

INQUIRY INTO THE USE OF VICTIMS' DNA

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Date received: 14/09/2009

Department of Justice and Attorney General Submission

**LEGISLATIVE COUNCIL STANDING COMMITTEE ON LAW AND
JUSTICE**

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<September 2009>

BACKGROUND

Forensic material is any physical material taken from a suspect, crime scene, victim or other source and includes, for example, samples taken from individuals in the form of buccal swabs and rape kits as well as blood found at the scene of a crime.

Forensic materials can be used in a number of ways. This submission focuses on the use of the profiles derived from material which contains deoxyribonucleic acid (DNA). A **profile** is a string of numbers derived by means of a chemical and analytical process which describes a portion of the DNA.

NSW has a **database** on which most profiles are uploaded. The database facilitates **matching** between profiles: so that, for example, a profile taken from a suspect can be compared to profiles taken from crime scenes and matched to a particular scene. Part 11 of the *Crimes (Forensic Procedures) Act 2000* (the Act) contains rules on what matching can and cannot occur. Limitations are placed on profiles acquired from certain sources, for example, a profile taken from a volunteer for a particular purpose can only ever be matched for that purpose and can never be matched against profiles taken from suspects.

NSW also takes part in the National Criminal Investigation DNA Database (**NCIDD**). Through an agreement it has with CrimTrac and agreements it has with other jurisdictions in Australia, NSW can both exchange samples with other jurisdictions and match profiles against profiles uploaded by other jurisdictions.

Once a match has occurred between two samples on the database, certain inferences can be drawn. Three examples are:

One, a match between a sample on the crime scene index of the database and a sample on the offender index would be powerful evidence that the person's DNA was present at that scene and would tend to suggest that that person was there.

Two, a match between a crime scene profile and another crime scene profile would tend to suggest that the same person was at both the crime scenes.

Three, a match between a missing persons profile and a suspect would tend to suggest that the suspect is the same person as the missing person.

This information can be used, amongst other things, to build a case against a suspect. The knowledge that a certain person is likely to have been at a certain place is useful to police as an identifier of offenders. Once a person has been identified, police can focus on that person and gather further evidence to use against her or him. For the purposes of this submission, this type of use will be referred to as **'investigative use.'**

The knowledge that a certain person is likely to have been at a certain place is of itself evidence which can be presented in court against that person. For the purposes of this submission, this type of use will be referred to as **'forensic use.'**

THE FORENSIC MATERIAL OF VICTIMS

There are two ways that the Government can come into possession of the forensic material of a victim of a crime. First, by way of a forensic procedure conducted on the person. Second, by taking a sample from a crime scene.

Forensic procedures conducted on victims

Forensic procedures conducted on most victims of crime are **not** conducted pursuant to the Act (see Part 8 of that Act generally and the definition of “excluded volunteer” in section 76A). Rather, they are conducted pursuant to a protocol settled between the Minister for Police and the Attorney General. A copy of the protocol is attached for your information.

An example of such a procedure is a buccal swab taken from a victim of a break and enter offence in order to exclude him or her from other evidence at the scene.

DJAG is not of the view that the treatment of these materials or profiles derived from them is in any way deficient. These profiles are either not loaded onto the database, or loaded on specific indexes designated for them. If loaded into these databases, matching is limited by Part 11 of the Act.

Under Part 11, a victim can volunteer their DNA for a limited or unlimited purpose. In the former case, the use of the DNA is restricted for the purpose for which it was provided. It can be matched against other profiles, but only in so far as doing so is within the ambit of the purpose for which it was acquired. In the latter case, the DNA profile can be matched against other profiles on the database. However, in both cases, no matching is permitted with profiles from certain sources (see table in section 93 of the Act).

Crime scene samples

Almost any sample taken from a crime scene might contain forensic material belonging to a victim. A stark example of where this might occur is a semen sample taken as part of a sexual assault kit which would almost certainly contain some material belonging to the victim intermingled with the semen. Another example is material belonging to the occupiers of premises which have been broken into.

NSW has limited the investigative use of profiles derived from victims by adopting a policy that it will take all reasonable steps to avoid matching such profiles except:

- in order to exclude that person from an investigation;
- where the person consents in writing; or
- against other profiles found or taken during the course of the particular investigation in which the sample is found.

The Department of Justice and Attorney General (DJAG) is advised that the Department of Health, which manages the DNA database, takes particular care to ensure that profiles known or reasonably suspected to belong to victims derived from material found at crime scenes are not placed on the crime scene index, and hence matched against other crimes. However, there are cases in which it is not clear that a sample relates to a victim. In those circumstances, the profile derived from that sample is uploaded to the crime scene index of the database. If at a later time it becomes apparent that a profile belongs to a victim it is removed from the database.

Concerns about Crime Scene Samples

It remains possible that one of these samples will be matched to another sample on the crime scene index, and hence a crime before it is identified as belonging to a victim and taken off the database. The existence of that link poses significant ethical problems and throws into sharp relief the conflicting imperatives of protecting victims from prosecution so as to encourage them to come forward and report crimes, and allowing victims and their families to know the identity of their assailants. Acting on that link may result in the 'victim' being charged, which may in turn deter other victims from coming forward. On the other hand, not acting on the link may result in that particular crime remaining unsolved.

Moreover, DJAG understands that some other jurisdictions in Australia do, or have in the past, put victims' profiles on their crime scene indexes. Such policies create the risk that a NSW crime could be matched against a victim in another jurisdiction.

For this reason, the Attorney General, at the request of the Police Commissioner, wrote to the Chief Executive Officer of the CrimTrac agency, which manages the National DNA Database, and requested that DNA profiles from NSW crime scenes on the National Database not be matched against DNA profiles from crime scenes in other jurisdictions. Whilst this negates the danger of putting a victim from another jurisdiction in jeopardy, it means that police are losing valuable intelligence from crime scene to crime scene links which do not involve victims.

Conflicting imperatives

One of the key benefits of a DNA criminal investigation database is the ability to link individuals to crimes where there is no other evidence or lead which would bring that link to the attention of investigators. This is known as a '**cold link**'. Cold links provide a significant benefit to society in general and individual victims in particular when they lead to convictions for offences which would not otherwise be brought to justice.

Thus a cold link involving a victim's profile might be the only basis that police have to investigate an offence. Denying or limiting that use may result in less offenders being prosecuted.

Equally, the danger of being linked to offences committed in the past may result in victims not coming forward to report crimes, causing a significant cost to society in allowing offenders to escape prosecution, and leaving victims without access to support services, such as assistance and treatment for their physical and mental injuries, for fear of being linked, through their DNA, to a crime in their past.

DISCUSSION OF PROPOSED SOLUTIONS

A number of ideas have been put forward as solutions to this issue. The proposed solutions are discussed below to assist the Standing Committee in its deliberations. Most focus upon a legislative limitation on the forensic and investigative use of DNA known to have come from or reasonably suspected to have come from a victim of crime against that victim. The discussion begins with a 'total' ban on use and then raises some of the possible exceptions to that ban.

Legislative prohibition

A legislative prohibition on the forensic use of DNA known to have come from or reasonably suspected to have come from a victim of crime against that victim, or any evidence derived from its use would fall firmly upon the side of providing protection and support to victims of crime. A similar prohibition exists in section 83A of the *Crimes (Forensic Procedures) Act 2000* in relation to forensic material taken for the purpose of identifying missing persons.

The extension of the prohibition to evidence derived from using a victim's profile ensures that the prohibition on forensic use cannot be circumvented by investigation based on the profile.

The current policy of taking all reasonable steps to avoid matching victims' profiles noted above would remain but the prohibition would protect those samples placed on the database which are subsequently found to belong to a victim. One consequence is that the victim may be identified as the suspect in another crime however investigators would not be able to pursue that link by further investigations based on that information or use the evidence of the link in court.

A complete legislative ban would go some way to relieving some of the difficulties of conflicting priorities by removing the need for a decision maker to balance the conflicting interests. It would also mean that NSW would be less exposed to the dangers of the policies of other jurisdictions as to the treatment of profiles belonging to victims found at crime scenes. If a victim in another jurisdiction is linked to a crime in NSW they would not face prosecution in NSW. This absolute protection would allow reconsideration of the existing crime scene profile to crimes scene profile matching ban, and would provide a significant intelligence boon to police.

Vulnerable victims

An alternative proposal is to provide specific legislative protection, but only to particularly vulnerable victims such as victims of sexual assault and domestic violence offences through legislation specifically preventing the use of these victims' DNA against themselves, including where the sample has already been linked to another crime. The difficulties of encouraging such victims to come forward and report crimes of these offences is well documented. The basis, therefore, for distinguishing such victims from others is sound.

Whether that distinction will be taken into account by those reporting crime is not known. It is possible that victims of these offences will become reluctant to come forward because they have heard of others being prosecuted having done so, notwithstanding the protection for the particular kind of offence.

Serious offence inclusions

A second possible proposal would be to allow the use of victims' DNA found at crime scenes to prosecute victims for serious offences only. For example, a victim of a stabbing whose DNA is acquired at a crime scene could have his or her DNA used against him or her if linked to a murder charge, but not if linked to a simple break and enter offence.

Victims who are also offenders will be aware of the crimes they have committed in the past and may, for fear of detection, be less inclined to report crimes. This compromise position acknowledges the two competing interests. It affords protection to most victims to encourage them to report crime. However, where crime scene DNA belonging to a victim is matched with a serious crime, the exception would allow the use of the evidence and hence the finalisation of the outstanding matter.

Discretionary exclusion

Another proposal is to provide a court with the discretionary power to allow the use of victims' DNA against the victim. This would allow investigative use of the information through the matching database but would prevent the forensic use except with the permission of the court at trial. One difficulty with this course is that a victim is likely to have been arrested, brought before the court and, potentially, remanded into custody for a significant period before a court decides whether or not to allow the use of the DNA. It is possible that the fear of being brought before a

court and refused bail will have a negative effect on crime reporting almost as high as allowing general usage of victims' profiles without any limitations.



VICTIMS PROTOCOL

Conducting a forensic procedure in relation to a victim of a personal violence offence

- 1 This Protocol applies to the carrying out of forensic procedures¹ upon the following excluded volunteers:
 - (a) a person who volunteers to a police officer to undergo a forensic procedure in relation to an offence under Part 3, or Subdivision 2 of Division 1 of Part 4, of the *Crimes Act 1900* of which the person is a victim, or
 - (b) a child or incapable person whose parent or guardian volunteered to a police officer that the child or incapable person undergo a forensic procedure in relation to an offence under Part 3, or Subdivision 2 of Division 1 of Part 4, of the *Crimes Act 1900* of which the child or incapable person is a victim.

This Protocol *does not* apply to:

 - (a) excluded volunteers as defined in s76A (c) or (d) of the *Crimes (Forensic Procedures) Act 2000*, or
 - (b) the taking of photographs of an excluded volunteer which constitute a non-intimate forensic procedure (that is, the taking of a photograph of a part of a person's body, other than the person's private parts).
- 2 A victim of any personal violence offence² must be treated with courtesy, compassion and respect for their rights and dignity (*Charter of Victim's Rights*; section 6, *Victims Rights Act 1996*).
- 3 A forensic procedure may only be carried out with the consent of the victim, in the case of an adult, or in accordance with paragraphs 6, 7 and 8 in respect of children, young persons and incapable persons. A police officer should only ask a victim of a personal violence offence, or a person legally responsible for the victim (where applicable), to consent to a forensic procedure if the forensic procedure is likely to be useful for the investigation of the offence against the victim.
- 4 A victim or a person legally responsible for him/her (where applicable) may withdraw consent. In the case of a child aged between 10 and 14, the forensic procedure must not be carried out if either the child or the person legally responsible withdraws consent. In addition, a forensic procedure must not be carried out if the victim objects to or resists the carrying out of the procedure.

¹ The terms "forensic procedure", "intimate forensic procedure", "non-intimate forensic procedure" and "incapable person" have the same meaning as defined in section 3 of the *Crimes (Forensic Procedures) Act 2000* ('the Act'). A copy of these definitions is annexed (Annexure A).

² For the purposes of the Protocol, a victim of a personal violence offence means an "excluded volunteer", as defined in s76A (a) and (b) of the *Crimes (Forensic Procedures) Act 2000*. A copy of this definition is annexed (Annexure A).

5. When a police officer asks a victim to consent to a forensic procedure, the victim should be informed of:
- The type of forensic procedure to be carried out;
 - The way in which the forensic procedure will be carried out;
 - Why the police officer believes the forensic procedure is required;
 - Their right to refuse to undergo the procedure;
 - If they consent, their right to withdraw consent at any time;
 - Their right to consult a legal practitioner;
 - That the procedure will only be carried out with their written consent as per Annexure B; and
 - If a sample is to be taken from the victim for the purpose of obtaining a DNA profile, the information in Annexure C should be explained to the victim and their written consent then obtained.
6. If the victim is a *child or young person*, the information in paragraph 5 and Annexures B and/or C must be given to, and consent obtained from:
- Where the child is less than 10 years old: a person legally responsible for the victim, that is, a person with parental responsibility or guardianship ('the appropriate adult'). Where appropriate, the victim should be provided with information about the procedure to be carried out.
 - Where the child is between 10 and 14 years old: the appropriate adult and the child;
 - Where the child/young person is aged 14 and over: the child/young person.
7. If the victim is an *incapable person*, the information in paragraph 5 and Annexures B and/or C must be given to, and consent obtained from, a person legally responsible for the victim, that is, a person with parental responsibility or guardianship ('the appropriate adult'). Where appropriate, the victim should be provided with information about the procedure to be carried out.
8. If the victim is a child, young person or incapable person, and the appropriate adult is the alleged offender, consent must be obtained from another person with legal responsibility for the victim.
9. A victim is entitled to have a support person of their choice present at the time they are asked to consent to the procedure and when the procedure is carried out UNLESS:
- that person is the alleged offender; or
 - it is not reasonably practicable for that person to attend,
- in which case another support person chosen by the victim may be present.
- Where the victim is a child aged under 14 or is an incapable person, the appropriate adult must be present, unless that person is the alleged offender. Where reasonably practicable, the victim may also have another support person of their choice present.


10. Where the victim is capable of giving consent, but needs assistance to understand the information in paragraph 5 and Annexures B and/or C, every reasonable effort must be made to assist the person to understand the process and procedure and make an informed decision. This should include, as appropriate:
 - If a victim cannot communicate orally in English with reasonable fluency, the use of an interpreter;
 - If a victim is hearing-impaired, the use of an interpreter or appropriate communication aid;
 - If a victim cannot read, the information must be read to them.
11. Every reasonable effort must be made to ensure that the forensic procedure is carried out in privacy, as quickly as possible and with minimum discomfort and inconvenience to the victim.
12. Carrying out forensic procedures must not involve the removal of more of the victim's clothing or more inspection or examination of the victim than is necessary.
13. Subject to paragraphs 14 and 15, forensic procedures may only be carried out on a victim by the persons nominated in Annexure D.
14. If the victim is a victim of any form of sexual assault and the forensic procedure to be conducted is any of the following forensic procedures:
 - an external or internal examination of a person's private parts,
 - the taking from a person of a sample of the person's pubic hair,
 - the taking from a person of a sample of any matter, by swab or washing, from the person's private parts,
 - the taking from a person of a sample of any matter, by vacuum suction, scraping or lifting by tape, from the person's private parts,
 - the taking from a person of an impression or cast of a wound from the person's private parts.

then only a medical practitioner or nurse employed or contracted by NSW Health Services and appropriately qualified to undertake sexual assault forensic examinations may conduct the procedure on the victim, consistent with NSW Health policies and procedures for sexual assault services:
15. If the victim is a victim of a sexual assault and the forensic procedure to be conducted is the taking of a photograph of the person's private parts, then the primary responsibility for this is taken by the NSW Police Force, using appropriately qualified police officers.

A medical practitioner, nurse or other appropriately qualified person employed or contracted by NSW Health Services may also conduct the procedure.

Where such photographs are to be taken, suitable premises and clothing or draping should be provided by the Area Health Service. In circumstances where the victim prefers, the photographs may be taken by Sexual Assault Service staff, using the equipment provided by and under the guidance of NSW Police Force crime scene officers.

16. If the victim is not a victim of a sexual assault and the forensic procedure to be carried out is an intimate forensic procedure (see Annexure A), the victim should be given the option of having a medical practitioner or nurse conduct the procedure or be present during the procedure.
17. Intimate forensic procedures (other than the collection of blood, saliva or the taking of a dental impression) must not be carried out:
- In the presence or view of a person who is of the opposite sex to the victim or the opposite gender to a transgender person's identified gender, unless there is no other option and the victim consents. Police should always try to offer the victim the choice of having the procedure conducted by an officer of the same gender; or
 - In the presence or view of a person who is not needed for the conduct of the procedure.
18. Property of the victim taken as possible forensic evidence should be returned as soon as it is no longer needed in connection with the investigation of the offence and any court proceedings and any inconvenience to the victim should be minimised. However, the victim's safety should be borne in mind at all times and items that are no longer safe to handle (eg bloody clothing stored for a long time) may not be returned. In such a case the victim should be informed of the reasons why it is not possible to return the item.
19. In applying this Protocol, police officers should also have regard to the requirements of the NSW Police Force Victims Support Policies and Procedures.

signed  date 20/8/07
John Hatzistergos
Attorney General

signed  date 13/11/07
David Campbell
Minister for Police

ANNEXURE A

FORENSIC PROCEDURE means:

- (a) an intimate forensic procedure, or
- (b) a non-intimate forensic procedure.

BUT DOES NOT INCLUDE:

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

Note: Nothing in this Protocol prohibits a medical practitioner from asking a person to consent to, or from conducting, a sexual assault forensic examination that involves the intrusion into a person's body cavities.

INTIMATE FORENSIC PROCEDURE means any of the following:

- an external examination of a person's private parts,
- the carrying out on a person of an other-administered buccal swab,
- (c) the taking from a person of a sample of the person's blood,
- (d) the taking from a person of a sample of the person's pubic hair,
- (e) the taking from a person of a sample of any matter, by swab or washing, from the person's private parts,
- (f) the taking from a person of a sample of any matter, by vacuum suction, scraping or lifting by tape, from the person's private parts,
- (g) the taking from a person of a dental impression,
- (h) the taking of a photograph of the person's private parts,
- (i) the taking from a person of an impression or cast of a wound from the person's private parts.

NON-INTIMATE FORENSIC PROCEDURE means any of the following:

- (a) an external examination of a part of a person's body, other than the person's private parts, that requires touching of the body or removal of clothing,
- (b) the carrying out on a person of a self-administered buccal swab,
- (c) the taking from a person of a sample of the person's hair, other than pubic hair,
- (d) the taking from a person of a sample (such as a nail clipping) of the person's nails or of matter from under the person's nails,
- (e) the taking from a person of a sample of any matter, by swab or washing, from any external part of the person's body, other than the person's private parts,
- (f) the taking from a person of a sample of any matter, by vacuum suction, scraping or lifting by tape, from any external part of the person's body, other than the person's private parts,

- (g) the taking from a person of the person's hand print, finger print, foot print or toe print,
- (h) the taking of a photograph of a part of a person's body, other than the person's private parts,
- (i) the taking from a person of an impression or cast of a wound from a part of the person's body, other than the person's private parts,
- (j) the taking of a person's physical measurements (whether or not involving marking) for biomechanical analysis of an external part of the person's body, other than the person's private parts.

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.

NURSE means a registered nurse or an enrolled nurse, within the meaning of the *Nurses Act 1991*.

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

For the purposes of the Protocol, **EXCLUDED VOLUNTEER** means:

a person who volunteers to a police officer to undergo a forensic procedure in relation to an offence under Part 3, or Subdivision 2 of Division 1 of Part 4, of the *Crimes Act 1900* of which the person is a victim, or

a child or incapable person whose parent or guardian volunteered to a police officer that the child or incapable person undergo a forensic procedure in relation to an offence under Part 3, or Subdivision 2 of Division 1 of Part 4, of the *Crimes Act 1900* of which the child or incapable person is a victim.

Note: This Protocol does not apply to an excluded volunteer as defined in s76A (c) or (d) of the *Crimes (Forensic Procedures) Act 2000*.

ANNEXURE B

Forensic Procedure Consent Form Victims of Personal Violence Offences

Adult or Child / Young Person 14 Years of Age or Older

I, _____, who was born on _____ consent
to the following forensic procedure/s being carried out on me:

I understand that the forensic procedure/s are necessary for the proper investigation of the offence committed against me and that evidence obtained from carrying out the forensic procedure/s may be used in evidence in Court (COPS Event No. _____).

have:

- * been given an Information Sheet that I have read and understood or
 - * had an Information Sheet read to me, the contents of which I understood
- (* delete whichever is not applicable)

DNA Sample (Delete if not applicable)

I consent to the DNA sample that I have been requested to provide being conveyed to a forensic laboratory for the purpose of obtaining a DNA profile. I understand that the DNA profile will be stored securely and will only be used for the purpose of investigating the offence committed against me.

signed
(Victim)

...date...

signed date
(Witness) *

signed date.
(Interpreter – if applicable)

* if reasonably practicable, the witness should be someone other than a police officer or a person involved in the investigation of the offence to which the procedure relates.

**Forensic Procedure Consent Form
Victims of Personal Violence Offences**

Child 10 Years of Age or Older But Less Than 14 Years of Age

_____, born on _____, and I,

_____, being a person legally responsible for the victim, consent to the following forensic procedure/s being carried out on me/the victim:

We understand that the forensic procedure/s are necessary for the proper investigation of the offence committed against me/the victim and that evidence obtained from carrying out the forensic procedure/s may be used in evidence in Court (COPS Event No. _____).

We have:

- * been given an Information Sheet that I/we have read and understood, or
 - * had an Information Sheet read to me, the contents of which I/we understood
- (* delete whichever is not applicable)

**DNA Sample
(Delete if not applicable)**

We consent to the DNA sample that I/the victim has been requested to provide being conveyed to a forensic laboratory for the purpose of obtaining a DNA profile. We understand that the DNA profile will be stored securely and will only be used for the purpose of investigating the offence committed against me/the victim.

signed. date.
(Victim)

signed.....date.....
(Person legally responsible for the victim)*

signed.... ... date
(Witness)*

signed.....date.....
(Interpreter – if applicable)

* a forensic procedure cannot be performed on a child over 10 years of age but less than 14 years of age unless consent is obtained from the child and the person legally responsible for the victim.

* if reasonably practicable, the witness should be someone other than a police officer or a person involved in the investigation of the offence to which the procedure relates.

Forensic Procedure Consent Form^{*}
Victims of Personal Violence Offences

Adult or Child / Young Person 14 Years of Age or Over

_____, born on _____ consent
to the Sexual Assault Kit that was obtained from me on _____
being forwarded to the Division of Analytical Laboratories for analysis and DNA
profiling. I understand that the analysis and profiling of the samples are
necessary for the proper investigation of the offence committed against me and
that evidence obtained from this analysis and profiling may be used as
evidence in Court. The offence being investigated is

_____(COPS Event No. _____)

signed..... ..date
(Victim)

signed..... ..date...
(Witness) ^{*}

signed..... ..date.
(Interpreter – if applicable)

^{*} This Consent Form should be used when a Sexual Assault Kit has been obtained from the victim, by a doctor or nurse, **prior** to the offence being reported to the police.

^{*} if reasonably practicable, the witness should be someone other than a police officer or a person involved in the investigation of the offence to which the procedure relates.

**Forensic Procedure Consent Form
Victims of Personal Violence Offences**

Child Under 10 Years of Age or Incapable Person

_____, being a person legally responsible
for _____, who was born on _____ consent
to the following forensic procedure/s being carried out on him/her:

I understand that the forensic procedure/s are necessary for the proper investigation of the offence committed against him/her and that evidence obtained from carrying out the forensic procedure/s may be used in evidence in Court (COPS Event No. _____).

have:

- * been given an Information Sheet that I have read and understood, or
 - * had an Information Sheet read to me, the contents of which I understood
- (* delete whichever is not applicable)

**DNA Sample
(Delete if not applicable)**

I consent to the DNA sample that _____ has been requested to provide being conveyed to a forensic laboratory for the purpose of obtaining a DNA profile. I understand that the DNA profile will be stored securely and will only be used for the purpose of investigating the committed offence against him/her.

signed.....date..... signed date
(Person legally responsible for the victim)* (Witness)*

signed.....date.
(Interpreter – if applicable)

* a forensic procedure cannot be performed on a child over 10 years of age but less than 14 years of age unless consent is obtained from the child and the person legally responsible for the victim.
* if reasonably practicable, the witness should be someone other than a police officer or a person involved in the investigation of the offence to which the procedure relates.

Forensic Procedure Consent Form[▼]
Victims of Personal Violence Offences

Child 10 Years of Age or Older But Less Than 14 Years of Age

(Consent Form to be read to, and signed by, the victim and
the person legally responsible for the victim)

_____ (the victim), born _____ and
_____, being a person legally
responsible for the victim, consent to the Sexual Assault Kit that was obtained from
me / the victim on _____ being forwarded to the Division of
Analytical Laboratories for analysis and DNA profiling. We understand that the
analysis and profiling of the samples are necessary for the proper investigation of the
offence committed against me / the victim and that evidence obtained from this
analysis and profiling may be used as evidence in Court. The offence being
investigated is

_____ (COPS Event No. _____)

signed date...
(Victim)

signed date.....
(Person legally responsible for the victim)[♦]

signed date...
(Witness) ^{*}

signed date
(Interpreter – if applicable)

[▼] This Consent Form should be used when a Sexual Assault Kit has been obtained from the victim, by a doctor or nurse, prior to the offence being reported to the police.

[♦] a forensic procedure cannot be performed on a child over 10 years of age but less than 14 years of age unless consent is obtained from the child and the person legally responsible for the victim.

^{*} if reasonably practicable, the witness should be someone other than a police officer or a person involved in the investigation of the offence to which the procedure relates.

Forensic Procedure Consent Form[▼]
Victims of Personal Violence Offences

Child 10 Years of Age or Older But Less Than 14 Years of Age

(Consent Form to be read to, and signed by, the victim and
the person legally responsible for the victim)

_____ (the victim), born _____, and
_____, being a person legally
responsible for the victim, consent to the Sexual Assault Kit that was obtained from
me / the victim on _____ being forwarded to the Division of
Analytical Laboratories for analysis and DNA profiling. We understand that the
analysis and profiling of the samples are necessary for the proper investigation of the
offence committed against me / the victim and that evidence obtained from this
analysis and profiling may be used as evidence in Court. The offence being
investigated is

_____(COPS Event No. _____)

signed
(Victim)

date.

signed.....date.....
(Person legally responsible for the victim)^{*}

signed
(Witness) ^{*}

date.

signed.....date.....
(Interpreter – if applicable)

[▼] This Consent Form should be used when a Sexual Assault Kit has been obtained from the victim, by a doctor or nurse, prior to the offence being reported to the police.

^{*} a forensic procedure cannot be performed on a child over 10 years of age but less than 14 years of age unless consent is obtained from the child and the person legally responsible for the victim.

^{*} if reasonably practicable, the witness should be someone other than a police officer or a person involved in the investigation of the offence to which the procedure relates.

ANNEXURE C

Forensic Procedure Information Sheet Victims of Personal Violence Offences

Adult or Child / Young Person 14 Years of Age or Over

Prior to asking you to consent to undergo a forensic procedure, I wish to provide you with the following information.

- The forensic procedure is needed:

(state the reason why police believe the forensic procedure is required)

- The offence the procedure relates to is:

- The procedure will be carried out by an appropriately qualified police officer or person in the following manner:

(self-administered or other-administered buccal (mouth) swab, hair sample, blood sample, photograph etc.)

- The forensic procedure will only be carried out with your written consent. You may withdraw this consent at any time.
- You have the right to consult a legal practitioner of your choice prior to consenting.

DNA Sample

(cross out if not applicable)

- » The DNA sample to be taken from you will be placed in a tamper-evident bag, which will be sealed in your presence. The sample will be stored securely by the NSW Police Force until it is taken to the Division of Analytical Laboratories for analysis and profiling.
- » At all times, your DNA profile and the remainder of the DNA sample will be stored securely by the Division of Analytical Laboratories.
- » Your DNA profile will only be used for the purpose of investigating the offence committed against you and evidence in relation to the profile may be used in Court in proceedings against the alleged offender in connection with that offence.
- » After the investigation and all Court proceedings in connection with the offence have been finalised, you may request that the police officer in charge of your case ensures that the remainder of the DNA sample, any existing DNA extract and information linking the profile to you is destroyed.
- » The request for destruction will need to be in writing to the NSW Police Force. The NSW Police Force will consider any such request on its merits. In some circumstances e.g. if there is a risk that a case could be re-opened, a request may not be granted immediately.

- Do you understand the information that has just been read to you? Yes / No

**Forensic Procedure Information Sheet
Victims of Personal Violence Offences**

Child Under 10 Years of Age or Incapable Person

(Information Sheet to be read to person legally responsible for the victim)

Prior to asking you to consent to _____ undergoing a forensic procedure, I wish to provide you with the following information

- The forensic procedure is needed:

(state the reason why police believe the forensic procedure is required)

- The offence the procedure relates to is:

- The procedure will be carried out by an appropriately qualified police officer or person in the following manner:

(self-administered or other-administered buccal (mouth) swab, hair sample, blood sample, photograph etc.)

- The forensic procedure will only be carried out with your written consent. You may withdraw this consent at any time.
- You have the right to consult a legal practitioner of your choice prior to consenting.

DNA Sample

(cross out if not applicable)

- » The DNA sample to be taken from you will be placed in a tamper-evident bag, which will be sealed in your presence. The sample will be stored securely by the NSW Police Force until it is taken to the Division of Analytical Laboratories for analysis and profiling.
- » At all times, your DNA profile and the remainder of the DNA sample will be stored securely by the Division of Analytical Laboratories.
- » Your DNA profile will only be used for the purpose of investigating the offence committed against you and evidence in relation to the profile may be used in Court in proceedings against the alleged offender in connection with that offence.
- » After the investigation and all Court proceedings in connection with the offence have been finalised, you may request that the police officer in charge of your case ensures that the remainder of the DNA sample, any existing DNA extract and information linking the profile to you is destroyed.
- » The request for destruction will need to be in writing to the NSW Police Force. The NSW Police Force will consider any such request on its merits. In some circumstances e.g. if there is a risk that a case could be re-opened, a request may not be granted immediately.

- Do you understand the information that has just been read to you? Yes No

**Forensic Procedure Information Sheet
Victims of Personal Violence Offences**

Child 10 Years of Age or Older But Less Than 14 Years of Age

(Information sheet to be read to the victim and person legally responsible for the victim)

Prior to asking you and _____ (*person legally responsible for the victim*) to consent to you undergoing a forensic procedure, I wish to provide you with the following information.

- The forensic procedure is needed:

(state the reason why police believe the forensic procedure is required)

- The offence the procedure relates to is:

- The procedure will be carried out by an appropriately qualified police officer or person in the following manner:

(self-administered or other-administered buccal (mouth) swab, hair sample, blood sample, photograph etc.)

- The forensic procedure will only be carried out with your written consent and the written consent of _____.
- You or _____ (*person legally responsible for the victim*) may withdraw this consent at any time.
- You have the right to consult a legal practitioner of your choice prior to consenting.

DNA Sample

(cross out if not applicable)

- » The DNA sample to be taken from you will be placed in a tamper-evident bag, which will be sealed in your presence. The sample will be stored securely by the NSW Police Force until it is taken to the Division of Analytical Laboratories for analysis and profiling.
- » At all times, your DNA profile and the remainder of the DNA sample will be stored securely by the Division of Analytical Laboratories.
- » Your DNA profile will only be used for the purpose of investigating the offence committed against you and evidence in relation to the profile may be used in Court in proceedings against the alleged offender in connection with that offence.
- » After the investigation and all Court proceedings in connection with the offence have been finalised, you may request that the police officer in charge of your case ensures that the remainder of the DNA sample, any existing DNA extract and information linking the profile to you is destroyed.
- » The request for destruction will need to be in writing to the NSW Police Force. The NSW Police Force will consider any such request on its merits. In some circumstances e.g. if there is a risk that a case could be re-opened, a request may not be granted immediately.

- Do you understand the information that has just been read to you? Yes / No

ANNEXURE D

Type of forensic procedure		Who may carry out the forensic procedure
1	External examination of a person's private parts	Medical practitioner Nurse Appropriately qualified police officer or person
2	The taking of a sample of blood	Medical practitioner Nurse Appropriately qualified police officer or person
3	The taking of a sample of saliva, or a sample by an other-administered buccal swab	Medical practitioner Nurse Appropriately qualified police officer or person
4	The taking of a sample of pubic hair	Medical practitioner Nurse
5	The taking of a sample of any matter, by swab or washing from the person's private parts	Medical practitioner Nurse Appropriately qualified police officer or person
6	The taking of a sample by vacuum suction, scraping or lifting by tape from the person's private parts	Medical practitioner Nurse Appropriately qualified police officer or person
7	The taking of a dental impression	Medical practitioner Dentist Dental technician
8	The taking of a photograph of, or an impression or cast of a wound from a person's private parts	Medical practitioner Nurse Appropriately qualified police officer or person
9	External examination of a part of the body other than a person's private parts that requires touching of the body or removal of clothing	Medical practitioner Nurse Appropriately qualified police officer or person
10	The taking of a sample of hair other than pubic hair	Medical practitioner Nurse Appropriately qualified police officer or person

Type of forensic procedure		Who may carry out the forensic procedure
11	The taking from a person of a sample (such as a nail clipping) of the person's nails or of matter from under the person's nails	Medical practitioner Nurse Appropriately qualified police officer or person
12	The taking of a sample of any matter, by swab or washing from any external part of the body other than the person's private parts	Medical practitioner Nurse Appropriately qualified police officer or person
13	The taking from a person of a sample of any matter, by vacuum suction, scraping or lifting by tape from any external part of the body other than the person's private parts.	Medical practitioner Nurse Appropriately qualified police officer or person
14	The taking of a hand print, finger print, foot print or toe print	Appropriately qualified police officer or person
15	The taking of a photograph of a part of a person's body, other than the person's private parts	Appropriately qualified police officer or person
16	The taking of an impression or cast of a wound from a part of the body other than the person's private parts.	Appropriately qualified police officer or person
17	The taking of a person's physical measurements (whether or not involving marking) for biomechanical analysis of an external part of the body other than the person's private parts.	Appropriately qualified police officer or person