after, making an order under section 18 or 19, make a record of:
 - (a) the order made, and
 - (b) the date and time when the order was made, and
 - (c) the reasons for making it,and must sign the record.
- (5) The senior police officer must ensure that a copy of the record is sent to or made available to the suspect as soon as practicable after the record is made.

Part 5 Forensic procedures by order of Magistrate

Division 1 General

22 Forensic procedure may be carried out by order of Magistrate

A person is authorised to carry out a forensic procedure on a suspect by order of a Magistrate under section 24, 27 or 32. The person is authorised to carry out the procedure in accordance with Part 6 and not otherwise.

23 Circumstances in which Magistrate may order forensic procedure

A Magistrate may, under section 24 or 32, order the carrying out of a forensic procedure on a suspect if:

- (a) the suspect is not under arrest and has not consented to the forensic procedure, or
- (b) the suspect is under arrest and has not consented to the forensic procedure, or
- (c) under section 8, the suspect cannot consent to the forensic procedure.

Division 2 Final orders

24 Final order for carrying out of forensic procedure

A Magistrate may order the carrying out of a forensic procedure on a suspect if:

- (a) section 23 applies, and
- (b) the Magistrate is satisfied as required by section 25.

25 Matters to be considered by Magistrate before ordering forensic procedure

The Magistrate must be satisfied that:

- (a) the person on whom the procedure is proposed to be carried out is a suspect, and

- (b) if the forensic procedure concerned is an intimate forensic procedure, on the evidence before the Magistrate there are reasonable grounds to believe that the suspect committed:
 - (i) a prescribed offence, or
 - (ii) another prescribed offence arising out of the same circumstances as that offence, or
 - (iii) another prescribed offence in respect of which evidence likely to be obtained as a result of carrying out the procedure on the suspect is likely to have probative value, and

Note. A **prescribed offence** is defined in section 3 as an indictable offence or any other offence prescribed by the regulations.

- (c) if the forensic procedure concerned is a non-intimate forensic procedure other than the taking of a sample of hair other than pubic hair, on the evidence before the Magistrate, there are reasonable grounds to believe that the suspect committed:
 - (i) an indictable or a summary offence, or
 - (ii) another indictable or summary offence arising out of the same circumstances as that offence, or
 - (iii) another indictable or summary offence in respect of which evidence likely to be obtained as a result of carrying out the procedure on the suspect is likely to have probative value, and
- (d) if the forensic procedure concerned is the taking of a sample of hair other than pubic hair, on the evidence before the Magistrate, there are reasonable grounds to believe that the suspect committed:
 - (i) a prescribed offence, or
 - (ii) another prescribed offence arising out of the same circumstances as that offence, or
 - (iii) another prescribed offence in respect of which evidence likely to be obtained as a result of carrying out the procedure on the suspect is likely to have probative value, and
- (e) if the forensic procedure concerned is the taking of a sample by buccal swab, on the evidence before the Magistrate, there are reasonable grounds to believe that the suspect committed:
 - (i) a prescribed offence, or
 - (ii) another prescribed offence arising out of the same circumstances as that offence, or

- (iii) another prescribed offence in respect of which evidence likely to be obtained as a result of carrying out the procedure on the suspect is likely to have probative value, and
- (f) there are reasonable grounds to believe that the forensic procedure might produce evidence tending to confirm or disprove that the suspect committed the relevant offence, and
- (g) the carrying out of the forensic procedure is justified in all the circumstances.

26 Application for order

- (1) An authorised applicant (but no other person) may apply to a Magistrate for an order under section 24 authorising him or her to arrange the carrying out of a forensic procedure on a suspect.
- (2) An application for an order must:
 - (a) be made in writing, and
 - (b) be supported by evidence on oath or by affidavit dealing with the matters referred to in section 25 (a) and, if relevant, section 25 (b), (c), (d) and (e), and
 - (c) specify the type of forensic procedure sought to be carried out, and
 - (d) be made in the presence of the suspect (subject to any contrary order made by the Magistrate).
- (3) If a Magistrate refuses an application for an order authorising the carrying out of a forensic procedure on a suspect, the authorised applicant (or any other person aware of the application) may not make a further application to carry out the same forensic procedure on the suspect unless he or she provides additional information that justifies the making of the further application.

27 Application and order for repeated forensic procedure

- (1) An authorised applicant (but no other person) may apply to a Magistrate for an order under this section authorising him or her to arrange the carrying out for a second time of a forensic procedure on a suspect on whom a forensic procedure has already been carried out by order of a Magistrate under section 24.

- (2) The application for the order must:
 - (a) be made in writing, and
 - (b) specify the type of forensic procedure carried out and the grounds for authorising it to be carried out a second time, and
 - (c) be supported by evidence on oath or by affidavit.
- (3) A Magistrate may order the carrying out for a second time of a forensic procedure on a suspect under this section if the Magistrate is satisfied that:
 - (a) the forensic procedure already carried out on the suspect was authorised by an order under section 24 and was carried out in accordance with Part 6, and
 - (b) the forensic material obtained as a result of the carrying out of that forensic procedure is insufficient for analysis or has been contaminated, and
 - (c) the carrying out of the forensic procedure for a second time is justified in all the circumstances.

28 Securing the presence of suspect at hearing—suspect under arrest

- (1) If the suspect has been arrested by a police officer (*original arrest*), the Magistrate may, on the application of another police officer, issue a warrant directing the person holding the suspect under original arrest to deliver the suspect into the custody of the other police officer (*temporary custody*) for the hearing of an application for an order under this Part.
- (2) The police officer given temporary custody must return the suspect to the place of original arrest:
 - (a) if the application for the order is refused—without delay, or
 - (b) if the order is made—without delay at the end of the period for which the suspect may be detained under arrest under section 42.

29 Securing the presence of suspect at hearing—suspect not under arrest

- (1) If the suspect is not under arrest, the Magistrate may, on the application of a police officer:
 - (a) issue a summons for the appearance of the suspect at the hearing of the application, or

- (b) issue a warrant for the arrest of the suspect for the purpose of bringing the suspect before the Magistrate for the hearing of the application.
- (2) An application for a summons under subsection (1) must be:
 - (a) made by information on oath, and
 - (b) accompanied by an affidavit dealing with the matters referred to in subsection (3).
- (3) The Magistrate may issue a summons only if satisfied:
 - (a) that the issue of the summons is necessary to ensure the appearance of the suspect at the hearing of the application, or
 - (b) that the issue of the summons is otherwise justified.
- (4) An application for a warrant under subsection (1) must be:
 - (a) made by information on oath, and
 - (b) accompanied by an affidavit dealing with the matters referred to in subsection (5).
- (5) The Magistrate may issue a warrant only if satisfied:
 - (a) that the arrest is necessary to ensure the appearance of the suspect at the hearing of the application, and that the issue of a summons would not ensure that appearance, or
 - (b) that the suspect might destroy evidence that might be obtained by carrying out the forensic procedure, or
 - (c) that the issue of the warrant is otherwise justified.

30 Procedure at hearing of application for order

- (1) An order may only be made in the presence of the suspect concerned, subject to any contrary order made by the Magistrate.
- (2) A suspect who is:
 - (a) a child, or
 - (b) an incapable person,must have an interview friend and may also be represented by a legal practitioner.
- (3) If the authorised applicant believes on reasonable grounds that the suspect is an Aboriginal person or a Torres Strait Islander not covered by subsection (2), the suspect:

- (a) must have an interview friend, and
 - (b) may also be represented by a legal practitioner.
- (4) Subsection (3) (a) does not apply if the suspect expressly and voluntarily waives his or her right to have an interview friend present.
- (5) Any other suspect (including a suspect covered by subsection (2)) may be represented by a legal practitioner.
- (6) The suspect or his or her representative:
 - (a) may cross-examine the applicant for the order, and
 - (b) may, with the leave of the Magistrate, call or cross-examine any other witness, and
 - (c) may address the Magistrate.
- (7) A Magistrate must not give leave under subsection (6) (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.
- (8) Despite subsections (2) and (3), the suspect's interview friend may be excluded from the hearing if the interview friend unreasonably interferes with or obstructs the hearing of the application.

31 Making of order

- (1) If a Magistrate makes an order for the carrying out of a forensic procedure, the Magistrate must:
 - (a) specify the forensic procedure authorised to be carried out, and
 - (b) give reasons for making the order, and
 - (c) ensure that a written record of the order is kept, and
 - (d) order the suspect to attend for the carrying out of the forensic procedure, and
 - (e) inform the suspect that reasonable force may be used to ensure that he or she complies with the order for the carrying out of the forensic procedure.
- (2) The Magistrate may give directions as to the time and place at which the procedure is to be carried out.

Division 3 Interim orders

32 Interim order for carrying out of a forensic procedure

- (1) A Magistrate may make an interim order authorising the carrying out of a forensic procedure on a suspect that must be carried out without delay if:
 - (a) section 23 applies, and
 - (b) the Magistrate is satisfied that the probative value of evidence obtained as a result of the forensic procedure concerned is likely to be lost or destroyed if there is delay in carrying out the procedure, and
 - (c) the Magistrate is satisfied that there is sufficient evidence to indicate that a Magistrate is reasonably likely to be satisfied of the existence of the matters referred to in section 25 when the application is finally determined.
- (2) An interim order may authorise the carrying out of an intimate forensic procedure on a suspect only if the person is a suspect in relation to a prescribed offence.
- (3) An interim order operates as provided by this Division until a Magistrate, at a hearing held under Division 2, confirms the interim order or disallows the interim order.

Note. Section 35 (2) requires that an interim order specify the intended date, time and place of the later hearing.
- (4) Division 2 applies in relation to an order confirming the interim order in the same way it applies in relation to an order under section 24, and an order confirming the interim order is taken to be an order under section 24.

33 Application for interim order

- (1) An authorised applicant may, without bringing a suspect before a Magistrate and without obtaining an order under section 24, make an application seeking an interim order authorising the carrying out of a forensic procedure on a suspect that must be carried out without delay.
- (2) An application seeking an interim order authorising the carrying out of an intimate forensic procedure on a suspect may be made only if the person is a suspect in relation to a prescribed offence.

- (3) An application for an interim order must:
 - (a) be supported by evidence on oath or by affidavit dealing with the matters referred to in section 32 (1), and
 - (b) specify the type of forensic procedure sought to be carried out.
- (4) An application for an interim order may be made in person or, if that is not practicable, by telephone, radio, telex, facsimile or other means of transmission.
- (5) If the suspect who is in the presence of the authorised applicant when an application for an interim order is made is:
 - (a) a child, or
 - (b) an incapable person,an interview friend or legal representative of the suspect must also (if reasonably practicable) be in the presence of the authorised applicant.
- (6) If the authorised applicant believes on reasonable grounds that a suspect who is in the presence of the authorised applicant when an application for an interim order is made is an Aboriginal person or a Torres Strait Islander who is not covered by subsection (5), an interview friend or legal representative of the suspect must also (if reasonably practicable) be in the presence of the authorised applicant.
- (7) If a suspect who is in the presence of the authorised applicant when an application for an interim order is made is not covered by subsection (5) or (6), the suspect's legal representative (if any) must also (if reasonably practicable) be in the presence of the authorised applicant.
- (8) Despite subsections (5) and (6), the suspect's interview friend may be excluded from the presence of the authorised applicant if the interview friend unreasonably interferes with or obstructs the making of the application.

34 Procedure at hearing of application for interim order

- (1) If the application is made in person, or by telephone or radio or other form of oral communication, the Magistrate must ensure that:
 - (a) the suspect or the suspect's legal representative, if any, and
 - (b) the suspect's interview friend, if any,are given an opportunity to speak to the Magistrate.

- (2) If the application is made by telex, facsimile or other form of written communication, the Magistrate must ensure that:
 - (a) the suspect or the suspect's legal representative, if any, and
 - (b) the suspect's interview friend, if any,are given an opportunity to make a written submission to accompany the application, or to speak to the Magistrate by telephone, radio or other form of oral communication.
- (3) Despite subsections (1) and (2), the suspect's interview friend may be excluded from the presence of the Magistrate if the interview friend unreasonably interferes with or obstructs the hearing of the application.

35 Making of interim order

- (1) A Magistrate who makes an interim order must inform the applicant for the order personally, or by telephone, radio, telex, facsimile or other means of transmission:
 - (a) that the order has been made, and
 - (b) of the terms of the order, including the matters mentioned in subsection (2), and
 - (c) of any orders made or directions given under subsection (3) in relation to the order.
- (2) An interim order must specify the date, time and place at which a further hearing on the application will take place and the application will be finally determined.
- (3) A Magistrate may make such orders and give such directions in relation to an interim order as the Magistrate may make or give in relation to an order under section 24.

36 Records of application and interim order

- (1) The applicant for an interim order must, at the time of, or as soon as practicable after, applying for the interim order, make a record (the *applicant's record*) of:
 - (a) the application, and
 - (b) the grounds for seeking the order, and
 - (c) the order made, and

- (d) the date and time when the order was made, and
 - (e) the Magistrate's name,
- and sign the record.
- (2) The applicant must send a copy of the applicant's record to the Magistrate as soon as practicable after it is made.
 - (3) The Magistrate must, at the time of, or as soon as practicable after, making an interim order, make a record (the *Magistrate's record*) of:
 - (a) the application, and
 - (b) the grounds for seeking the order, and
 - (c) the order made, and
 - (d) the date and time when the order was made, and
 - (e) the reasons for making it,and sign the record.
 - (4) The Magistrate must send a copy of the Magistrate's record to the applicant as soon as practicable after the record is made.
 - (5) The applicant must ensure that a copy of the Magistrate's record and a copy of the applicant's record are made available to the suspect as soon as practicable after the applicant receives the Magistrate's record.
 - (6) If the applicant's record does not, in all material respects, accord with the Magistrate's record, the order is taken to have had no effect.

37 Suspect may be prevented from destroying or contaminating evidence

- (1) A police officer may, while waiting for the application seeking an interim order to be determined, use reasonable force to prevent the suspect destroying or contaminating any evidence that might be obtained by carrying out the forensic procedure if the order is made.
- (2) Nothing in this section authorises any person to carry out a forensic procedure before an interim order is made.

38 Results of forensic procedure carried out under interim order

- (1) A sample taken under an interim order must not be analysed unless:
 - (a) the sample is likely to perish before a final order is made, or
 - (b) a final order is made.

- (2) A person who conducts an analysis in the circumstances set out in subsection (1) (a) must not intentionally or recklessly disclose the results of the analysis to any person other than the suspect:
- (a) during the period before a final order is made, or
 - (b) if the interim order is disallowed.
- Maximum penalty (subsection (2)): imprisonment for 12 months.

Division 4 Time limits for forensic procedures ordered by Magistrate

39 Application

This Division applies where a Magistrate orders the carrying out of a forensic procedure on a suspect under this Act.

40 Time for carrying out forensic procedure—suspect not under arrest

- (1) If a suspect who is not under arrest presents himself or herself to the investigating police officer to undergo the procedure after it is ordered by the Magistrate, the procedure must be carried out as quickly as reasonably possible but in any case within 2 hours after the suspect so presents himself or herself.
- (2) In working out any period of time for the purposes of subsection (1), any time out is to be disregarded.

41 Arrest of suspect not under arrest

- (1) If the suspect is not under arrest, the Magistrate may, on the application of a police officer, issue a warrant for the arrest of the suspect for the purpose of carrying out the forensic procedure.
- (2) An application for a warrant must be:
 - (a) made by information on oath, and
 - (b) accompanied by an affidavit dealing with the matters referred to in subsection (3) (a) and (b).
- (3) The Magistrate may issue a warrant only if satisfied:
 - (a) that the arrest is necessary to ensure that the forensic procedure can be carried out, or
 - (b) that the issue of the warrant is otherwise justified.

Clause 41	Crimes (Forensic Procedures) Bill 2000
Part 5	Forensic procedures by order of Magistrate
Division 4	Time limits for forensic procedures ordered by Magistrate

- (4) A Magistrate must not issue a warrant for the arrest of a suspect for the purpose of carrying out a forensic procedure if a warrant has previously been issued (by any Magistrate) for the arrest of the suspect for the purpose of carrying out that forensic procedure.

42 Time for carrying out forensic procedure—suspect under arrest

- (1) If the suspect is under arrest (whether or not as the result of the issue of a warrant under section 41), he or she may be detained under arrest for such period as is reasonably necessary to carry out the forensic procedure but in any case for no longer than 2 hours after the end of the investigation period permitted under Part 10A of the *Crimes Act 1900* starting when:
- (a) the Magistrate orders the carrying out of the procedure, or
 - (b) the suspect is arrested pursuant to a warrant under section 41.
- (2) In working out any period of time for the purposes of subsection (1), any time out is to be disregarded.

Division 5 Reports of proceedings under Act

43 Restrictions on publication

- (1) A person must not intentionally or recklessly, in any report of a proceeding under this Act, publish:
- (a) the name of the suspect on whom a forensic procedure is carried out or proposed to be carried out in relation to an offence, or
 - (b) any information likely to enable the identification of the suspect,
- unless the suspect has been charged with the offence or the Magistrate, by order, has authorised such publication.
- Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.
- (2) This section does not make it an offence to publish the name of a suspect or any information likely to enable the identification of a suspect if the publication is solely for the purposes of the internal management of the Police Service.

Part 6 Carrying out forensic procedures on suspects

Note. This Part also applies to the carrying out of forensic procedures on serious indictable offenders and volunteers. See sections 65 and 76 (4).

Division 1 General

44 General rules for carrying out forensic procedures

A forensic procedure:

- (a) must be carried out in circumstances affording reasonable privacy to the suspect and except as permitted (expressly or impliedly) by any other provision of this Act, must not be carried out in the presence or view of a person who is of the opposite sex to the suspect, and
- (b) must not be carried out in the presence or view of a person whose presence is not necessary for the purposes of the forensic procedure or required or permitted by another provision of this Act, and
- (c) must not involve the removal of more clothing than is necessary for the carrying out of the procedure, and
- (d) must not involve more visual inspection than is necessary for the carrying out of the procedure.

45 No questioning during forensic procedure

- (1) A forensic procedure must not be carried out while the suspect is being questioned. If questioning has not been completed before the forensic procedure is to be carried out, it must be suspended while the forensic procedure is carried out.
- (2) In this section, a reference to **questioning** of a suspect is a reference to questioning the suspect, or carrying out an investigation (in which the suspect participates), to investigate the involvement (if any) of the suspect in any offence (including an offence for which the suspect is not under arrest).

46 Suspect must be cautioned before forensic procedure starts

Before anyone starts to carry out a forensic procedure on a suspect, a police officer must caution the suspect that he or she does not have to say anything while the procedure is carried out but that anything the person does say may be used in evidence.

47 Use of force in carrying out forensic procedures

- (1) Subject to subsection (2) and section 48, a person authorised to carry out a forensic procedure on a suspect, or a police officer, may use reasonable force:
 - (a) to enable the forensic procedure to be carried out, or
 - (b) to prevent loss, destruction or contamination of any sample.
- (2) All forensic procedures are to be carried out in a manner consistent with appropriate medical or other relevant professional standards.

48 Forensic procedures not to be carried out in cruel, inhuman or degrading manner

Nothing in this Act authorises the carrying out of a forensic procedure in a cruel, inhuman or degrading manner but the carrying out of a forensic procedure on a suspect in accordance with this Act is not of itself taken to be cruel, inhuman or degrading to the suspect.

49 Taking of samples of hair

A person is authorised to take a sample of hair of a suspect by removing the root of the hair only if:

- (a) the person takes only so much hair as the person believes is necessary for analysis of the sample, or other examination of the hair, to be carried out for the purpose of investigating:
 - (i) a prescribed offence, or
 - (ii) another prescribed offence arising out of the same circumstances as that offence, or
 - (iii) another prescribed offence in respect of which evidence likely to be obtained as a result of carrying out the procedure on the suspect is likely to have probative value, and
- (b) strands of hair are taken using the least painful technique known and available to the person.

Division 2 Persons involved in forensic procedures

50 Persons who may carry out forensic procedures

- (1) The table to this section shows, for each forensic procedure specified in the first column of the table, the persons who may carry out the procedure under this Act. A person not specified in the second column of the table is not authorised to carry out a forensic procedure under this Part except as mentioned in section 52.
- (2) The third column of the table to this section shows, for each forensic procedure, whether the suspect is entitled to request that a medical practitioner or dentist of the suspect's choice is present while the forensic procedure is carried out.

Note. Section 53 makes detailed provision for the presence of a medical practitioner or dentist of the suspect's choice while a forensic procedure is carried out.

- (3) A person is authorised to carry out a particular forensic procedure if he or she is an appropriately qualified police officer or person in relation to the procedure even if the person also satisfies another description specified in the table to this section that is not specified in relation to the particular forensic procedure.

Note. For example, a police officer who is an appropriately qualified police officer or person to take samples of blood may take such samples even though the table does not expressly list police officers as persons who may take samples of blood.

- (4) This section does not prevent a suspect from carrying out a forensic procedure specified in item 3 of the first column of the table to this section on himself or herself under the supervision of an appropriately qualified police officer or person.

Clause 50 Crimes (Forensic Procedures) Bill 2000

Part 6 Carrying out forensic procedures on suspects

Division 2 Persons involved in forensic procedures

Who may carry out forensic procedures

Forensic procedure	Persons who may carry out forensic procedure	Is suspect entitled to request presence of medical practitioner or dentist of suspect's choice?
1 external examination of the genital or anal area or the buttocks or the breasts of a female or a transgender person who identifies as a female	medical practitioner nurse appropriately qualified police officer or person	yes (medical practitioner)
2 the taking of a sample of blood	medical practitioner nurse appropriately qualified police officer or person	yes (medical practitioner)
3 the taking of a sample of saliva, or a sample by buccal swab	medical practitioner dentist dental technician nurse appropriately qualified police officer or person	no
4 the taking of a sample of pubic hair	medical practitioner nurse appropriately qualified police officer or person	yes (medical practitioner)
5 the taking of a sample by swab or washing from the external genital or anal area or the buttocks or the breasts of a female or a transgender person who identifies as a female	medical practitioner nurse appropriately qualified police officer or person	yes (medical practitioner)

	Forensic procedure	Persons who may carry out forensic procedure	Is suspect entitled to request presence of medical practitioner or dentist of suspect's choice?
6	the taking of a sample by vacuum suction, scraping or lifting by tape from the external genital or anal area or the buttocks or the breasts of a female or a transgender person who identifies as a female	medical practitioner nurse appropriately qualified police officer or person	yes (medical practitioner)
7	the making of a dental impression	medical practitioner dentist dental technician	yes (dentist)
8	the taking of a photograph of, or an impression or cast of a wound from, the genital or anal area or the buttocks or the breasts of a female or a transgender person who identifies as a female	appropriately qualified police officer or person	yes (medical practitioner)
9	external examination of a part of the body other than the genital or anal area or the buttocks or the breasts of a female or a transgender person who identifies as a female that requires touching of the body or removal of clothing	medical practitioner nurse appropriately qualified police officer or person	no
10	the taking of a sample of hair other than pubic hair	medical practitioner nurse appropriately qualified police officer or person	no

Clause 50 Crimes (Forensic Procedures) Bill 2000

Part 6 Carrying out forensic procedures on suspects
Division 2 Persons involved in forensic procedures

	Forensic procedure	Persons who may carry out forensic procedure	Is suspect entitled to request presence of medical practitioner or dentist of suspect's choice?
11	the taking of a sample from a nail or from under a nail	medical practitioner nurse appropriately qualified police officer or person	no
12	the taking of a sample by swab or washing from any external part of the body other than the genital or anal area or the buttocks or the breasts of a female or a transgender person who identifies as a female	medical practitioner nurse appropriately qualified police officer or person	no
13	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 or the buttocks or the breasts of a female or a transgender person who identifies as a female	medical practitioner nurse appropriately qualified police officer or person	no
14	the taking of a hand print, finger print, foot print or toe print	appropriately qualified police officer or person	no
15	the taking of a photograph of an external part of the body other than the genital or anal area or the buttocks or the breasts of a female or a transgender person who identifies as a female	appropriately qualified police officer or person	no

	Forensic procedure	Persons who may carry out forensic procedure	Is suspect entitled to request presence of medical practitioner or dentist of suspect's choice?
16	the taking of an impression or cast of a wound from an external part of the body other than the genital or anal area or the buttocks or the breasts of a female or a transgender person who identifies as a female	appropriately qualified police officer or person	yes (medical practitioner)
17	the taking of physical measurements (whether or not involving marking) for biomechanical analysis of an external part of the body other than the genital or anal area or the buttocks or the breasts of a female or a transgender person who identifies as a female	appropriately qualified police officer or person	no

Note. *Appropriately qualified* (as used in the expression “appropriately qualified police officer or person”) is defined in section 3.

Division 3 Further provisions about who may carry out forensic procedures

51 Certain forensic procedures generally to be carried out by person of same sex as suspect

- (1) If practicable, an intimate forensic procedure (other than the taking of a sample of blood or saliva, or a dental impression) is to be carried out:
 - (a) if the suspect is an adult—by a person of the same sex as the suspect, or

Clause 51 Crimes (Forensic Procedures) Bill 2000

Part 6 Carrying out forensic procedures on suspects

Division 3 Further provisions about who may carry out forensic procedures

- (b) if the suspect is a child—by a person of the sex chosen by the suspect or, if the suspect does not wish to make such a choice, a person of the same sex as the suspect.
- (2) If practicable, a non-intimate forensic procedure for which the suspect is required to remove clothing other than his or her overcoat, coat, jacket, gloves, socks, shoes, scarf or hat is to be carried out:
 - (a) if the suspect is an adult—by a person of the same sex as the suspect, or
 - (b) if the suspect is a child—by a person of the sex chosen by the suspect or, if the suspect does not wish to make such a choice, a person of the same sex as the suspect.
- (3) If practicable, a person asked under section 52 to help carry out a forensic procedure covered by subsection (1) or (2):
 - (a) is to be:
 - (i) if the suspect is an adult—a person of the same sex as the suspect, or
 - (ii) if the suspect is a child—a person of the sex chosen by the suspect or, if the suspect does not wish to make such a choice, a person of the same sex as the suspect, and
 - (b) is to be a person who is not inappropriate to help carry out the forensic procedure.

52 Person may get help to carry out forensic procedures

- (1) A person who is authorised to carry out a forensic procedure under the table to section 50 is authorised to ask another person to help him or her to carry out the procedure, and the other person is authorised to give that help.
- (2) A person who is asked to help carry out a forensic procedure need not be a person mentioned in the table to section 50.
- (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.

Division 4 Presence of other people while forensic procedure is carried out

53 Medical practitioner or dentist of suspect's choice may be present for some forensic procedures

- (1) A suspect is entitled to request a medical practitioner or dentist (*the expert*) of his or her choice as shown in the table to section 50 to be present while a forensic procedure is carried out unless the forensic procedure is:
- (a) the taking of a hand print, finger print, foot print or toe print, or
 - (b) the taking of a sample of saliva or a sample by buccal swab, or
 - (c) the external examination of a part of the body other than:
 - (i) the genital or anal area or the buttocks, or
 - (ii) the breasts of a female or a transgender person who identifies as a female,that requires the touching of the body or removal of clothing, or
 - (d) the taking of a sample of hair other than pubic hair, or
 - (e) the taking of a sample from a nail or from under a nail, or
 - (f) the taking of a sample by swab or washing from any external part of the body other than:
 - (i) the genital or anal area or the buttocks, or
 - (ii) the breasts of a female or a transgender person who identifies as a female, or
 - (g) the taking of a sample by vacuum suction, scraping or lifting by tape from any external part of the body other than:
 - (i) the genital or anal area or the buttocks, or
 - (ii) the breasts of a female or a transgender person who identifies as a female, or
 - (h) the taking of a photograph of an external part of the body other than:
 - (i) the genital or anal area or the buttocks, or
 - (ii) the breasts of a female or a transgender person who identifies as a female, or

- (i) the taking of physical measurements (whether or not involving marking) for biomechanical analysis of an external part of the body other than:
 - (i) the genital or anal area or the buttocks, or
 - (ii) the breasts of a female or a transgender person who identifies as a female.

Note. Section 99 provides that the request may be made by the suspect's legal representative or interview friend.

- (2) The expert chosen is to be present at the forensic procedure unless he or she:
 - (a) is unable, or does not wish, to attend, or
 - (b) cannot be contacted,

within a reasonable time or, if relevant, within the time in which the person responsible for the effective carrying out of the forensic procedure considers the forensic procedure should be carried out if it is to be effective in affording evidence of the relevant offence.

54 Presence of interview friend or legal representative—children and incapable persons

- (1) This section applies if the suspect is:
 - (a) a child, or
 - (b) an incapable person.
- (2) Either an interview friend or a legal representative (if he or she is not the interview friend) of the suspect must, if reasonably practicable, be present while the forensic procedure is carried out. Both an interview friend and a legal representative may be present.
- (3) An interview friend (other than a legal representative) of the suspect may be excluded from the place where the forensic procedure is being carried out if the interview friend unreasonably interferes with or obstructs the carrying out of the procedure.

55 Presence of interview friend or legal representative—Aboriginal persons and Torres Strait Islanders

- (1) This section applies if the investigating police officer believes on reasonable grounds that the suspect is an Aboriginal person or a Torres Strait Islander not covered by section 54.

- (2) Either an interview friend or a legal representative (if he or she is not the interview friend) of the suspect must, if reasonably practicable, be present while the forensic procedure is carried out. Both an interview friend and a legal representative may be present.
- (3) Subsection (2) does not apply if the suspect expressly and voluntarily waives his or her right to have an interview friend present.

Note. Section 106 relates to proving a waiver.

- (4) An interview friend (other than a legal representative) of the suspect may be excluded from the place where the forensic procedure is being carried out if the interview friend unreasonably interferes with or obstructs the carrying out of the procedure.

56 Presence of police officers

- (1) The number of police officers who may be present during the carrying out of a forensic procedure must not exceed that which is reasonably necessary to ensure that the procedure is carried out effectively and in accordance with this Act.
- (2) Where the presence of a police officer (other than a police officer who is carrying out or helping to carry out the procedure) is reasonably necessary to ensure that a forensic procedure is carried out effectively and in accordance with this Act, the police officer is, if reasonably practicable:
 - (a) if the suspect is a child—to be a person of the sex chosen by the suspect or, if the suspect does not wish to make such a choice, a person of the same sex as the suspect, or
 - (b) in any other case—to be of the same sex as the suspect unless it is not practicable for such a police officer to attend within a reasonable time.

Note. Section 51 provides that, if practicable, most forensic procedures are to be carried out by persons of the same sex as the suspect.

- (3) This section does not apply to the following forensic procedures:
 - (a) the taking of hand prints, finger prints, foot prints or toe prints,
 - (b) any non-intimate forensic procedure that may be carried out without requiring the suspect to remove any clothing other than his or her overcoat, coat, jacket, gloves, socks, shoes, scarf or hat.

Division 5 Recording of forensic procedure

57 Recording of forensic procedure

- (1) The carrying out of a forensic procedure (other than the taking of a hand print, finger print, foot print or toe print) must be recorded by electronic means unless:
 - (a) the suspect objects to the recording, or
 - (b) the recording is not practicable.
- (2) Before the forensic procedure is carried out, the suspect must be informed:
 - (a) of the reasons for recording the carrying out of the forensic procedure, including the protection that the recording provides for the suspect, and
 - (b) that the suspect may object to a video recording.
- (3) Despite section 99, an interview friend of an Aboriginal person or a Torres Strait Islander not covered by section 54 has no right to object to the recording of the forensic procedure.

Note. Section 99 gives interview friends and legal representatives general powers to act on behalf of suspects. Section 54 applies to children and incapable persons, including children or incapable persons who are Aboriginal persons or Torres Strait Islanders, but does not apply to other Aboriginal persons or Torres Strait Islanders.
- (4) If the carrying out of the forensic procedure is not to be recorded by electronic means, the forensic procedure must be carried out in the presence of an independent person who is not a police officer.
- (5) Subsection (4) does not apply if the suspect expressly and voluntarily waives his or her right to have an independent person present.

Division 6 Procedure after forensic procedure is carried out

58 Samples—sufficient material to share

- (1) This section applies to a sample taken from a suspect under this Act if there is sufficient material to be analysed both in the investigation of the offence and on behalf of the suspect.

(2) The investigating police officer must ensure that:

- (a) a part of the material sufficient for analysis is made available to the suspect as soon as practicable after the procedure has been carried out, and
- (b) reasonable care is taken to ensure that the suspect's part of the material is protected and preserved until the suspect receives it, and
- (c) reasonable assistance is given to the suspect to ensure that the material is protected and preserved until it can be analysed.

Note. Part 13 contains provisions about making material available to the suspect.

59 Photographs

Where a forensic procedure involves the taking of a photograph of a part of a suspect's body, the investigating police officer must ensure that a copy of the photograph is made available to the suspect.

Note. Part 13 contains provisions about making copies of material available to the suspect.

60 Results of analysis

- (1) If material from a sample taken from a suspect is analysed in the investigation of an offence, the investigating police officer must ensure that a copy of the results of the analysis is made available to the suspect.
- (2) Subsection (1) does not require a copy of the results of an analysis to be made available to a suspect at any time when to do so would prejudice the investigation of any offence. However, the copy must be made available to the suspect a reasonable time before evidence of it is adduced in any prosecution of the suspect for the offence.
- (3) This section does not require the destruction of a DNA profile derived from a sample.

Note. Part 13 contains provisions about making copies of material available to the suspect.

Part 7 Carrying out of certain forensic procedures after conviction of serious indictable offenders

61 Forensic procedures and offenders to which Part applies

- (1) **Intimate forensic procedures to which Part applies**
This Part applies to the taking of a sample of blood.
- (2) **Non-intimate procedures to which Part applies**
This Part applies to the following non-intimate forensic procedures:
 - (a) the taking of a sample of hair other than pubic hair,
 - (b) the taking of a hand print, finger print, foot print or toe print.
- (3) **Other forensic procedures to which Part applies**
This Part applies to the taking of a sample by buccal swab.
- (4) A person is authorised to carry out a forensic procedure under this Part on a person who is serving a sentence of imprisonment for a serious indictable offence in a correctional centre or other place of detention whether or not the offender was convicted of the offence before or after the commencement of this section.

62 Non-intimate forensic procedures authorised to be carried out on serious indictable offenders

- (1) A person is authorised to carry out a non-intimate forensic procedure to which this Part applies on a person (other than a child or an incapable person) who is serving a sentence of imprisonment for a serious indictable offence in a correctional centre or other place of detention:
 - (a) with the informed consent of the serious indictable offender, or
 - (b) by order of a police officer under section 70.
- (2) A person is authorised to carry out a non-intimate forensic procedure to which this Part applies on a child, or an incapable person, who is serving a sentence of imprisonment for a serious indictable offence in a correctional centre or other place of detention by order of a court under section 74.

63 Intimate forensic procedures authorised to be carried out on serious indictable offenders

- (1) A person is authorised to carry out an intimate forensic procedure to which this Part applies on a person (other than a child or an incapable person) who is serving a sentence of imprisonment for a serious indictable offence in a correctional centre or other place of detention:
 - (a) with the informed consent of the serious indictable offender, or
 - (b) by order of a court under section 74.
- (2) A person is authorised by this section to carry out an intimate forensic procedure in accordance with Part 6 as applied by section 65 and not otherwise.

64 Authority to take buccal swabs from serious indictable offenders

- (1) A person is authorised to take a sample by buccal swab from a person (other than a child or an incapable person) who is serving a sentence of imprisonment for a serious indictable offence in a correctional centre or other place of detention:
 - (a) with the informed consent of the serious indictable offender, or
 - (b) by order of a court under section 74.

Note. Section 70 authorises a police officer to take a sample of hair other than pubic hair if consent to the taking of a sample by buccal swab is refused.

- (2) A person is authorised by this section to take a sample by buccal swab in accordance with Part 6 as applied by section 65 and not otherwise.

65 Application of Part 6

- (1) Part 6 applies to the carrying out of a forensic procedure on a serious indictable offender under this Part as if the references to the suspect in Part 6 were references to a serious indictable offender.
- (2) A person is authorised by section 62, 63 or 64 to carry out a forensic procedure in accordance with Part 6 as applied by this section and not otherwise.

66 Scope of authorisation

- (1) A person is not authorised to carry out a forensic procedure under this Part on a serious indictable offender if the serious indictable offender is a suspect or a volunteer.

- (2) A forensic procedure may be carried out on a serious indictable offender who is a suspect only if authorised by and in accordance with Parts 2–5.
- (3) A forensic procedure may be carried out on a serious indictable offender who is a volunteer only if authorised by and in accordance with Part 8.

67 Informed consent to forensic procedures

- (1) A serious indictable offender gives informed consent to the carrying out of a forensic procedure under this Part if the offender consents to the carrying out of the procedure after a police officer:
 - (a) requests the offender to consent to the forensic procedure under section 68, and
 - (b) informs the offender about the forensic procedure in accordance with section 69, and
 - (c) gives the offender the opportunity to communicate, or attempt to communicate, with a legal practitioner of the offender's choice.
- (2) The police officer must allow the offender to communicate, or attempt to communicate, with the legal practitioner in private unless the police officer suspects on reasonable grounds that the offender might attempt to destroy or contaminate any evidence that might be obtained by carrying out the forensic procedure.

Note. Section 103 states that the burden lies on the prosecution to prove on the balance of probabilities that a police officer had a belief on reasonable grounds.

68 Police officer may request offender to consent to forensic procedure

A police officer may request a serious indictable offender (other than a child or an incapable person) to consent to a forensic procedure to which this Part applies being carried out on the offender.

69 Matters that offender must be informed of before giving consent

- (1) The police officer must (personally or in writing) inform the serious indictable offender of the following:
 - (a) the purpose for which the forensic procedure is required,
 - (b) if the police officer wants the forensic procedure carried out in relation to an offence—the offence concerned,

-
- (c) the way in which the forensic procedure is to be carried out,
 - (d) that the forensic procedure may produce evidence against the offender that might be used in a court of law,
 - (e) that the forensic procedure will be carried out by a person who may carry out the procedure under Part 6 as applied by section 65,
 - (f) if the forensic procedure is the taking of a sample of blood—that the offender may request that the correctional centre medical officer be present while the blood is taken,
 - (g) that the offender may refuse consent to the carrying out of the forensic procedure,
 - (h) the consequences of not consenting, as specified in subsection (2), (3) or (4) (whichever is applicable),
 - (i) the effect of section 84 (if applicable),
 - (j) that information obtained from analysis of forensic material obtained from carrying out the forensic procedure may be placed on the DNA database system and used for the purposes of a criminal investigation or for any other purpose for which the DNA database system may be used under Part 11 or 12.
- (2) **Failure to consent to non-intimate forensic procedure**
The police officer must (personally or in writing) inform a serious indictable offender requested to undergo a non-intimate forensic procedure to which this Part applies that, if the offender does not consent, a police officer may order the carrying out of the forensic procedure under section 70 if the police officer has taken into account the matters set out in section 71.
- (3) **Failure to consent to intimate forensic procedure**
The police officer must (personally or in writing) inform a serious indictable offender requested to undergo an intimate forensic procedure to which this Part applies that, if the offender does not consent, an application may be made to a court for an order authorising the carrying out of the forensic procedure.
- (4) **Failure to consent to taking of sample by buccal swab**
The police officer must (personally or in writing) inform a serious indictable offender requested to permit the taking of a sample by buccal swab, that, if the offender does not consent:
-

- (a) a senior police officer may order the taking of a sample of hair other than pubic hair under section 70, or
- (b) that an application may be made to a court for an order authorising the taking of a sample by buccal swab or some other forensic procedure.

70 Circumstances in which police officer may order non-intimate forensic procedures

- (1) A police officer may order the carrying out of a non-intimate forensic procedure on a serious indictable offender if:
 - (a) the offender has been requested under section 68 to consent to the carrying out of the forensic procedure, and
 - (b) the offender has not consented, and
 - (c) the police officer has taken into account the matters set out in section 71.
- (2) A police officer may take a sample of hair other than pubic hair from a serious indictable offender if:
 - (a) the offender has been requested under section 68 to consent to the taking of a sample by buccal swab, and
 - (b) the offender has not consented, and
 - (c) a senior police officer has ordered that the sample be taken after taking into account the matters set out in section 71.

71 Matters to be taken into account by police officer

In determining whether to make an order under section 70, the police officer concerned is to take into account whether this Act would authorise the forensic procedure to be carried out in the absence of the order.

72 Form of consent

The consent of a serious indictable offender to the carrying out of a forensic procedure under this Part is not effective unless:

- (a) the consent is in writing and in a form containing the particulars prescribed by the regulations, and
- (b) the consent is signed by the offender, and

- (c) the signature is witnessed by a person other than a police officer, and
- (d) the offender is given a copy of the consent as soon as practicable after it is signed and witnessed.

73 Record of police officer's order

- (1) The police officer must, at the time of, or as soon as practicable after, making an order under section 70, make a record of:
 - (a) the order, and
 - (b) the date and time when the order was made, and
 - (c) the reasons for making it,and sign the record.
- (2) The police officer must ensure that a copy of the record is made available to the serious indictable offender as soon as practicable after the record is made.

74 Court order for carrying out forensic procedure on serious indictable offender

- (1) A police officer may apply to any court for an order directing a serious indictable offender serving a sentence of imprisonment in a correctional centre or other place of detention to permit an intimate forensic procedure to which this Part applies to be carried out on the offender.
- (2) A police officer may apply to any court for an order for the carrying out of a non-intimate procedure to which this Part applies on a child or an incapable person who is a serious indictable offender.
- (3) A police officer may apply to any court for an order for the taking of a sample by buccal swab or the carrying out of any other forensic procedure on a serious indictable offender.
- (4) A police officer may make such an application to the court that is sentencing a serious indictable offender or to any court at a later time.
- (5) A court may order the carrying out of a forensic procedure under this section if satisfied that the carrying out of the forensic procedure is justified in all the circumstances.

Clause 74 Crimes (Forensic Procedures) Bill 2000

Part 7 Carrying out of certain forensic procedures after conviction of serious
 indictable offenders

- (6) In determining whether to make an order under this section, a court is to take into account whether this Act would authorise the forensic procedure to be carried out in the absence of the order.
- (7) An order under this section takes effect immediately. However, any forensic material taken must not (unless the sample is likely to perish if analysis is delayed) be analysed:
 - (a) until the expiration of any appeal period or after the final determination of any appeal in relation to the serious indictable offence committed by the serious indictable offender concerned, whichever is the later, or
 - (b) if the conviction is quashed.

75 Carrying out of forensic procedure following conviction

- (1) If a court orders a serious indictable offender who is serving a sentence of imprisonment in a correctional centre or other place of detention to permit a forensic procedure to be carried out, the court may order that a police officer, together with a person who, under Part 6 as applied by section 65, may carry out the forensic procedure, be permitted to attend on the offender in the correctional centre or place of detention to allow the forensic procedure to be carried out.
- (2) A serious indictable offender ordered under section 74 to permit the carrying out of a forensic procedure must not, without reasonable excuse, refuse or fail to permit the forensic procedure to be carried out.
Maximum penalty: 50 penalty units or 12 months imprisonment, or both.

Part 8 Carrying out of forensic procedures on volunteers and certain other persons

76 Carrying out of forensic procedures on volunteers

(1) In this Act:

volunteer means a person (other than a suspect):

- (a) who volunteers to a police officer to undergo a forensic procedure, or
- (b) in the case of a child or an incapable person—whose parent or guardian volunteers to a police officer that the child or incapable person undergo a forensic procedure.

(2) A person is authorised to carry out a forensic procedure:

- (a) on a volunteer other than a child or an incapable person—with the informed consent of the volunteer given in accordance with section 77, or
- (b) on a volunteer who is a child or an incapable person:
 - (i) with the informed consent of the parent or guardian of the volunteer given in accordance with section 77 or by order of a Magistrate under section 80, and
 - (ii) after the person has informed the child or incapable person that, even though consent has been given or an order made, if he or she objects to or resists the carrying out of the forensic procedure, it will not be carried out.

(3) Subsection (2) (b) (i) does not authorise a person to carry out a forensic procedure on a child or an incapable person who objects to or resists the carrying out of the forensic procedure.

(4) Part 6 applies to the carrying out of a forensic procedure under this Part as if the references to a suspect in that Part were references to a volunteer referred to in this section. A person is authorised by this section to carry out a forensic procedure on a volunteer in accordance with Part 6 as so applied and not otherwise.

77 Informed consent of volunteer or parent or guardian of volunteer

- (1) A volunteer, or parent or guardian of a volunteer, gives informed consent in accordance with this section if the volunteer, parent or guardian consents in the presence of an independent person (not being a police officer) after a police officer informs the volunteer, parent or guardian (personally or in writing) of the following matters:
 - (a) the way in which the forensic procedure is to be carried out,
 - (b) that the volunteer is under no obligation to undergo the forensic procedure,
 - (c) that the forensic procedure may produce evidence that might be used in a court of law,
 - (d) to the extent that they are relevant, the matters specified in subsection (2),
 - (e) that the volunteer, parent or guardian may consult a legal practitioner of the volunteer's, parent's or guardian's choice before deciding whether or not to consent to the forensic procedure,
 - (f) that the volunteer, parent or guardian may at any time withdraw consent to undergoing the forensic procedure or retention of the forensic material taken or of information obtained from the analysis of that material.
- (2) The police officer must (personally or in writing) inform the volunteer, or parent or guardian of the volunteer, of the following:
 - (a) that information obtained from analysis of forensic material taken from a person under this Part, and as to the identity of the person, may be placed on the DNA database system,
 - (b) if the police officer intends the information to be placed on the volunteers (limited purposes) index of that system—the purpose for which it is to be placed on that index and that the information may be used only for that purpose,
 - (c) if the police officer intends the information to be placed on the volunteers (unlimited purposes) index of that system—that the information may be used for the purposes of a criminal investigation or any other purpose for which the DNA database system may be used under Part 11 or 12,

- (d) that information placed on the DNA database system will be retained for such period as the Commissioner of Police and the volunteer (or in the case of a volunteer who is a child or an incapable person, a parent or guardian of the volunteer) agree and must then be removed from the system,
- (e) any other matters prescribed by the regulations.

78 Form of consent

The consent of a volunteer, or a parent or guardian of a volunteer, to the carrying out of a forensic procedure under this Part is not effective unless:

- (a) the consent is in writing and in a form containing the particulars prescribed by the regulations, and
- (b) the consent is signed by the volunteer, parent or guardian, and
- (c) the signature is witnessed by a person other than a police officer or other person involved in the investigation of an offence to which the forensic procedure relates, and
- (d) the volunteer, parent or guardian is given a copy of the consent as soon as practicable after it is signed and witnessed.

79 Withdrawal of consent

- (1) If a volunteer, or parent or guardian of a volunteer, expressly withdraws consent to the carrying out of a forensic procedure under this Part (or if the withdrawal of such consent can reasonably be inferred from the volunteer's, parent's or guardian's conduct) before or during the carrying out of the forensic procedure:
 - (a) the forensic procedure is to be treated from the time of the withdrawal as a forensic procedure for which consent has been refused, and
 - (b) the forensic procedure is not to proceed except (in the case of a child or incapable person) by order of a Magistrate under section 80.

- (2) If, after the carrying out of a forensic procedure under this Part on a volunteer, the volunteer, or the parent or guardian of the volunteer, expressly withdraws consent to retention of the forensic material taken or of information obtained from the analysis of that material, the forensic material and any information obtained from analysis of the material is, subject to any order made under section 81, to be destroyed as soon as practicable after the consent is withdrawn.
- (3) A police officer may request, but cannot require, a volunteer, or a parent or guardian of a volunteer, who withdraws consent to the carrying out of a forensic procedure under this Part to confirm the withdrawal of consent in writing.

80 Circumstances in which Magistrate may order the carrying out of forensic procedure on child or incapable person

- (1) A Magistrate may order the carrying out of a forensic procedure on a child or incapable person if:
 - (a) the consent of the parent or guardian of the child or incapable person to the carrying out of the forensic procedure cannot reasonably be obtained from a parent or guardian of the child or incapable person, or
 - (b) the parent or guardian of the child or incapable person refuses consent to the carrying out of the forensic procedure and the Magistrate is satisfied that there are reasonable grounds to believe that:
 - (i) the child or incapable person, or the parent or guardian, is a suspect, and
 - (ii) the forensic procedure is likely to produce evidence tending to confirm or disprove that he or she committed an offence, or
 - (c) the parent or guardian of the child or incapable person consented to the carrying out of the forensic procedure, but subsequently withdrew that consent.
- (2) In determining whether to make an order under this section, the Magistrate is to take into account the following:
 - (a) whether this Part would authorise the carrying out of the forensic procedure apart from this section,

-
- (b) if the forensic procedure is being carried out for the purposes of the investigation of a particular offence—the seriousness of the circumstances surrounding the commission of the offence,
 - (c) the best interests of the child or incapable person,
 - (d) so far as they can be ascertained, any wishes of the child or incapable person with respect to whether the forensic procedure should be carried out,
 - (e) except in the circumstances referred to in subsection (1) (b), any wishes expressed by the parent or guardian of the child or incapable person with respect to whether the forensic procedure should be carried out,
 - (f) whether the carrying out of the forensic procedure is justified in all the circumstances.
- (3) An order under this section may:
- (a) require the forensic procedure to be carried out at a time or place specified in the order, or
 - (b) specify the period for which forensic material obtained from carrying out the procedure may be retained,
- or both.

81 Retention of forensic material by order of a Magistrate after parent or guardian of child or incapable person withdraws consent

- (1) An authorised applicant may apply to a Magistrate for an order under subsection (2).
- (2) A Magistrate may order that forensic material taken or information obtained from carrying out a forensic procedure on a volunteer who withdraws consent to the retention of the material be retained if the Magistrate is satisfied that:
 - (a) during an investigation into the commission of a serious indictable offence 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

Clause 81 Crimes (Forensic Procedures) Bill 2000

Part 8 Carrying out of forensic procedures on volunteers and certain other persons

- (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 indictable 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 or information obtained from carrying out the procedure may be retained.

Part 9 Admissibility of evidence

Division 1 Forensic evidence

82 Inadmissibility of evidence from improper forensic procedures

- (1) This section applies where:
- (a) a forensic procedure has been carried out on a person, and
 - (b) there has been any breach of, or failure to comply with:
 - (i) any provision of this Act in relation to a forensic procedure carried out on a person (including, but not limited to, any breach of or failure to comply with a provision requiring things to be done at any time before or after the forensic procedure is carried out), or
 - (ii) any provision of Part 11 with respect to recording or use of information on the DNA database system.
- (2) This section does not apply if:
- (a) a provision of this Act required forensic material to be destroyed, and
 - (b) the forensic material has not been destroyed.
- Note.** Section 83 applies where this Act requires forensic material to have been destroyed.
- (3) This section applies:
- (a) to evidence of forensic material, or evidence consisting of forensic material, taken from a person by a forensic procedure, and
 - (b) to evidence of any results of the analysis of the forensic material, and
 - (c) to any other evidence made or obtained as a result of or in connection with the carrying out of the forensic procedure.
- (4) If this section applies, evidence described in subsection (3) is not admissible in any proceedings against the person in a court unless:
- (a) the person does not object to the admission of the evidence, or

- (b) in the opinion of the court the desirability of admitting the evidence outweighs the undesirability of admitting evidence that was not obtained in compliance with the provisions of this Act, or
 - (c) in the opinion of the court, the breach of, or failure to comply with, the provisions of this Act arose out of mistaken but reasonable belief as to the age of a child.
- (5) The matters that may be considered by the court for the purposes of subsection (4) (b) are the following:
 - (a) the probative value of the evidence,
 - (b) the reasons given for the failure to comply with the provision of this Act,
 - (c) the gravity of the failure to comply with the provisions of this Act, and whether the failure deprived the person of a significant protection under this Act,
 - (d) whether the failure to comply with the provision of this Act was intentional or reckless,
 - (e) the nature of the provision of this Act that was not complied with,
 - (f) the nature of the offence concerned and the subject matter of the proceedings,
 - (g) whether admitting the evidence would seriously undermine the protection given to suspects by this Act,
 - (h) whether the breach of or failure to comply with the provision of this Act was contrary to or inconsistent with a right of a person recognised by the International Covenant on Civil and Political Rights,
 - (i) whether any other proceeding (whether or not in a court) has been or is likely to be taken in relation to the breach or failure to comply,
 - (j) the difficulty (if any) of obtaining the evidence without contravention of an Australian law,
 - (k) any other matters the court considers to be relevant.
- (6) The probative value of the evidence does not by itself justify the admission of the evidence.

- (7) If a judge permits evidence to be given before a jury under subsection (4), the judge must:
- (a) inform the jury of the breach of, or failure to comply with, a provision of this Act, and
 - (b) give the jury such warning about the evidence as the judge thinks appropriate in the circumstances.

83 Inadmissibility of evidence where forensic material required to be destroyed

- (1) If a provision of this Act requires forensic material taken from a person by a forensic procedure to be destroyed, subsection (2) applies:
- (a) to evidence of the forensic material, and
 - (b) if the material has not been destroyed—to evidence consisting of the forensic material, and
 - (c) to any results of the analysis of the forensic material, and
 - (d) to any other evidence made or obtained as a result of or in connection with the carrying out of the forensic procedure.
- (2) The results of the analysis, and the other evidence, are not admissible if adduced by the prosecution in any proceedings against the person, but may be admissible if adduced in such proceedings by the person.

Division 2 Other evidence

84 Admissibility of evidence relating to consent to forensic procedure

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 or another person investigating the commission of the offence concerned acted contrary to law in carrying out that investigation.

85 Admissibility of evidence relating to carrying out of forensic procedure

Despite section 82 (4), evidence of how a forensic procedure was carried out is admissible in proceedings against a person in a court:

- (a) to establish or rebut an allegation that unreasonable force was used to enable the procedure to be carried out, or

Clause 85 Crimes (Forensic Procedures) Bill 2000

Part 9 Admissibility of evidence

Division 2 Other evidence

- (b) to determine the admissibility of a confession or admission or other evidence adverse to the person where the person alleges that the evidence was induced or obtained by the use of unreasonable force, or
- (c) to establish or rebut an allegation that the forensic procedure was not carried out in accordance with Part 6.

Part 10 Destruction of forensic material

86 Destruction of forensic material where interim order disallowed or specified retention period ended

- (1) If an interim order made under section 32 for the carrying out of a forensic procedure is disallowed after the forensic procedure is carried out, the investigating police officer must ensure that:
 - (a) any forensic material obtained as a result of carrying out the forensic procedure is destroyed as soon as practicable after the disallowance, and
 - (b) a copy of the results of any analysis of the forensic material are made available by the person who conducted the analysis to the suspect.

Note. Part 13 contains provisions about making copies of material available to the suspect. Section 3 (5) explains the meaning of **destroy**.

- (2) If an order for:
 - (a) the carrying out of a forensic procedure made under section 80, or
 - (b) the retention of forensic material under section 81,specifies a period for which forensic material obtained as a result of the carrying out of the procedure may be retained the forensic material is to be destroyed as soon as practicable after the end of the period.

87 Destruction of forensic material taken from offender after conviction quashed

If an order is obtained under section 75 for the carrying out of a forensic procedure on a serious indictable offender and the offender's conviction is quashed after the making of the order, the police officer who obtained the order (or some other police officer) must, as soon as practicable after the conviction is quashed, ensure that any forensic material obtained as a result of the carrying out of the procedure is destroyed.

88 Destruction of forensic material after 12 months

- (1) This section applies where forensic material has been taken from a suspect by a forensic procedure carried out under Part 3, 4 or 5.

- (2) If:
- (a) forensic material has been taken from a suspect, and
 - (b) a period of 12 months has elapsed since the forensic material was taken, and
 - (c) proceedings in respect of the offence in relation to which the forensic material was taken have not been instituted against the suspect, or have been discontinued,

the forensic material must be destroyed as soon as practicable unless a warrant for the apprehension of the suspect has been issued.

Note. Section 3 (5) explains the meaning of *destroy*.

- (3) If a warrant for the apprehension of the suspect is issued during the period of 12 months after forensic material is taken, the forensic material must be destroyed as soon as practicable after:
- (a) the warrant lapses, or
 - (b) a period of 12 months elapses after the suspect is apprehended.
- (4) If forensic material has been taken from a person who is a suspect and:
- (a) the person is found to have committed an offence to which the forensic material relates but no conviction is recorded, or
 - (b) the person is acquitted of such an offence and:
 - (i) no appeal is lodged against the acquittal, or
 - (ii) an appeal is lodged against the acquittal and the acquittal is confirmed or the appeal is withdrawn,

the forensic material must be destroyed as soon as practicable unless an investigation into, or a proceeding against the person for, another offence is pending.

- (5) A Magistrate may, on application by a police officer or the Director of Public Prosecutions, extend the period of 12 months referred to in subsection (2), or that period as previously extended under this subsection in relation to particular forensic material, if the Magistrate is satisfied that there are special reasons for doing so.
- (6) A Magistrate to whom an application is made under subsection (5) is not to extend the period unless:
- (a) the applicant for the extension has taken reasonable steps to notify the person from whom the forensic material was taken of the making of the application, and

- (b) the person or his or her legal representative or interview friend (if any) has been given an opportunity to speak to or make a submission to the Magistrate concerning the extension.
- (7) An extension in relation to particular forensic material may be given on more than one occasion.
- (8) The Magistrate is to ensure that the responsible person in relation to the DNA database system is notified of any extension given under this section.

Note. Part 13 contains provisions restricting the use of information obtained as a result of the carrying out of a forensic procedure.

89 Destruction of forensic material where related evidence is inadmissible

- (1) If a court finds that evidence described in section 82 relating to a forensic procedure is inadmissible under section 85, the Commissioner of Police must, as soon as practicable, ensure that the forensic material taken from the suspect by that forensic procedure is destroyed.
- (2) This section does not require the destruction of a DNA profile derived from forensic material.

Note. The Commissioner of Police may delegate this function. See section 31 of the *Police Service Act 1990*. Section 3 (5) explains the meaning of **destroy**.

Part 11 DNA database system

90 Definitions

In this Act:

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

- (a) at any place (whether within or outside Australia) where an offence (whether a serious indictable offence or a prescribed offence or an offence under the law of a participating jurisdiction) was, or is reasonably suspected of having been, committed, or
- (b) on or within the body of the victim of such an offence, or
- (c) on anything worn or carried by the victim at the time when such an offence was committed, or
- (d) on or within the body of any person, on any thing, or at any place, associated with the commission of such an offence.

DNA database system means a database (whether in computerised or other form and however described) containing:

- (a) the following indexes of DNA profiles:
 - (i) a crime scene index,
 - (ii) a missing persons index,
 - (iii) an offenders index,
 - (iv) a suspects index,
 - (v) an unknown deceased persons index,
 - (vi) a volunteers (limited purposes) index,
 - (vii) a volunteers (unlimited purposes) 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.

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 such persons.

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

- (a) in accordance with Part 7 or under a corresponding law of a participating jurisdiction from serious indictable offenders, and
- (b) from suspects who have been convicted of prescribed offences or offences under the laws of participating jurisdictions.

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

suspects index means an index of DNA profiles derived from forensic material taken from suspects in accordance with Part 3, 4 or 5 or under a corresponding law of a participating jurisdiction.

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

volunteers (limited purposes) index means an index of DNA profiles derived from forensic material taken in accordance with Part 8 or under a corresponding law of a participating jurisdiction from volunteers who (or whose parents or guardians) have been informed that information obtained will be used only for a purpose specified to them under section 77 (2) (b).

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

- (a) in accordance with Part 8 or under a corresponding law of a participating jurisdiction from volunteers who (or whose parents or guardians) have been informed under section 77 (2) (c) 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 this Part or Part 12, and
- (b) from deceased persons whose identity is known.

91 Supply of forensic material for DNA database system purposes

(1) A person:

- (a) whose conduct causes the supply of forensic material taken from any person under this Act (or under a corresponding law of a participating jurisdiction) to any person for prohibited analysis, and
- (b) who intends or is reckless as to the supply of material of that kind,

is guilty of an offence.

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

(2) A person:

- (a) whose conduct causes the supply of forensic material (other than permitted forensic material) to any person for analysis for the purpose of deriving a DNA profile for inclusion on an index of the DNA database system, and
- (b) who intends or is reckless as to the supply of material of that kind,

is guilty of an offence.

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

(3) In this section:

permitted forensic material means forensic material:

- (a) found at a crime scene, or
- (b) taken from a suspect in relation to an offence in accordance with Part 3, 4 or 5 or under a corresponding law of a participating jurisdiction and who is subsequently convicted of the offence, or
- (c) taken from an offender or a volunteer in accordance with Part 7 or 8 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 material is required to be destroyed by this Act or under a corresponding law of a participating jurisdiction.

92 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.

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

- (2) A person authorised by the responsible person for the DNA database system may access information stored on the DNA database system for one or more of the following purposes:
- (a) the purpose of forensic matching permitted under section 93,
 - (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 purposes of any arrangement entered into between the State and another State or Territory or the Commonwealth for the provision of access to information contained in the DNA database system by law enforcement officers or by any other persons prescribed by the regulations,
 - (e) the purposes of and in accordance with the *Mutual Assistance in Criminal Matters Act 1987*, or the *Extradition Act 1988*, of the Commonwealth,
 - (f) the purpose of a review of, or inquiry into, a conviction or sentence under Part 13A of the *Crimes Act 1900*,
 - (g) the purposes of the investigation of complaints about the conduct of police officers under Part 8A of the *Police Service Act 1990*,
 - (h) the purposes of a coronial inquest or inquiry,
 - (i) the purpose of the investigation of a complaint by the Privacy Commissioner,
 - (j) any other purposes prescribed by the regulations.

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

Note. Section 109 prevents the disclosure of accessed information except in certain specified circumstances.

93 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 table is not permitted by this Part 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, 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 was so placed.
- (2) 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 table is permitted by this Part if:
- (a) “yes” 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, 6, 7 or 8 opposite the volunteers (limited purposes) index specified in column 1 and the matching is carried out for a purpose for which the DNA profile placed on the volunteers (limited purposes) index was so placed.

Index of 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)	offenders	missing persons	unknown deceased persons
crime scene		yes	yes	no	yes	yes	yes	yes
suspects		yes	no	no	no	yes	no	yes
volunteers (limited purposes)		only if within purpose	no	no	no	only if within purpose	only if within purpose	only if within purpose
volunteers (unlimited purposes)		yes	no	no	no	yes	yes	yes
offenders		yes	yes	no	no	yes	yes	yes
missing persons		yes	yes	yes	yes	yes	yes	yes
unknown deceased persons		yes	yes	yes	yes	yes	yes	no

(3) A person:

- (a) whose conduct gives rise to a matching that is not permitted by this Part of a DNA profile on an index of the DNA database system with a DNA profile on the same or another index of the DNA database system, and
- (b) who intends or is reckless as to any such matching of profiles, is guilty of an offence.

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

- (4) This section does not make it an offence for conduct to cause a matching that is not permitted by this Part if the matching is solely for the purpose of administering the DNA database system.

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

(1) A person:

- (a) whose conduct causes any identifying information about a person obtained from forensic material taken from the person under this Act to be recorded or retained in a DNA database system at any time after this Act requires the forensic material to be destroyed, and

Note. See, for example, section 88 (2) which requires forensic material taken from a suspect to be destroyed if 12 months has elapsed since the forensic material was taken and proceedings have not been instituted against the suspect.

- (b) who intends or is reckless as to the recording or retention, is guilty of an offence.

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

- (2) The responsible person for the DNA database system must ensure that any identifying information relating to a person from whose forensic material a DNA profile on the volunteers (unlimited purposes) index or volunteers (limited purposes) index of the system was derived is removed from the system as soon as practicable after the end of the identifying period for the profile.

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

- (3) The responsible person for the DNA database system must remove any identifying information relating to a DNA profile of an offender on the offenders index of the system 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.

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

- (4) 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:

- (a) 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 (or, in the case of a volunteer who is a child or an incapable person, a parent or guardian of the volunteer), or
- (b) 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.

Part 12 Interstate enforcement

95 Definitions

In this Act:

appropriate authority means:

- (a) in relation to a participating jurisdiction other than the Australian Capital Territory—an authority exercising, in relation to the police force of that jurisdiction, functions corresponding to those of the Commissioner of Police and any other authority prescribed by the regulations, or
- (b) in relation to the Australian Capital Territory—the Commissioner of the Australian Federal Police and any other authority prescribed by the regulations.

corresponding law means a law relating to the carrying out of forensic procedures and DNA databases that substantially corresponds to Part 11 or that is prescribed by the regulations for the purposes of this definition.

DNA database means:

- (a) in relation to the State—the DNA database system, and
- (b) in relation to a participating jurisdiction—a DNA database system that is kept under a corresponding law of the participating jurisdiction.

participating jurisdiction means the Commonwealth, or a State or Territory, in which there is a corresponding law in force.

responsible Minister of a participating jurisdiction means a Minister of that jurisdiction who is responsible for administration of a corresponding law.

96 Registration of orders

- (1) The Minister may enter into arrangements with the responsible Ministers of the participating jurisdictions for the establishment and maintenance, in one of those jurisdictions, of a register of orders for the carrying out of forensic procedures made under corresponding laws of participating jurisdictions.

- (2) An order is registered when a copy of the order (being a copy certified by the person who made it) is registered in accordance with the law of the participating jurisdiction in which the register is kept.
- (3) A person is authorised to carry out the forensic procedure authorised by an order that is registered in accordance with such an arrangement in the State. The person is authorised to carry out the procedure in accordance with Part 6 and not otherwise.
- (4) An application for registration of an order, or for cancellation of registration of an order, may be made by the Commissioner of Police or an appropriate authority.

97 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 the State that may be relevant to the investigation of an offence against the law of the participating jurisdiction is to be transmitted to the appropriate authority in that jurisdiction for the purposes of the investigation of, or proceedings in respect of, that offence, and
 - (b) information from a DNA database of the participating jurisdiction that may be relevant to the investigation of an offence against the law of the State is to be transmitted to the Commissioner of Police for the purposes of the investigation of, or proceedings in respect of, that offence.
- (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.

Part 13 General provisions relating to operation of this Act

98 Interpreters

(1) Where:

- (a) a police officer proposes to take an action listed in subsection (2), and
- (b) the police officer believes on reasonable grounds that the suspect or serious indictable offender is unable, because of inadequate knowledge of the English language or a physical disability, to communicate orally with reasonable fluency in the English language,

the police officer must, before taking the proposed action, arrange for the presence of an interpreter, and defer taking the proposed action until the interpreter is present.

(2) The actions are as follows:

- (a) asking a suspect or offender to consent to a forensic procedure (Part 3 or 7),
- (b) ordering the carrying out of a non-intimate forensic procedure on, or taking of a sample by buccal swab from, a suspect or offender (Part 4 or 7),
- (c) applying to a Magistrate for an order for the carrying out of a forensic procedure on a suspect or offender (Part 5 or 7),
- (d) cautioning a suspect or offender (Part 6 or 7),
- (e) carrying out, or arranging for the carrying out of, a forensic procedure on a suspect or offender (Part 6 or 7),
- (f) giving a suspect or offender an opportunity to view a video recording made under this Act (section 100).

99 Powers and entitlements of legal representatives and interview friends

- (1) A request or objection that may be made by a suspect or offender under this Act may be made on the suspect's or offender's behalf by:
- (a) in any case—the suspect's or offender's legal representative, or
 - (b) if the suspect or offender is a child or an incapable person—an interview friend of the suspect or offender, or

- (c) if the investigating police officer believes on reasonable grounds that the suspect or offender is an Aboriginal person or a Torres Strait Islander—an interview friend of the suspect or offender.
- (2) If:
- (a) a provision of this Act requires a suspect or offender to be informed of a matter, and
 - (b) an interview friend or legal representative of the suspect or offender is present when the suspect or offender is to be so informed,
- the interview friend or legal representative must also be informed of the matter.

100 Obligation of investigating police officers relating to recordings

- (1) If a recording is made as required by a provision of this Act, the investigating police officer must ensure that:
- (a) if an audio recording only or a video recording only is made—the suspect, offender or volunteer concerned is given the opportunity to listen to or view the recording, and
 - (b) if both an audio recording and a video recording are made:
 - (i) the suspect, offender or volunteer concerned is given an opportunity to listen to the audio recording, and
 - (ii) the suspect, offender or volunteer concerned is given an opportunity to view the video recording, and
 - (c) in any case, if a transcript of the recording is made—a copy of the transcript is made available to the suspect, offender or volunteer concerned.
- (2) Where an investigating police officer is required to ensure that a suspect, offender or volunteer is given an opportunity to view a video recording made under this Act, the investigating police officer must ensure that the same opportunity is given to:
- (a) in any case—the suspect's, offender's or volunteer's legal representative, and
 - (b) if the suspect, offender or volunteer is a child or an incapable person—an interview friend of the suspect, offender or volunteer, and

- (c) if the investigating police officer believes on reasonable grounds that the suspect, offender or volunteer is an Aboriginal person or a Torres Strait Islander—an interview friend of the suspect, offender or volunteer.

101 Material required to be made available to suspect, offender or volunteer

- (1) Without limiting the way in which material from samples, copies, or any other material, that must be made available to a suspect, offender or volunteer under this Act may be made available, it:
 - (a) may be sent to the suspect, offender or volunteer at his or her last known address (if any), or to the suspect's, offender's or volunteer's legal representative (if any) at his or her last known address, or
 - (b) if there is no known address as mentioned in paragraph (a)—may be made available for collection by the suspect, offender or volunteer at the police station where the investigating police officer was based at the time the forensic procedure was carried out.
- (2) Material of any kind (other than material from samples and copies of records made under section 36) that is required by this Act to be made available to a suspect, offender or volunteer must be made available in accordance with subsection (1):
 - (a) within 90 days after the material comes into existence, or
 - (b) if the material is requested by the suspect, offender or volunteer or the suspect's, offender's or volunteer's interview friend or legal representative, within 90 days of the request.

Note. The timing of making copies of section 36 records available is covered in section 36 (5).

102 No charge to be made for material or viewing video

If a provision of this Act requires material of any kind to be given to a suspect, offender or volunteer, or an opportunity to view a video recording to be given to a suspect, offender or volunteer, the material or the opportunity to view the video recording must be given without charge.

103 Proof of belief or suspicion

In any proceedings, the burden lies on the prosecution to prove on the balance of probabilities that a police officer had a belief on reasonable grounds, or suspected on reasonable grounds, as to a matter referred to in this Act.

104 Proof of impracticability

In any proceedings, the burden lies on the prosecution to prove on the balance of probabilities that it was not practicable to do something required by this Act to be done if practicable.

105 Proof that time should be disregarded

In any proceedings, the burden lies on the prosecution to prove on the balance of probabilities that any particular time was covered by a provision of section 16 (2), 40 (2) or 53 (2).

106 Proof of voluntary waiver of certain rights

In any proceedings:

- (a) the burden lies on the prosecution to prove that an Aboriginal person or Torres Strait Islander has waived a right as mentioned in section 10 (3), 30 (4), 55 (3) or 57 (5), and
- (b) the burden is not discharged unless the court is satisfied on the balance of probabilities that the person voluntarily waived that right, and did so with full knowledge and understanding of what he or she was doing.

107 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 anything properly and necessarily done or omitted to be done in good faith by the person in carrying out or helping to carry out the forensic procedure if the person believed on reasonable grounds that:

- (a) informed consent had been given to the carrying out of the forensic procedure, or

- (b) the carrying out of the forensic procedure without informed consent had been duly ordered by a police officer or Magistrate under this Act.

Note. This section does not provide any protection in respect of action taken maliciously or recklessly.

108 Experts not obliged to carry out forensic procedures

Nothing in this Act requires a medical practitioner, nurse, dentist, dental technician or appropriately qualified police officer or person to carry out a forensic procedure.

109 Disclosure of information

- (1) 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 suspect, offender or volunteer,must not disclose that information except as provided by this section.
- (2) A person may only disclose information stored on the DNA database system for one or more of the following purposes:
 - (a) the purposes of forensic comparison in the course of a criminal investigation by a police officer or other person prescribed by the regulations,
 - (b) the purposes of making the information available, in accordance with the regulations, to the person to whom the information relates,
 - (c) the purposes of administering the DNA database system,
 - (d) the purposes of any arrangement entered into between the State and another State or Territory or the Commonwealth for the provision of access to information contained in the DNA database system by law enforcement officers or by any other persons prescribed by the regulations,
 - (e) the purposes of a review, or inquiry into, a conviction or sentence under Part 13A of the *Crimes Act 1900*,
 - (f) the purposes of an investigation of a complaint by the Privacy Commissioner,
 - (g) any other purpose prescribed by the regulations.

-
- (3) A person may only disclose information revealed by the carrying out of a forensic procedure on a suspect, offender or volunteer:
- (a) if the person is the suspect, offender or volunteer to whom the information relates, or
 - (b) if the information is already publicly known, or
 - (c) in accordance with any other provision of this Act, or
 - (d) in accordance with the *Mutual Assistance in Criminal Matters Act 1987*, or the *Extradition Act 1988*, of the Commonwealth, or
 - (e) for the purposes of the investigation of any offence or offences generally, or
 - (f) for the purpose of a decision whether to institute proceedings for an offence, or
 - (g) for the purpose of proceedings for any offence, or
 - (h) for the purpose of a coronial inquest or inquiry, or
 - (i) for the purpose of civil proceedings (including proceedings under Part 9 of the *Police Service Act 1990*) that relate to the way in which the procedure was carried out, or
 - (j) for the purpose of the suspect's, offender's or volunteer's medical treatment, or
 - (k) for the purpose of the medical treatment of a victim of an offence that there are reasonable grounds to believe was committed by the suspect, or
 - (l) if the suspect, offender or volunteer consents in writing to the disclosure, or
 - (m) for the purposes of the investigation of complaints about the conduct of police officers under Part 8A of the *Police Service Act 1990*, or
 - (n) for the purposes of scrutiny by the Ombudsman under section 121, or
 - (o) for any other purpose prescribed by the regulations.
- (4) This section does not apply in relation to information that cannot be used to discover the identity of any person.

(5) A person:

- (a) whose conduct gives rise to the disclosure of information in contravention of this section, and
 - (b) who intends or is reckless as to the disclosure,
- is guilty of an offence.

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

110 Retention of electronic recordings

- (1) A recording made by electronic means by a police officer in accordance with this Act that is no longer required for investigative or evidentiary purposes may be retained for such other purposes, and for such period, as the Commissioner of Police directs.
- (2) A recording that is retained under this section is to be stored so as to protect it against unauthorised access or use by any person.

Part 14 Operation of this Act and effect on other laws

111 Act does not apply to persons under 10

This Act does not authorise the carrying out of a forensic procedure on a person who is under 10 years of age.

112 Relationship with sections 353A and 353AA of the Crimes Act 1900 and section 63 of the Crimes (Sentencing Procedure) Act 1999

This Act does not apply to the taking of photographs, hand prints, finger prints, foot prints or toe prints:

- (a) from a suspect who is under 14 years of age, if the suspect is in lawful custody as mentioned in section 353AA of the *Crimes Act 1900*, or
- (b) from a suspect who is at least 14 years of age, if the suspect is in lawful custody as mentioned in section 353A (3) of the *Crimes Act 1900*, or
- (c) from an offender as referred to in section 63 of the *Crimes (Sentencing Procedure) Act 1999*.

113 Relationship with Part 10A of the Crimes Act 1900

- (1) Nothing in this Act is intended to limit the rights and protections provided by Part 10A of the *Crimes Act 1900* to the extent that the provisions of that Part can operate in circumstances covered by this Act.
- (2) The rights and protections conferred by this Act are in addition to those conferred by Part 10A of the *Crimes Act 1900* but, to the extent (if any) that compliance with this Act results in compliance with that Part, the requirements of that Part are satisfied.

114 Application of other laws

- (1) This Act is not intended to limit or exclude the operation of another law of the State relating to the following:
 - (a) the carrying out of forensic procedures, including procedures not referred to in this Act,

- (b) without limiting paragraph (a), the carrying out of breath analysis or a breath test or the production of samples of blood or urine to determine the level of alcohol or drugs, if any, present in a person's body,
 - (c) the taking of forensic samples, including samples not referred to in this Act,
 - (d) the taking of identification evidence,
 - (e) the carrying out of searches of a person,
 - (f) the retention or use of forensic material or information obtained as a result of activities described in paragraph (a), (b), (c), (d) or (e).
- (2) It is declared that even though another law of the State provides power to do one or more of the things referred to in subsection (1), a similar power conferred by this Act may be used despite the existence of the power under the other law.

115 Taking, retention and use of forensic material

- (1) **Taking, retention and use authorised by laws of other jurisdictions**
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 is authorised by or under another law of the State or a law of the Commonwealth.
- (2) Forensic material, or information obtained from it, that is taken in accordance with the law of another State or a Territory may be retained or used in the State for investigative, statistical or evidentiary purposes even if its retention or use would, but for this subsection, constitute a breach of, or failure to comply with, any provision of this Act relating to the carrying out of forensic procedures.
- (3) **Use and retention of forensic material taken before commencement of subsection**
Forensic material, or information obtained from it, that was taken in accordance with the law of this or another State or a Territory, as in force immediately before the commencement of this subsection, may be retained or used in the State for investigative, statistical or evidentiary purposes even if its retention or use would, but for this subsection, constitute a breach of, or failure to comply with, any provision of this Act relating to the carrying out of forensic procedures.

Part 15 Miscellaneous

116 Lists of interview friends

- (1) The Minister must, so far as is reasonably practicable, establish, and update at such intervals as the Minister thinks appropriate, a list, in relation to a part of the State where there are likely to be persons under arrest or serving sentences of imprisonment in a correctional centre or other place of detention, of the names of persons (not being police officers) who:
 - (a) are suitable to help Aboriginal persons or Torres Strait Islanders under arrest or serving a sentence of imprisonment, and
 - (b) are willing to give such help in that part of the State.
- (2) In establishing and maintaining a list in relation to a part of the State, the Minister must from time to time consult with any Aboriginal legal aid organisation providing legal assistance to Aboriginal persons or Torres Strait Islanders in that part of the State.
- (3) The Minister may, in writing, delegate to a person employed in the Attorney General's Department all or any of the functions of the Minister under this section.

117 Proceedings for offences

Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

118 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, the regulations may make provision for or with respect to:
 - (a) the DNA database system, or
 - (b) the registration of orders under Part 12.
- (3) A regulation may create an offence punishable by a penalty not exceeding 20 penalty units.

119 Amendments

Each Act specified in Schedule 1 is amended as set out in that Schedule.

120 Savings, transitional and other provisions

Schedule 2 has effect.

121 Monitoring of operation of Act by Ombudsman

- (1) For the period of 2 years after the commencement of this section the Ombudsman is to keep under scrutiny the exercise of the functions conferred on police officers under this Act.
- (2) For that purpose, the Ombudsman may require the Commissioner of Police to provide information about the exercise of those functions.
- (3) The Ombudsman must, as soon as practicable after the expiration of that 2-year period, prepare a report of the Ombudsman's work and activities under this section and furnish a copy of the report to the Minister, the Minister for Police and the Commissioner of Police.
- (4) The Ombudsman may identify, and include recommendations in the report to be considered by the Minister about, amendments that might appropriately be made to this Act with respect to the exercise of functions conferred on police officers under this Act.
- (5) The Ombudsman may at any time make a special report on any matter arising out of the operation of this Act to the Minister.
- (6) The Minister is to lay (or cause to be laid) a copy of any report made or furnished to the Minister under this section before both Houses of Parliament as soon as practicable after the Minister receives the report.
- (7) If a House of Parliament is not sitting when the Minister seeks to furnish a report to it, the Minister may present copies of the report to the Clerk of the House concerned.
- (8) The report:
 - (a) on presentation and for all purposes is taken to have been laid before the House, and
 - (b) may be printed by authority of the Clerk of the House, and
 - (c) if printed by authority of the Clerk, is for all purposes taken to be a document published by or under the authority of the House, and

- (d) is to be recorded:
 - (i) in the case of the Legislative Council—in the Minutes of the Proceedings of the Legislative Council, and
 - (ii) in the case of the Legislative Assembly—in the Votes and Proceedings of the Legislative Assembly,on the first sitting day of the House after receipt of the report by the Clerk.

122 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 18 months from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period referred to in subsection (2).

123 Inquiry by Standing Committee on Law and Justice

- (1) The Committee of the Legislative Council established under the name of the “Standing Committee on Law and Justice” is to enquire into and report on the operation of this Act and the regulations.
- (2) The report is to be tabled in the Legislative Council as soon as possible after the end of the period of 18 months from the date of assent to this Act.
- (3) Without limiting the matters that the Committee may take into account for the purposes of its enquiry and report, it may take into account the following:
 - (a) any relevant provisions of the Model Forensic Procedures Bill 1999 set out in Appendix 3 of the Discussion paper dated May 1999 prepared by the Model Criminal Code Officers Committee or of any State, Commonwealth or other law,
 - (b) the wider social and legal implications of use of information obtained from matching of DNA profiles derived from forensic material,
 - (c) the effectiveness of matching of DNA profiles as an investigative tool,

Clause 123 Crimes (Forensic Procedures) Bill 2000

Part 15 Miscellaneous

- (d) the reliability of the matching of DNA profiles for the purposes of forensic identification.
- (4) The Committee may make recommendations in its report about amendments that might appropriately be made to the Act to enhance its operation and provide further safeguards for the privacy and civil liberty of persons on whom forensic procedures are carried out, or proposed to be carried out, under the Act.
- (5) The Committee is to furnish a copy of the report to the Ombudsman for consideration.

Schedule 1 Amendments

(Section 119)

1.1 Crimes Act 1900 No 40

Section 353A Power to search person, make medical examination, take photograph, finger-print or palm-print

Omit section 353A (3A) and (3B).

1.2 Justices Act 1902 No 27

Section 104 When an appeal can be made by a defendant or other person

Insert after section 104 (5):

(6) **Appeals concerning orders under the Crimes (Forensic Procedures) Act 2000**

An appeal under this Division on a ground that involves a question of law alone may be made to the Supreme Court:

- (a) against an order made by a Magistrate under the *Crimes (Forensic Procedures) Act 2000* authorising the carrying out of a forensic procedure on a person, or
- (b) against the refusal of a Magistrate to make such an order.

Schedule 2 Savings, transitional and other provisions

(Section 120)

Part 1 Savings and transitional regulations

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
this Act
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of Act

2 Forensic procedures

- (1) This Act does not apply in respect of the carrying out of a forensic procedure on a person:
 - (a) arrested for an offence, or
 - (b) charged with an offence, or
 - (c) summonsed to appear before a court in relation to an offence, before the commencement of this clause.

-
- (2) Section 353A (3A) and (3B) of the *Crimes Act 1900* continue to apply to and in respect of the taking of samples of the blood, saliva and hair of a person taken into lawful custody before the commencement of this clause.

3 DNA database system

- (1) Nothing in this Act prevents a DNA profile derived from forensic material found, or obtained from the carrying out of a forensic procedure, before the commencement of this clause from being placed on the appropriate index of the DNA database system.
- (2) However, information obtained from analysis of forensic material taken from a volunteer before that commencement is not to be placed on the DNA database system unless the volunteer (or in the case of a child or an incapable person, a parent or guardian of the volunteer) has been informed of the matters set out in section 77 (2).