Legislative Council—No 33
As received from the House of Assembly and read a first time, 13 May 2015

South Australia

Criminal Law (Forensic Procedures) (Blood Testing for Diseases) Amendment Bill 2015

A BILL FOR

An Act to amend the *Criminal Law (Forensic Procedures) Act 2007*.

Contents

Part 1—Preliminary

1 Short title
2 Commencement
3 Amendment provisions

Part 2—Amendment of *Criminal Law (Forensic Procedures) Act 2007*

4 Amendment of long title
5 Amendment of section 3—Interpretation
6 Insertion of Part 2 Division 4

Division 4—Blood testing of certain persons for communicable diseases

20A Interpretation
20B Senior police officer may require certain persons to provide blood sample

7 Amendment of section 31—Use of force
8 Insertion of section 34A

34A Forensic material obtained under Part 2 Division 4

9 Insertion of section 39A

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

10 Insertion of section 48A

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

11 Amendment of section 58—Regulations

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) (Blood Testing for Diseases) Amendment Act 2015*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Criminal Law (Forensic Procedures) Act 2007*

4—Amendment of long title

Long title—after "offences" insert:

and for other purposes

5—Amendment of section 3—Interpretation

Section 3(1), definition of ***suspects procedure***—delete the definition and substitute:

> ***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;

6—Insertion of Part 2 Division 4

After section 20 insert:

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;

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.

7—Amendment of section 31—Use of force

Section 31(1)(b)—delete "evidence obtained from" and substitute:

material obtained by carrying out

8—Insertion of section 34A

After section 34 insert:

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.

9—Insertion of section 39A

After section 39 insert:

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.

10—Insertion of section 48A

After section 48 insert:

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.

11—Amendment of section 58—Regulations

Regulation 58(2)—before paragraph (a) insert:

(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