

South Australia

## **Criminal Law (Forensic Procedures) Act 2007**

An Act to provide for carrying out forensic procedures to obtain evidence relevant to the investigation of criminal offences and for other purposes; to make provision for a DNA database system; and for other purposes.

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## Legislative history

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### The Parliament of South Australia enacts as follows:

## Part 1—Preliminary

### 1—Short title

This Act may be cited as the *Criminal Law (Forensic Procedures) Act 2007*.

### 3—Interpretation

- (1) In this Act, unless the contrary intention appears—
- assimilation order* means an order under section 37;
  - child* means a person under the age of 18 years;
  - closest available next of kin* means—
    - (a) in relation to a child, the first in order of priority of the following persons who is not a protected person and is available at the time:
      - (i) a parent of the child;
      - (ii) a brother or sister of the child;

- (iii) a guardian of the child; and
- (b) in relation to any other person, the first in order of priority of the following persons who is not a protected person and is available at the time:
  - (i) the spouse or domestic partner of the person;
  - (ii) a son or daughter of the person;
  - (iii) a parent of the person;
  - (iv) a brother or sister of the person;

**corresponding law** means a law of another jurisdiction that provides for carrying out forensic procedures and is prescribed by regulation for the purposes of this definition;

**DNA database system**—see section 40;

**domestic partner** means a person who is a domestic partner within the meaning of the *Family Relationships Act 1975*, whether declared as such under that Act or not;

**forensic material** means material obtained by carrying out a forensic procedure (but does not include the results of the analysis of any such material);

**forensic procedure** means a procedure carried out by or on behalf of South Australia Police or a law enforcement authority and consisting of—

- (a) the taking of prints of the hands, fingers, feet or toes; or
- (b) an examination of a part of a person's body (but not an examination that can be conducted without disturbing the person's clothing and without physical contact with the person); or
- (c) the taking of a sample of biological or other material from a person's body (but not the taking of a detached hair from the person's clothing); or

**Note—**

This would include, for example, taking a sample of the person's hair, a sample of the person's fingernails or toenails or material under the person's fingernails or toenails, a blood sample, a sample by buccal swab or a sample of saliva.

- (d) the taking of an impression or cast of a part of a person's body;

**Note—**

This would include, for example, the taking of a dental impression or the taking of an impression or cast of a wound.

**guardian** means a person acting or appointed under any Act or law as the guardian of another;

**gun shot residue procedure** means a forensic procedure consisting of the taking of samples by swab or other similar means of the hands and fingers of a person for the purposes of determining the presence of gun shot residue;

**intrusive forensic procedure** means—

- (a) a forensic procedure that involves exposure of, or contact with, the genital or anal area, the buttocks or the breast region of a female person or a transgender or intersex person who identifies as female; or
- (b) the taking of a dental impression; or

(c) the taking of a sample of blood,

but does not include a simple identity procedure;

**investigating police officer** means a police officer in charge of the investigation of a suspected offence;

**medical practitioner**, in relation to a forensic procedure, means a person who is registered as a medical practitioner in the jurisdiction in which the procedure is to be carried out and includes, in relation to a forensic procedure involving the mouth or teeth or an impression left by the mouth or teeth, a person who is registered as a dentist in the jurisdiction in which the procedure is to be carried out;

**offenders procedure**—see section 20;

**police officer** includes a law enforcement officer to whom the powers of a police officer under this Act are extended by regulation;

**protected person** means—

- (a) a child; or
- (b) a person physically or mentally incapable of understanding the nature and consequences of a forensic procedure;

**quality assurance register** means a register maintained by the Commissioner of Police for quality assurance purposes that contains DNA profiles derived from biological material from—

- (a) police officers; and
- (b) persons involved in the conduct of forensic procedures under this Act; and
- (c) persons involved in the analysis of forensic material;

**retention order** means an order under section 36;

**senior police officer** means a police officer of or above the rank of inspector;

**serious offence** means—

- (a) an indictable offence; or
- (b) a summary offence that is punishable by imprisonment;

**simple forensic procedure** means a forensic procedure consisting of 1 or more of the following:

- (a) a simple identity procedure;
- (b) a gun shot residue procedure;
- (c) a forensic procedure prescribed by regulation for the purposes of this definition;

**simple identity procedure** means a forensic procedure consisting of 1 or more of the following:

- (a) the taking of prints of the hands or fingers of a person;
- (b) the taking of forensic material from a person by buccal swab or finger-prick for the purpose of obtaining a DNA profile of the person;

**spouse**—a person is the spouse of another if they are legally married;

*suspects/offenders index*—see section 40;

*suspects procedure* means a forensic procedure authorised under Part 2 Division 2 and includes, for the purposes of Part 3, a forensic procedure authorised under Part 2 Division 4;

*telephone* includes any device for voice telecommunication;

*volunteers (limited purposes) index*—see section 40;

*volunteers and victims procedure*—see section 7;

*volunteers (unlimited purposes) index*—see section 40.

- (2) A reference in this Act to the closest available next of kin of a person means, where there are 2 or more persons having a description referred to in a subparagraph of paragraph (a) or (b) of the definition of *closest available next of kin* in subsection (1), any 1 of those people.

**Note—**

This means, for example, that where this Act requires the consent of the closest available next of kin of a person to the carrying out of a forensic procedure, the procedure may be authorised by the consent of any 1 of the closest available next of kin (being persons who are equal in the order of priority in the definition of that term), even if the other closest available next of kin do not consent.

- (3) For the avoidance of doubt, a procedure consisting of the taking of a sample of biological material from—
- (a) a police officer; or
  - (b) a person involved in the conduct of forensic procedures under this Act; or
  - (c) a person involved in the analysis of forensic material,
- for the purpose of obtaining a DNA profile of the person to be included in the quality assurance register does not constitute a forensic procedure for the purposes of this Act.
- (4) For the purposes of this Act, a person is *suspected of a serious offence* if the police officer by or on whose instructions a forensic procedure is to be carried out on the person suspects the person, on reasonable grounds, of having committed a serious offence (whether or not the person has been charged with the offence).

#### 4—Application of Act

- (1) Nothing in this Act applies to—
- (a) a forensic procedure authorised under another law of this State; or
  - (b) a search of a person.

**Note—**

Forensic procedures authorised under another law would include, for example, the taking of a sample of breath, blood or oral fluid from a person under the *Road Traffic Act 1961*.

- (2) The fact that a particular class of forensic procedure may be authorised under another law of this State does not prevent that class of forensic procedure from being authorised under this Act, unless the other law specifically excludes the operation of this Act.

- (3) Except for Part 5 and Part 7, this Act does not apply to a forensic procedure carried out on the body of a deceased person.

## 5—Extra-territorial operation

It is the intention of the Parliament that this Act apply within the State and outside the State to the full extent of the extra-territorial legislative capacity of the Parliament.

# Part 2—Authorisation of forensic procedures

## Division 1—Volunteers and victims procedures

### 6—Interpretation

In this Division—

*protected person* means—

- (a) a child under the age of 16 years; or
- (b) a person physically or mentally incapable of understanding the nature and consequences of a forensic procedure;

*relevant person*, in relation to a forensic procedure proposed to be carried out on a person under this Division, means—

- (a) if the person on whom the procedure is to be carried out is not a protected person—that person; or
- (b) if the person on whom the procedure is to be carried out is a protected person—
  - (i) in the case of a child—the closest available next of kin of the child; or
  - (ii) in any other case—the person's guardian or, if the person does not have a guardian, the closest available next of kin of the person.

### 7—Volunteers and victims procedures

- (1) A forensic procedure authorised under this Division is a *volunteers and victims procedure*.
- (2) A forensic procedure may be carried out on a person under this Division if—
  - (a) the procedure is not being carried out on the person in connection with the person being suspected of a serious offence; and
  - (b) either—
    - (i) the relevant person consents to the procedure in accordance with section 8; or
    - (ii) a senior police officer authorises the carrying out of the procedure in accordance with section 9.

## **8—Authorisation by consent of relevant person**

A relevant person may consent to the carrying out of a forensic procedure under this Division by—

- (a) expressly consenting to the procedure orally or in writing; or
- (b) giving some other unequivocal indication of consent.

## **9—Authorisation by senior police officer**

A senior police officer may, by instrument in writing, authorise the carrying out of a forensic procedure specified in the instrument on a protected person if the officer is satisfied that—

- (a) it is impracticable or inappropriate to obtain consent to the procedure from the relevant person—
  - (i) because of the difficulty of locating or contacting that person; or
  - (ii) because that person, or a person related to or associated with him or her, is under suspicion in relation to a criminal offence; and
- (b) the carrying out of the procedure is justified in the circumstances of the case.

## **10—Withdrawal of consent**

- (1) A relevant person who has given consent to the carrying out of a volunteers and victims procedure may, by withdrawing his or her consent, withdraw the authority to carry out the procedure at any time before completion of the procedure.
- (2) If, at any time before completion of a volunteers and victims procedure, the relevant person who has given consent to the procedure behaves in a way that would indicate withdrawal of consent to a reasonable observer, the person is taken to have withdrawn consent under subsection (1).
- (3) If authority to carry out a volunteers and victims procedure is withdrawn under subsection (1), the procedure may only be continued or resumed if—
  - (a) a new authorisation for the procedure is obtained under this Division; or
  - (b) the procedure is authorised under some other law.
- (4) If authority to carry out a volunteers and victims procedure is withdrawn under subsection (1), any evidence obtained as a result of the procedure is not admissible in any proceedings.

## **11—Volunteers and victims procedure not to be carried out on protected person who objects to procedure**

- (1) Before a volunteers and victims procedure is carried out on a protected person, a police officer or the person who is to carry out the procedure must explain to the protected person that the procedure will not be carried out if the person objects to the procedure.
- (2) A volunteers and victims procedure is not to be carried out and, if commenced, is not to be continued on a protected person if the person objects to or resists the procedure.



- (3) However—
- (a) failure to give an explanation under subsection (1) does not affect the admissibility of evidence obtained as a result of the procedure; and
  - (b) if a volunteers and victims procedure is commenced but not completed because of objection or resistance to the procedure, the admissibility of evidence obtained before the procedure was, or should have been, discontinued is not affected; and
  - (c) this section does not apply if the person on whom the forensic procedure is (or is to be) carried out—
    - (i) is under 10 years of age; or
    - (ii) does not appear to be capable of responding rationally to information.

## 12—Provision of information

- (1) If forensic material is obtained from a person by carrying out a volunteers and victims procedure, the person who carries out the procedure must give the relevant person a written statement, in a form approved by the Attorney-General, explaining the right to request destruction of the material under section 39.
- (2) However, failure to give a written statement under subsection (1) does not affect the admissibility of evidence obtained as a result of the procedure.

## Division 2—Suspects procedures

### 13—Interpretation

In this Division—

*respondent*, in relation to an application for an order authorising a forensic procedure under this Division, means the person on whom it is proposed to carry out the forensic procedure.

### 14—Suspects procedures

- (1) A forensic procedure authorised under this Division is a *suspects procedure*.
- (2) A forensic procedure may be carried out on a person under this Division if—
  - (a) the person is suspected of a serious offence; and
  - (b) either—
    - (i) the procedure consists only of a simple forensic procedure; or
    - (ii) the procedure is authorised by order under this Division.
- (3) For the avoidance of doubt, a forensic procedure may be carried out on a person under this Division whether or not the person is in lawful custody.

### 15—Application for order

- (1) An order authorising a forensic procedure under this Division may be made by a senior police officer.

- (2) An application for such an order—
  - (a) must be made in writing by a police officer; and
  - (b) must state the nature of the suspected offence and the grounds for suspecting that the respondent has committed the offence; and
  - (c) must state the nature of the forensic procedure for which the order is sought and the grounds for suspecting the forensic procedure could produce evidence of value to the investigation of the suspected offence.
- (3) A copy of the application must be given to the respondent, unless the application is one to which section 18 applies.
- (4) The application may be sent by fax or email to the senior police officer who is to hear the application or, if it is not reasonably practicable to send the application by fax or email, the application may be read to the officer over the telephone (however, in such a case, a copy of the application must be provided to the officer as soon as practicable after the application is made).

## **16—Conduct of hearing**

Subject to this Division, an order may be made by a senior police officer on the basis of an informal hearing conducted in such manner as the senior police officer thinks fit.

## **17—Respondent's rights at hearing of application**

- (1) The respondent may be represented by a legal practitioner at the hearing of the application.
- (2) If the respondent is a protected person, he or she must be represented by an appropriate representative at the hearing (and may also be represented by a legal practitioner).
- (3) An appropriate representative may be—
  - (a) a parent, relative or friend chosen by, or acceptable to, the protected person; or
  - (b) if there is no available person in the above category—an advocate for the protected person nominated by a government or private agency with responsibilities for the care of protected persons of the relevant class; or
  - (c) if there is no available person within the above categories—a person, who is not a police officer or person involved in the investigation of the suspected offence, chosen by a police officer in charge of a police station or the investigating police officer.
- (4) A hearing may be conducted by telephone or other electronic means provided that the respondent or the respondent's representatives (if any) are given a reasonable opportunity to make representations at the hearing to the senior police officer who is determining the application.

**18—Applications of special urgency**

- (1) This section applies to an application for an order authorising a forensic procedure under this Division if—
  - (a) the respondent cannot be located at the time at which the application is made; and
  - (b) evidence (or the probative value of evidence) may be lost or destroyed if the forensic procedure is not carried out urgently.
- (2) If a senior police officer is satisfied that this section applies to an application—
  - (a) section 17 does not apply in relation to the application; and
  - (b) the senior police officer may proceed to determine the application in the absence of the respondent, or any representative of the respondent.

**19—Making of order**

- (1) A senior police officer may make an order authorising the carrying out of a forensic procedure on the respondent if, after conducting the hearing required under this Division, the officer is satisfied that—
  - (a) there are reasonable grounds to suspect that the respondent has committed a serious offence; and
  - (b) there are reasonable grounds to suspect that the forensic procedure could produce material of value to the investigation of the suspected offence; and
  - (c) the public interest in obtaining evidence tending to prove or disprove the respondent's guilt outweighs the public interest in ensuring that private individuals are protected from unwanted interference.
- (2) In weighing the public interest in obtaining evidence tending to prove or disprove guilt against the public interest in ensuring that private individuals are protected from unwanted interference, the senior police officer must have regard to—
  - (a) the seriousness of the suspected offence; and
  - (b) the extent to which the procedure is necessary for the proper investigation of the suspected offence; and
  - (c) any likely effects of the procedure on the welfare of the respondent (so far as they can be reasonably anticipated) given the respondent's age, physical and mental health, and cultural and ethnic background; and
  - (d) whether there is a less intrusive but reasonably practicable way of obtaining evidence of the same or similar probative value to confirm or disprove that the respondent committed the suspected offence; and
  - (e) other relevant factors.
- (3) If a senior police officer makes an order authorising the carrying out of a forensic procedure under this Division, the officer must make a written record of the order and the reasons for the order.
- (4) A copy of the record of the order must be given to the respondent.

- (5) An order made as a result of an application to which section 18 applies, only remains in force for a period of 12 hours after the making of the order and cannot be extended or renewed (however nothing prevents the making of another order under this Division authorising the relevant forensic procedure provided that order is made following a hearing conducted in accordance with the normal procedures specified in section 17).

## **Division 3—Offenders procedures**

### **20—Offenders procedures**

- (1) A simple identity procedure authorised under this Division is an *offenders procedure*.
- (2) A simple identity procedure may be carried out on a person under this Division if the person—
- (a) is serving a term of imprisonment, detention or home detention in relation to an offence; or
  - (b) is being detained as a result of being declared liable to supervision under Part 8A of the *Criminal Law Consolidation Act 1935* by a court dealing with a charge of an offence; or
  - (c) is convicted of a serious offence by a court; or
  - (d) is declared liable to supervision under Part 8A of the *Criminal Law Consolidation Act 1935* by a court dealing with a charge of a serious offence; or
  - (e) is a registrable offender under the *Child Sex Offenders Registration Act 2006*.
- (3) This section applies whether the relevant offence was committed before, on or after the commencement of this section.

## **Division 4—Blood testing of certain persons for communicable diseases**

### **20A—Interpretation**

In this Division—

*accident or emergency department* of a hospital means the part of a hospital dedicated to the hospital's major accident and emergency functions, including those areas of the department used for administrative, waiting, reception, storage, diagnostic, treatment, consultation, triage and resuscitation functions and the access bays for ambulance and police;

*biological material* of a person means the person's blood or bodily fluids or any other biological material of the person that is capable of communicating or transmitting a disease;

*emergency services provider* means—

- (a) South Australian Country Fire Service; or
- (b) South Australian Metropolitan Fire Service; or
- (c) South Australian State Emergency Service; or
- (d) SA Ambulance Service Inc; or

- (e) St John Ambulance Australia South Australia Incorporated; or
- (f) Surf Life Saving South Australia Incorporated; or
- (g) a volunteer marine rescue association accredited by the State Marine Rescue Committee to perform search and rescue functions; or
- (h) the accident or emergency department of a hospital;

**emergency work** means work carried out (whether or not in response to an emergency) by or on behalf of an emergency services provider;

**hospital** means the site of an incorporated hospital or private hospital (both within the meaning of the *Health Care Act 2008*) at which the health services provided by the hospital include services provided on a live-in basis;

**medical practitioner** means a person registered under the *Health Practitioner Regulation National Law* to practise in the medical profession;

**prescribed employment**—the following is prescribed employment:

- (a) employment as a police officer;
- (b) employment in emergency work (whether carried out for remuneration or on a voluntary basis);
- (c) employment as a medical practitioner in a hospital;
- (d) employment as a nurse or midwife in a hospital;
- (e) employment in the provision of assistance or services, in a hospital, to a medical practitioner, nurse or midwife acting in the course of his or her employment in the hospital;
- (f) employment as an officer or employee of the administrative unit of the Public Service that is responsible for assisting a Minister in the administration of the *Correctional Services Act 1982*;

**prescribed serious offence**—the following are prescribed serious offences:

- (a) an offence against section 20 of the *Criminal Law Consolidation Act 1935* where the victim is a person engaged in prescribed employment acting in the course of his or her official duties;
- (b) an offence against section 23 of the *Criminal Law Consolidation Act 1935* where the victim is a person engaged in prescribed employment acting in the course of his or her official duties;
- (c) an offence against section 24 of the *Criminal Law Consolidation Act 1935* where the victim is a person engaged in prescribed employment acting in the course of his or her official duties;
- (d) an offence against section 29 of the *Criminal Law Consolidation Act 1935* where the victim is a person engaged in prescribed employment acting in the course of his or her official duties;
- (e) an offence against Part 3A of the *Criminal Law Consolidation Act 1935*;
- (f) an offence against section 6 of the *Summary Offences Act 1953*;
- (g) an offence against section 6A of the *Summary Offences Act 1953*;

- (h) any other serious offence prescribed by the regulations.

### **20B—Senior police officer may require certain persons to provide blood sample**

- (1) A forensic procedure consisting of the taking of a sample of blood may be carried out on a person under this Division if a senior police officer (the *authorising officer*) is satisfied that—
- (a) the person is suspected of a prescribed serious offence; and
  - (b) it is likely that a person engaged in prescribed employment came into contact with, or was otherwise exposed to, biological material of the person as a result of the suspected offence.
- (2) The authorising officer must make a written record of the grounds on which he or she determined that the forensic procedure should be carried out on a person under this Division and a copy of the record must be given to the person.
- (3) For the avoidance of doubt, a forensic procedure may be carried out on a person under this Division whether or not the person is in lawful custody.
- (4) This section applies whether the relevant offence was committed before, on or after the commencement of this section.

## **Part 3—Carrying out forensic procedures**

### **Division 1—General provisions on carrying out forensic procedures**

#### **21—Forensic procedures to be carried out humanely**

- (1) A forensic procedure must be carried out humanely and with care—
- (a) to avoid, as far as reasonably practicable, offending genuinely held cultural values or religious beliefs; and
  - (b) to avoid inflicting unnecessary physical harm, humiliation or embarrassment.
- (2) A forensic procedure must not be carried out in the presence or view of more persons than are necessary for properly carrying out the procedure and satisfying any relevant statutory requirements.
- (3) If reasonably practicable, a forensic procedure that involves exposure of, or contact with, the genital or anal area, the buttocks or the breast region of a female person or a transgender or intersex person who identifies as female, must not be carried out by a person of a different sex (other than at the request of the person on whom the forensic procedure is to be carried out).

#### **22—Right to be assisted by interpreter**

If a person on whom a forensic procedure is to be carried out is not reasonably fluent in English, the person is entitled—

- (a) to be assisted by an interpreter; and
- (b) if the person so requests—to have an interpreter present during carrying out of the forensic procedure.

### **23—Duty to observe relevant medical or other professional standards**

A forensic procedure must be carried out in a way that is consistent with appropriate medical standards or other relevant professional standards.

### **24—Who may carry out forensic procedure**

- (1) A person who carries out a forensic procedure must be—
  - (a) a medical practitioner; or
  - (b) a person who is qualified as required by the regulations to carry out forensic procedures of the relevant type.
- (2) A person carrying out a forensic procedure may be assisted by a police officer or other person.

### **25—Right to have witness present**

- (1) If an intrusive forensic procedure is to be carried out on a person, the person must be allowed a reasonable opportunity to arrange for the attendance, at the person's expense, of a medical practitioner of the person's choice to witness the forensic procedure.
- (2) If, in accordance with an authorisation under a Division of Part 2, a forensic procedure is to be carried out on a person who is a protected person within the meaning of that Division, an appropriate representative must be present to witness the forensic procedure.
- (3) An appropriate representative may be—
  - (a) a relative or friend chosen by, or acceptable to, the protected person; or
  - (b) if there is no available person within the above category—an advocate for the protected person nominated by a government or private agency with responsibilities for the care of protected persons of the relevant class; or
  - (c) if there is no available person within either of the above categories—a person, who is not a police officer or person involved in the investigation of the suspected offence (if any), chosen by a police officer in charge of a police station or, where relevant, the investigating police officer.
- (4) However, a witness who attempts, without reasonable justification, to obstruct the forensic procedure may be excluded from the place in which the procedure is being or is to be carried out.

### **26—Audiovisual record of intrusive procedures to be made**

- (1) An audiovisual recording of an intrusive forensic procedure must be made—
  - (a) if the procedure is a suspects procedure; or
  - (b) if the procedure is a volunteers and victims procedure and the person on whom the procedure is to be carried out requests the making of an audiovisual record.
- (2) Arrangements must be made, at the request of the person on whom the intrusive forensic procedure was carried out, for the playing of the audiovisual recording of the procedure at a reasonable time and place to be nominated by the Commissioner of Police.

- (3) A copy of an audiovisual recording made under this section must, on payment of the fee fixed by regulation, be made available to the person on whom the forensic procedure was carried out.

### **27—Exemption from liability**

No civil or criminal liability is incurred by a person who carries out, or assists in carrying out, a forensic procedure for an act or omission if—

- (a) the person genuinely believes that the forensic procedure is authorised under this Act; and
- (b) the act or omission is reasonable in the circumstances.

## **Division 2—Special provisions relating to suspects and offenders procedures**

### **28—Application of Division**

This Division only applies to suspects procedures and offenders procedures.

### **29—Police officer may issue directions**

- (1) If a forensic procedure is to be carried out on a person who is not in lawful custody, a police officer may issue directions about—
- (a) the time, place and manner in which the forensic procedure is to be carried out; and
  - (b) custody of the person while the forensic procedure is being carried out; and
  - (c) any other incidental matter.
- (2) A written record of any directions issued under subsection (1) in relation to a forensic procedure must be given to the person on whom the procedure is to be carried out and the person must be informed that if the person fails to comply with the directions, a warrant may be issued by the Magistrates Court for the arrest of the person for the purpose of carrying out the forensic procedure.
- (3) If a person fails to comply with directions issued under subsection (1) in relation to a forensic procedure, a police officer may apply to the Magistrates Court for the issue of a warrant to have the person arrested and brought to a police station for the purpose of carrying out the forensic procedure.
- (4) The Magistrates Court must issue a warrant for the arrest of the person under subsection (3) if satisfied that the person has failed to comply with directions issued under subsection (1).

### **30—Warnings to be given by police officer**

Before a forensic procedure is carried out on a person, a police officer must inform the person that—

- (a) reasonable force may be used to carry out the procedure; and
- (b) if the person obstructs or resists a person in connection with the carrying out of the procedure, evidence of that fact may be admissible in proceedings against the person.



### **31—Use of force**

- (1) A person authorised under this Act to carry out a forensic procedure, or a person assisting such a person, may use reasonable force—
  - (a) to carry out the authorised forensic procedure; and
  - (b) to protect material obtained by carrying out the forensic procedure.
- (2) Where this section authorises the use of force to detain a person, that action does not, by itself, constitute an arrest of the person.

### **32—Obstruction**

A person must not intentionally obstruct or resist the carrying out of a forensic procedure to which this Division applies.

Maximum penalty: Imprisonment for 2 years.

## **Part 4—How forensic material is to be dealt with**

### **Division 1—Access to forensic material**

#### **33—Person to be given sample of material for analysis following suspects or offenders procedure**

- (1) The Commissioner of Police must ensure that, if forensic material is removed from a person's body as a result of a suspects procedure or an offenders procedure—
  - (a) a part of the material, sufficient for analysis, is set aside for the person as soon as practicable after the material has been analysed; and
  - (b) reasonable care is taken to ensure that the material set aside is protected from degradation until the person receives it; and
  - (c) if the person expresses a desire to have the material analysed—reasonable assistance is given to the person to ensure that the material is protected from degradation until it is analysed.
- (2) However, subsection (1) need not be complied with if it is not practicable to divide the material obtained into separate parts for analysis.
- (3) This section does not apply to the taking of prints of the hands, fingers, feet or toes of a person or the taking of an impression or cast of a part of a person's body.

### **Division 2—Analysis of certain material**

#### **34—Hair samples**

A sample of hair taken from a person in the course of a forensic procedure must not be used for the purpose of obtaining a DNA profile of that person unless the person has specifically requested that the DNA profile be obtained in this way.

#### **34A—Forensic material obtained under Part 2 Division 4**

Forensic material obtained from a person by carrying out a forensic procedure under Part 2 Division 4 must not be used for a purpose other than testing the material for communicable diseases.

## **Division 3—Retention and assimilation orders**

### **35—Interpretation**

For the purposes of this Division, the *respondent* to an application relating to forensic material is—

- (a) in the case of an application for a retention order—the person who requested destruction of the forensic material to which the application relates; or
- (b) in the case of an application for an assimilation order—
  - (i) if the person from whom the forensic material was obtained is a protected person—
    - (A) if the person is a child—the closest available next of kin of the child; or
    - (B) if the person is not a child—the person's guardian or, if the person does not have a guardian, the closest available next of kin of the person; or
  - (ii) in any other case—the person from whom the forensic material was obtained.

### **36—Order for retention of forensic material obtained by carrying out volunteers and victims procedure on protected person**

- (1) If—
  - (a) forensic material was obtained by carrying out a volunteers and victims procedure on a protected person (within the meaning of Part 2 Division 1); and
  - (b) the relevant person who gave consent to the procedure has requested destruction of the forensic material,a senior police officer may make an order authorising the retention of the forensic material for a period specified in the order.
- (2) A senior police officer may make an order under this section if the officer is satisfied that—
  - (a) the person who gave consent, or a person related to or associated with him or her, is suspected of a serious offence; and
  - (b) there are reasonable grounds to suspect that the forensic material to which the application relates could be of probative value in relation to the investigation of the suspected offence; and
  - (c) the order is justified in all the circumstances.
- (3) If an order is made under this section authorising the retention of forensic material for a specified period, a senior police officer may, on application by a police officer, extend or further extend the specified period.

**37—Order for forensic material obtained by volunteers and victims procedure to be treated as if obtained by suspects procedure**

A senior police officer may order that forensic material obtained as a result of a volunteers and victims procedure be treated, for the purpose of Division 4 and for the purposes of the DNA database system, as if it were forensic material obtained as a result of a suspects procedure if satisfied that there are reasonable grounds to suspect that the person on whom the procedure was carried out has committed a serious offence and—

- (a) there are reasonable grounds to suspect that the forensic material may be of value to the investigation of the suspected offence; or
- (b) the forensic material consists of forensic material from the person's body taken for the purpose of obtaining a DNA profile of the person.

**38—General provisions relating to applications under this Division**

- (1) An application for an order under this Division—
  - (a) must be made, in writing, by a police officer; and
  - (b) must state the grounds on which the order is sought.
- (2) If the respondent can be located, a copy of the application must be given to the respondent.
- (3) The application may be sent by fax or email to the senior police officer who is to hear the application or, if it is not reasonably practicable to send the application by fax or email, the application may be read to the officer over the telephone (however, in such a case, a copy of the application must be provided to the officer as soon as practicable after the application is made).
- (4) Subject to this section, an order may be made under this Division by a senior police officer on the basis of an informal hearing conducted in such manner as the senior police officer thinks fit.
- (5) The respondent may be represented by a legal practitioner at the hearing of the application.
- (6) If the senior police officer hearing the application is satisfied that the respondent—
  - (a) could not be located to be served with a copy of the application; or
  - (b) has been served with a copy of the application but has failed to attend the hearing,the officer may proceed to hear and determine the application in the absence of the respondent.
- (7) A hearing may be conducted by telephone or other electronic means provided that, if the respondent or the respondent's representatives (if any) are present at the hearing, the respondent or the respondent's representatives are given a reasonable opportunity to make representations at the hearing to the senior police officer who is determining the application.
- (8) An order under this Division may include directions about any incidental matter.
- (9) If a senior police officer makes an order under this Division, the officer must make a written record of the order and the reasons for the order.

- (10) If the respondent can be located, a copy of the record of the order must be given to the respondent.

## **Division 4—Destruction of certain forensic material**

### **39—Destruction of forensic material obtained by carrying out volunteers and victims procedure**

- (1) The Commissioner of Police must ensure that relevant forensic material obtained from a person by carrying out a volunteers and victims procedure is destroyed—
- (a) within 21 days after receiving a request for destruction of the material from the relevant person who gave consent to the procedure; or
  - (b) if a retention order has been made in relation to the forensic material—at the time directed in the order.
- (2) A request for destruction of relevant forensic material must be in writing.
- (3) A person who, at the time at which a volunteers and victims procedure was authorised, was a protected person (within the meaning of Part 2 Division 1) because he or she was a child under the age of 16 years, may, at any time after reaching the age of 16 years, request the destruction of relevant forensic material under this section as if he or she were the relevant person who gave consent to the procedure.
- (4) If, within 14 days of receiving a request for destruction of relevant forensic material, an application is made for a retention order or an assimilation order that relates to the material, the Commissioner of Police may postpone destruction of the material until that application is determined.
- (5) For the purposes of this section, forensic material will be taken to have been destroyed if it is not possible to identify the person from whom the material was obtained or to whom the material relates.
- (6) In this section—

*relevant forensic material*, in relation to a person, means forensic material that was obtained as a result of a forensic procedure carried out on that person but does not include forensic material that consists only of biological material from a different person.

### **39A—Destruction of forensic material obtained under Part 2 Division 4**

The Commissioner of Police must ensure that forensic material obtained from a person by carrying out a forensic procedure under Part 2 Division 4 is destroyed as soon as is reasonably practicable after the material has been tested for communicable diseases in accordance with section 34A.

## Part 5—The DNA database system

### 40—Interpretation

In this Part—

**crime scene index** means an index of DNA profiles derived from biological material found—

- (a) at any place (whether within or outside Australia) where an offence was, or is reasonably suspected of having been, committed; or
- (b) on or within the body of the victim, or a person reasonably suspected of being a victim, of an offence; or
- (c) on anything worn or carried by the victim at the time when an offence was, or is reasonably suspected of having been, committed; or
- (d) on or within the body of any person, on any thing, or at any place, associated with the commission of 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 and information that may be used to identify the person from whose biological material each DNA profile was derived:
  - (i) a crime scene index;
  - (ii) a missing persons index;
  - (iii) an unknown deceased persons index;
  - (iv) a suspects/offenders index;
  - (v) a volunteers (unlimited purposes) index;
  - (vi) a volunteers (limited purposes) index; 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 biological material of persons who are missing;

**statistical index** means an index of information that—

- (a) has been derived from the analysis of biological material obtained by carrying out forensic procedures authorised under this Act, or a corresponding law, or otherwise; and
- (b) has been compiled for statistical purposes; and
- (c) cannot be used to discover the identity of persons from whom the biological material was obtained;

*suspects/offenders index* means an index of DNA profiles derived from forensic material of persons—

- (a) on whom forensic procedures have been carried out in accordance with an authorisation under Part 2 Division 1 if an assimilation order has been made in relation to the material or a court or other authority has ordered, in accordance with a corresponding law, that the material be treated as if it were material obtained from a person suspected of an offence; and
- (b) on whom forensic procedures have been carried out in accordance with an authorisation under Part 2 Division 2, or a corresponding law; and
- (c) on whom forensic procedures have been carried out in accordance with an authorisation under Part 2 Division 3 or a corresponding law;

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

*volunteers (limited purposes) index* means an index of DNA profiles derived from forensic material of persons on whom forensic procedures have been carried out in accordance with an authorisation under Part 2 Division 1, or a corresponding law, where specific consent has been given, in accordance with this Act or the corresponding law (as the case may require), to the information being stored on this index but a condition prohibiting the information being compared with 1 or more other specified indexes of the DNA database system has been imposed on the consent;

*volunteers (unlimited purposes) index* means an index of DNA profiles derived from—

- (a) forensic material of persons on whom forensic procedures have been carried out in accordance with an authorisation under Part 2 Division 1, or a corresponding law, where specific consent has been given, in accordance with this Act or the corresponding law (as the case may require), to the information being stored on this index and being used for any purposes for which the DNA database system may be used under this Part; and
- (b) biological material of deceased persons whose identity is known.

#### **41—Commissioner may maintain DNA database system**

- (1) The Commissioner of Police may maintain a DNA database system.
- (2) The Minister may—
  - (a) enter into an arrangement with the Minister responsible for the administration of a corresponding law, providing for the exchange of information recorded in the DNA database system kept under this section and a database kept under the corresponding law; and
  - (b) enter into an arrangement with the Minister responsible for the administration of a corresponding law of the Commonwealth or with CrimTrac, providing for the transmission of information recorded in the DNA database system kept under this section to CrimTrac for the purpose of that authority doing any, or all, of the following:
    - (i) causing the information so transmitted to form part of a national database;

- (ii) comparing the information so transmitted with other information on a national database;
  - (iii) identifying any matches between the information so transmitted and other information on a national database;
  - (iv) transmitting information arising from such matches to the Commissioner of Police;
  - (v) any other thing required or authorised to be done under the corresponding law or otherwise authorised by law.
- (3) In this section—

*CrimTrac* means the CrimTrac Agency, established as an Executive Agency by the Governor-General by order under section 65 of the *Public Service Act 1999* of the Commonwealth.

#### 42—Storage of information on DNA database system

- (1) A person who stores a DNA profile derived from forensic material obtained by carrying out a forensic procedure under this Act on a database other than the DNA database system is guilty of an offence, unless—
- (a) the DNA profile is stored in such a way that it is not possible to identify the person from whom the material was obtained or to whom the material relates; or
  - (b) the DNA profile is stored on a database kept under a corresponding law or kept by the Commonwealth in accordance with an arrangement entered into under section 41(2); or
  - (ba) the DNA profile is stored on a database kept in accordance with the directions of the Commissioner of Police for the sole purpose of preserving a backup copy of that DNA profile; or
  - (c) the DNA profile is temporarily stored on a database maintained in accordance with the regulations for purposes connected with the administration of this Act.

Maximum penalty: \$10 000 or imprisonment for 2 years.

- (2) A person who intentionally or recklessly—
- (a) causes the supply of biological material for the purpose of storing a DNA profile on the DNA database system; or
  - (b) stores a DNA profile on the DNA database system,

in circumstances in which that storage is not authorised by this Act (or a corresponding law) is guilty of an offence.

Maximum penalty: \$10 000 or imprisonment for 2 years.

#### 43—Specific consent required for storage of DNA profile on a volunteers index

- (1) A DNA profile derived from forensic material of a person on whom a forensic procedure has been carried out in accordance with an authorisation under Part 2 Division 1 must not be stored on the volunteers (limited purposes) index or the volunteers (unlimited purposes) index unless the relevant person has consented to that storage in accordance with this section.
- (2) Before a person consents to the storage of a DNA profile under this section a police officer must—
  - (a) complete a written statement, in a form approved by the Attorney-General, explaining—
    - (i) the options, under this Act, relating to the storage of the DNA profile on the DNA database system and the person's right to refuse consent to such storage or impose conditions—
      - (A) limiting the period for which such storage can occur; or
      - (B) prohibiting the comparison of that DNA profile with DNA profiles stored on other specified indexes of the DNA database system; and
    - (ii) any other matters required by the Attorney-General; and
  - (b) read that statement to the person; and
  - (c) give the person a copy of the written statement.
- (3) If the person is not reasonably fluent in English, the statement required to be read to the person under subsection (2) must be read with the assistance of an interpreter.
- (4) A person gives consent to the storage of a DNA profile under this section by—
  - (a) expressly consenting orally or in writing; or
  - (b) giving some other unequivocal indication of consent.
- (5) If consent is given otherwise than in writing, an audio or audiovisual record of—
  - (a) the statement read to the person; and
  - (b) the giving of consent by the person,must be made and, subject to subsection (6), a copy of that record must be given to the person.
- (6) A copy of an audiovisual record will not be provided unless the fee fixed by regulation is paid.
- (7) Arrangements must be made, at the request of the person, for the playing of an audiovisual record at a reasonable time and place to be nominated by the Commissioner of Police.
- (8) In this section—

**relevant person**, in relation to a DNA profile, means—

  - (a) if the DNA profile is of a person who is not a protected person—that person; or
  - (b) if the DNA profile is of a protected person—



- (i) in the case of a child—the closest available next of kin of the child;  
or
- (ii) in any other case—the person's guardian or, if the person does not have a guardian, the closest available next of kin of the person.

#### **44—Storage of information on suspects/offenders index following assimilation order**

If an assimilation order is made in relation to forensic material, a DNA profile derived from the material—

- (a) if the DNA profile is stored on the volunteers (limited purposes) index or the volunteers (unlimited purposes) index—must be transferred to the suspects/offenders index; or
- (b) in any other case—may be stored on the suspects/offenders index.

#### **45—Access to and use of DNA database system**

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

Maximum penalty: \$10 000 or imprisonment for 2 years.

- (2) A person authorised by the Commissioner of Police may access information stored on the DNA database system for 1 or more of the following purposes:
  - (a) for the purpose of comparing a DNA profile stored on an index of the DNA database system with any other DNA profiles stored on the DNA database system;
  - (b) for the purpose of proceedings for a serious offence or proceedings under the *Criminal Assets Confiscation Act 2005*;
  - (c) for the purpose of determining whether it is necessary to carry out a forensic procedure under this Act or a corresponding law;
  - (d) for the purpose of a coronial inquest or inquiry;
  - (e) for the purpose of making the information available to the person to whom the information relates;
  - (f) for the purpose of administering the DNA database system;
  - (g) for the purpose of an arrangement entered into by the Minister under section 41(2);
  - (h) for the purpose of, and in accordance with, the *Mutual Assistance in Criminal Matters Act 1987* or the *Extradition Act 1988* of the Commonwealth;
  - (i) for the purpose of an investigation by the Ombudsman or the Police Ombudsman;
  - (j) for the purpose of an audit under section 57;
  - (k) for any other purpose prescribed by regulation.

- (3) A person who has access to information stored on the DNA database system—
  - (a) must not compare a DNA profile stored on the volunteers (limited purposes) index with a DNA profile stored on another index of the DNA database system if the person who gave consent to the storage of that DNA profile on the volunteers (limited purposes) index has imposed a condition on the consent that prohibits that comparison; and
  - (b) must, in comparing a DNA profile stored on an index of the DNA database with any other DNA profiles stored on the DNA database system, comply with any other limitations or requirements prescribed by regulation.
- (4) However, a person who has access to information stored on the DNA database system may compare DNA profiles stored on the DNA database system in contravention of subsection (3) if the comparison is made solely for the purposes of administering the DNA database system.
- (5) Without limiting the actions that may be taken for the purpose of administering the DNA database system, the comparison of a DNA profile stored on an index of the DNA database system with any DNA profiles included in the quality assurance register is a comparison made for the purpose of administering the DNA database system.

#### **46—Removal of information from DNA database system**

- (1) The Commissioner of Police must ensure that—
  - (a) a DNA profile derived from forensic material obtained under this Act is not retained on the DNA database system beyond the time the destruction of the material is required under this Act; and
  - (b) a DNA profile derived from forensic material obtained under a corresponding law is not retained on the DNA database system beyond the time the destruction of the material is required under the corresponding law.

**Note—**

This means, for example, that where an order is made authorising the retention of forensic material for a specified period, a DNA profile derived from the material can remain on the database for that specified period (but will have to be removed when the material is required to be destroyed).

- (2) A DNA profile derived from biological material of a missing person that has been stored on the missing persons index of the DNA database system must, if the missing person is found and requests, in writing, removal of the DNA profile, be removed from that index as soon as practicable after the request.
- (3) A person who intentionally or recklessly causes information to be retained on the database system in contravention of this section is guilty of an offence.  
Maximum penalty: \$10 000 or imprisonment for 2 years.
- (4) For the purposes of this section, a DNA profile derived from forensic material or biological material obtained from a person will be taken to have been removed from the DNA database system, or from an index of the DNA database system, if the database or index is altered so that it is no longer possible to identify the person from whom the material was obtained.

## Part 6—Evidence

### 47—Effect of non-compliance on admissibility of evidence

- (1) If a police officer or other person with responsibilities under this Act (other than a person acting as an appropriate representative of a protected person under this Act) contravenes a requirement of this Act in relation to—
  - (a) a forensic procedure; or
  - (b) forensic material obtained from a forensic procedure; or
  - (c) a DNA profile derived from such forensic material,evidence obtained as a result of the forensic procedure is not admissible in evidence against the person on whom the procedure was carried out unless—
  - (d) the person does not object to the admission of the evidence; or
  - (e) the court is satisfied that the evidence should be admitted in the interests of the proper administration of justice despite the contravention.
- (2) In deciding whether evidence should be admitted in the interests of the proper administration of justice, the court must have regard to the following matters:
  - (a) the probative value of the evidence;
  - (b) the seriousness of the contravention and, in particular, whether it was intentional or reckless;
  - (c) the extent to which the defendant has been prejudiced by the contravention;
  - (d) any other relevant factors.
- (3) Evidence obtained by carrying out a volunteers and victims procedure on a person is inadmissible in any criminal proceedings against that person if, by the time the question of its admissibility arises, the forensic material obtained from the procedure should have been destroyed.

### 48—Admissibility of evidence of denial of consent, obstruction etc

- (1) Evidence that a person refused or failed to give consent, or withdrew consent, to a forensic procedure, or refused consent under section 43, is inadmissible, without the consent of the person, in any criminal proceedings against the person.
- (2) However, evidence that a person obstructed or resisted the carrying out of a suspects procedure or an offenders procedure authorised under this Act is admissible in any criminal proceedings against the person subject to the ordinary rules governing the admissibility of evidence.

### 48A—Inadmissibility of evidence relating to forensic procedure under Part 2 Division 4

The results of a test of forensic material obtained from a person by carrying out a forensic procedure under Part 2 Division 4 or any admission or statement made by a person in relation to such a forensic procedure—

- (a) will not be admissible in evidence against the person who submitted to the forensic procedure in any proceedings, other than—

- (i) proceedings for an offence against this Act; or
  - (ii) civil proceedings in connection with death or bodily injury caused by or arising out of the serious offence to which the forensic procedure relates; and
- (b) may not be relied on as grounds for the exercise of any search power or the obtaining of any search warrant.

#### **49—Evidentiary certificates**

- (1) In any proceedings for a criminal offence, a certificate—
- (a) purporting to be signed by a senior police officer and to certify—
    - (i) that a forensic procedure was carried out on a person specified in the certificate on a date and at a time and place specified in the certificate and that the procedure was carried out in compliance with the provisions of this Act relating to the conduct of forensic procedures; or
    - (ii) that forensic material obtained by carrying out a specified forensic procedure was dealt with in a manner specified in the certificate; or
  - (b) purporting to be signed by the Commissioner of Police and to certify that powers or functions specified in the certificate were exercised in accordance with an arrangement entered into under section 56; or
  - (c) purporting to be signed by an analyst and to certify that specified forensic material was dealt with in a manner specified in the certificate,

is, in the absence of evidence to the contrary, proof of the matters so certified.

- (2) In this section—

*analyst* means—

- (a) a person appointed by the Minister as an analyst for the purposes of this Act; or
- (b) a person holding an office of a class approved by the Minister for the purposes of this Act.

### **Part 7—Miscellaneous**

#### **50—Confidentiality**

- (1) A person who has, or has had, access to information obtained under this Act or information stored on the DNA database system must not disclose the information unless—
- (a) the disclosure is necessary for criminal investigation purposes or a missing persons inquiry; or
  - (b) the disclosure is necessary for the purpose of proceedings for a serious offence or proceedings under the *Criminal Assets Confiscation Act 2005*; or
  - (c) the disclosure is necessary for the purpose of determining whether it is necessary to carry out a forensic procedure under this Act or a corresponding law; or

- (d) the disclosure is necessary for the purpose of a coronial inquest or inquiry; or
  - (e) the disclosure is necessary for the purpose of making the information available to the person to whom the information relates; or
  - (f) the disclosure is necessary for the purpose of administering the DNA database system; or
  - (g) the disclosure is necessary for the purpose of an arrangement entered into by the Minister under section 41(2); or
  - (h) the disclosure is necessary for the purpose of, and in accordance with, the *Mutual Assistance in Criminal Matters Act 1987* or the *Extradition Act 1988* of the Commonwealth; or
  - (i) the disclosure is necessary for the purpose of an investigation by the Ombudsman or the Police Ombudsman; or
  - (j) the disclosure is necessary for the purpose of an audit under section 57; or
  - (k) the disclosure is made to a legal practitioner and is made for the purpose of obtaining legal advice; or
  - (l) the information is publicly known; or
  - (m) the disclosure is necessary for the purpose of civil proceedings (including disciplinary proceedings) that relate to the way in which the procedure was carried out; or
  - (n) the disclosure is necessary for the medical treatment of the person to whom the information relates or any other person; or
  - (o) the person to whom the information relates consents to the disclosure; or
  - (p) the information is disclosed for a purpose of a kind prescribed by regulation.
- (2) A person who intentionally or recklessly discloses information in contravention of this section is guilty of an offence.

Maximum penalty: \$10 000 or imprisonment for 2 years.

#### **50A—Release and disclosure for scientific purposes**

- (1) Despite any provision of this Act or any other Act or law, a prescribed authority may authorise the release, disclosure and use of forensic material and information obtained under this Act for the following purposes:
  - (a) the validation or development of forensic methodologies;
  - (b) the furtherance of forensic research and methodologies.
- (2) Forensic material and information released, disclosed or used under subsection (1) may only be released, disclosed or used in a manner such that it is not possible to identify the person from whom the material or information was obtained or to whom the material or information relates.
- (3) Subsection (1) does not apply to forensic material or information obtained by carrying out a volunteers and victims procedure on a person if the DNA profile of that person is contained only on a volunteers (limited purposes) index.

### **51—Restriction on publication**

A person must not intentionally or recklessly publish by newspaper, radio, television or in any other way, a report of proceedings under this Act containing the name of a person suspected of a serious offence, or other information tending to identify the person, unless—

- (a) the person consents to the publication; or
- (b) the person has been charged with the suspected offence or a related serious offence.

Maximum penalty: \$5 000 or imprisonment for 1 year.

### **52—*State Records Act 1997* not to apply**

The *State Records Act 1997* does not apply to forensic material or the DNA database system.

### **53—Forensic material lawfully obtained in another jurisdiction**

Forensic material lawfully obtained under a law of another jurisdiction (before or after the commencement of this section) may be retained and used in this State in accordance with this Act despite the fact that the material was obtained in circumstances in which this Act would not authorise the material to be obtained, or in accordance with requirements that are less stringent than (or are otherwise substantively different to) the requirements that would apply under this Act.

### **54—Subsequent procedure where insufficient material obtained**

- (1) If forensic material obtained as a result of a suspects procedure or an offenders procedure proves to be insufficient—
  - (a) in the case of an intrusive forensic procedure authorised by order under Part 2 Division 2—that procedure may be carried out again if a new order authorising the procedure is made; or
  - (b) in any other case—that procedure may be carried out again without any further authorisation under this Act.
- (2) Without limiting subsection (1), forensic material may prove to be insufficient if the material has become unavailable or insufficient for the purpose of enabling information, or information of a particular description, to be obtained by means of analysis of the material, as a consequence of—
  - (a) the loss, destruction or contamination of the whole or any part of the material; or
  - (b) any damage to the whole or a part of the material; or
  - (c) the use of the whole or a part of the material for an analysis which produced no results or which produced results some or all of which must be regarded, in the circumstances, as unreliable.

### **55—Power to require forensic procedure on deceased person**

- (1) A senior police officer may, by instrument in writing, authorise the carrying out of a forensic procedure specified in the instrument on the body, a body part, human tissue or other human remains of a deceased person if satisfied that the evidence obtained from the carrying out of the procedure is likely to assist in the investigation of a serious offence or in the identification of the deceased person.
- (2) If a senior police officer has authorised the carrying out of a forensic procedure under this section, a police officer, accompanied by such assistants as the officer thinks necessary, may—
  - (a) enter premises (using such force as is necessary) in which the officer reasonably believes the body of the deceased person is located; and
  - (b) search the premises for the body,and, on finding the body, the authorised forensic procedure may be carried out in accordance with this section.
- (3) A police officer must not exercise a power to enter premises under subsection (2) unless the officer has made a reasonable attempt to contact the occupier of the premises and advise the occupier of the intention to exercise such powers.
- (4) If the body of the deceased person is located at a hospital or other place at which a post-mortem examination of the body is being, or has been, conducted, the occupier of the premises may, despite any other Act or law, agree—
  - (a) to arrange for the authorised forensic procedure to be carried out in accordance with this section and provide forensic material obtained by carrying out that procedure to the Commissioner of Police; or
  - (b) if the material sought to be obtained from carrying out the forensic procedure has already been obtained in the course of the post-mortem examination of the body, to provide such material to the Commissioner of Police.
- (5) A forensic procedure authorised under this section must be carried out by—
  - (a) a medical practitioner; or
  - (b) a person who is qualified as required by the regulations to carry out forensic procedures of the relevant type.
- (6) A person carrying out a forensic procedure authorised under this section may be assisted by a police officer or other person.
- (7) Nothing in this section authorises the exhumation of a body.

### **56—Arrangements with other jurisdictions**

- (1) The Minister may enter into an arrangement with the Minister responsible for the administration of a corresponding law providing for—
  - (a) the exercise of functions or powers under this Act by police officers of the jurisdiction in which the corresponding law is in force; and
  - (b) the exercise of functions or powers under a corresponding law by police officers of this State.

- (2) The Minister may enter into an arrangement with the Minister responsible for the administration of a corresponding law, providing for—
  - (a) the registration in this jurisdiction of orders made under the corresponding law; and
  - (b) the registration under the corresponding law of orders made under this Act.
- (3) An order that is registered under subsection (2) may be enforced in the same way as if it were an order under this Act.
- (4) The regulations may make further provision with respect to arrangements under this section.
- (5) Subject to any limitations prescribed by regulation, an arrangement entered into under this section has effect according to its terms.

### **57—Compliance audits**

- (1) The Ombudsman must conduct an annual audit to monitor compliance with this Act.
- (2) The Commissioner of Police must ensure that the Ombudsman is provided with such information as it may require for the purpose of conducting an audit under this section.
- (3) A report on an annual audit must be presented to the Attorney-General on or before 30 September in each year.
- (4) The Attorney-General must, within 12 sitting days after receipt of a report under this section, cause copies of the report to be laid before each House of Parliament.

### **58—Regulations**

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) Without limiting the generality of subsection (1), those regulations may make provision for or relating to—
  - (aa) the carrying out of forensic procedures under Part 2 Division 4, the testing of forensic material obtained by such forensic procedures for communicable diseases (including by prohibiting the carrying out of tests of a specified kind) and the communication of the results of such testing to a specified person or body; and
  - (a) fees in respect of any matter under this Act and their payment, recovery or waiver; and
  - (b) fines, not exceeding \$2 500, for offences against the regulations; and
  - (c) facilitation of proof of the commission of offences against the regulations.
- (3) The regulations may—
  - (a) be of general application or vary in their application according to prescribed factors; and
  - (b) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister or the Commissioner of Police.



## **Schedule 1—Transitional provisions**

### **Part 4—Transitional provisions**

#### **6—Retention of fingerprints etc obtained in accordance with *Summary Offences Act 1953***

Where photographs, prints or recordings have, before the commencement of Part 2 Division 2 of this Schedule, been taken in respect of a person under section 81(4) of the *Summary Offences Act 1953*, or a person has supplied a sample of his or her handwriting under that subsection, any requirement to destroy that material under subsection (4f) of that section will be taken not to apply to the material and to have never applied to the material.

#### **7—Material obtained in accordance with repealed Act**

- (1) Forensic material obtained as a result of a forensic procedure authorised under Part 2B of the repealed Act will be taken to be forensic material obtained as a result of a forensic procedure authorised under Part 2 Division 1 of this Act.
- (2) Forensic material obtained as a result of a forensic procedure authorised under Part 3 of the repealed Act (whether authorised by informed consent, the making of an interim order or the making of a final order under that Part) will be taken to be forensic material obtained as a result of a forensic procedure authorised under Part 2 Division 2 of this Act.
- (3) Forensic material obtained as a result of a forensic procedure authorised under Part 3A of the repealed Act will be taken to be forensic material obtained as a result of a forensic procedure authorised under Part 2 Division 3 of this Act.

#### **8—Retention and assimilation orders under repealed Act**

- (1) An order made under section 43 of the repealed Act that is in force on the commencement of this clause will be taken to be an order under section 36 of this Act.
- (2) An order made under section 44 of the repealed Act that is in force on the commencement of this clause will be taken to be an order under section 37 of this Act.

#### **9—Continuation of DNA database system**

- (1) The DNA database system maintained by the Commissioner under the repealed Act forms part of the DNA database system under this Act.
- (2) Information that was, immediately before the commencement of this clause, stored on the suspects index or the offenders index of the DNA database system maintained by the Commissioner under the repealed Act will be taken to be stored on the suspects/offenders index of the DNA database system under this Act.

#### **10—Validation provision**

For the purposes of any proceedings, contravention of a requirement of section 40, 44C, 44D or 46C of the repealed Act in relation to a forensic procedure, forensic material or a DNA profile derived from forensic material will be taken not to be contravention of a requirement of the repealed Act and will not affect the admissibility of any evidence obtained from, or relating to, the procedure, material or DNA profile.

## Legislative history

### Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Legislation repealed by principal Act

The *Criminal Law (Forensic Procedures) Act 2007* repealed the following:

*Criminal Law (Forensic Procedures) Act 1998*

### Legislation amended by principal Act

The *Criminal Law (Forensic Procedures) Act 2007* amended the following:

*Child Sex Offenders Registration Act 2006*

*Summary Offences Act 1953*

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2007	5	<i>Criminal Law (Forensic Procedures) Act 2007</i>	29.3.2007	14.5.2007 ( <i>Gazette</i> 10.5.2007 p1977)
2012	52	<i>Independent Commissioner Against Corruption Act 2012</i>	6.12.2012	Sch 3 (cll 14—16)—20.12.2012 ( <i>Gazette</i> 20.12.2012 p5742)
2013	41	<i>Child Sex Offenders Registration (Miscellaneous) Amendment Act 2013</i>	3.10.2013	Sch 1 (cl 2)—22.12.2013 ( <i>Gazette</i> 19.12.2013 p4923)
2015	11	<i>Criminal Law (Forensic Procedures) (Blood Testing for Diseases) Amendment Act 2015</i>	9.7.2015	12.12.2016 ( <i>Gazette</i> 8.12.2016 p4902)
2016	28	<i>Statutes Amendment (Attorney-General's Portfolio) Act 2016</i>	16.6.2016	Pt 5 (ss 10, 11 & 13—16)—16.6.2016: s 2(1); s 12—12.12.2016: s 2(2)
2016	35	<i>Statutes Amendment (Gender Identity and Equity) Act 2016</i>	4.8.2016	Pt 4 (ss 9 & 10)—8.9.2016 ( <i>Gazette</i> 8.9.2016 p3676)
<b>2016</b>	<b>60</b>	<b><i>Police Complaints and Discipline Act 2016</i></b>	<b>8.12.2016</b>	<b>Sch 1 (cl 7)—19.4.2017 (<i>Gazette</i> 19.4.2017 p1101); cll 5 &amp; 6—uncommenced</b>

## Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	20.12.2012
	amended by 11/2015 s 4	12.12.2016
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>20.12.2012</i>
s 3		
s 3(1)		
gun shot residue procedure	inserted by 28/2016 s 10(1)	16.6.2016
intrusive forensic procedure	amended by 28/2016 s 10(2)	16.6.2016
simple forensic procedure	amended by 35/2016 s 9	8.9.2016
suspects procedure	inserted by 28/2016 s 10(3)	16.6.2016
suspects procedure	substituted by 11/2015 s 5	12.12.2016
Pt 2		
Pt 2 Div 2		
s 14		
s 14(2)	amended by 28/2016 s 11	16.6.2016
Pt 2 Div 3		
s 20		
s 20(2)	amended by 41/2013 Sch 1 cl 2	22.12.2013
Pt 2 Div 4	inserted by 11/2015 s 6	12.12.2016
s 20A		
prescribed employment	amended by 28/2016 s 12	12.12.2016
Pt 3		
s 21		
s 21(3)	amended by 35/2016 s 10(1), (2)	8.9.2016
s 31		
s 31(1)	amended by 11/2015 s 7	12.12.2016
Pt 4		
s 34A	inserted by 11/2015 s 8	12.12.2016
s 39A	inserted by 11/2015 s 9	12.12.2016
Pt 5		
s 41		
s 41(2)	amended by 28/2016 s 13(1), (2)	16.6.2016
s 41(3)		

## Criminal Law (Forensic Procedures) Act 2007—19.4.2017 to 21.8.2017

### Legislative history

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<i>NCIDD</i>	<i>deleted by 28/2016 s 13(3)</i>	16.6.2016
s 42		
s 42(1)	amended by 28/2016 s 14	16.6.2016
s 45		
s 45(2)	amended by 52/2012 Sch 3 cl 14	20.12.2012
	amended by 60/2016 Sch 1 cl 5(1), (2)	uncommenced—not incorporated
Pt 6		
s 48A	inserted by 11/2015 s 10	12.12.2016
Pt 7		
s 50		
s 50(1)	amended by 52/2012 Sch 3 cl 15	20.12.2012
	amended by 60/2016 Sch 1 cl 6(1), (2)	uncommenced—not incorporated
s 50A	inserted by 28/2016 s 15	16.6.2016
s 55		
s 55(1)	substituted by 28/2016 s 16	16.6.2016
s 57		
s 57(1)	amended by 52/2012 Sch 3 cl 16	20.12.2012
	<b>amended by 60/2016 Sch 1 cl 7(1)</b>	<b>19.4.2017</b>
s 57(2)	amended by 52/2012 Sch 3 cl 16	20.12.2012
	<b>amended by 60/2016 Sch 1 cl 7(2)</b>	<b>19.4.2017</b>
s 58		
s 58(2)	amended by 11/2015 s 11	12.12.2016
Sch 1		
<i>Pts 1—3</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	20.12.2012

### Historical versions

20.12.2012

22.12.2013

16.6.2016

8.9.2016

12.12.2016