

Legislative Council—No 63A

As reported with amendments, report adopted, Standing Orders suspended and passed remaining stages, 23 June 2016

South Australia

**Summary Offences (Biometric Identification)
Amendment Bill 2015**

A BILL FOR

An Act to amend the *Summary Offences Act 1953*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

5 This Act may be cited as the *Summary Offences (Biometric Identification) Amendment Act 2015*.

2—Commencement

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

3—Amendment provisions

10 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 *Summary Offences Act 1953*

4—Amendment of section 74A—Power to require personal details and other identification information

(1) Section 74A(1)—delete subsection (1) and substitute:

- 15 (1) If a police officer has reasonable cause to suspect—
- (a) that a person has committed, is committing, or is about to commit, an offence; or
 - (b) that a person may be able to assist in the investigation of an offence or a suspected offence,
- 20 the officer may require the person to do either or both of the following:
- (c) state all or any of the person's personal details;
 - (d) submit to a biometric identification procedure.

(2) Section 74A(2)—delete "subsection (1)" and substitute:

25 subsection (1)(c)

(2a) Section 74A—after subsection (2) insert:

(2a) Despite subsection (1), a police officer may only require a person to submit to a biometric identification procedure under subsection (1)(d) if—

- (a) the person has refused or failed to comply with a requirement under subsection (1)(c) to state all or any of the person's personal details; or
- (b) after requiring the production of evidence by the person under subsection (2), the officer is not reasonably satisfied as to the identity of the person.

(2b) Before a biometric identification procedure is carried out in respect of a person, a police officer must inform the person of the following matters:

- (a) that the police officer is exercising a power under this section;
- (b) the grounds on which the person is required to submit to the biometric identification procedure;
- (c) the manner in which the procedure will be conducted and what directions may be given to the person for the purposes of the procedure;
- (d) that any biometric data obtained from the person may only be retained for the purposes of conducting the procedure;
- (e) the right of the person under this section to request confirmation from the Commissioner relating to the non-retention of the biometric data under subsection (4c).

(3) Section 74A(3)(b)—delete "subsection (1)" and substitute:
subsection (1)(c)

(4) Section 74A(4)—after "personal details" insert:

, or submit to a biometric identification procedure,

(5) Section 74A—after subsection (4) insert:

(4a) A person must not retain or store biometric data derived from a biometric identification procedure under this section for longer than is reasonably required for the purposes of carrying out the biometric identification procedure.

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

(4b) The Commissioner must—

- (a) establish guidelines for the conduct of biometric identification procedures under this section including the operation of prescribed devices and the handling of biometric data derived from biometric identification procedures; and

(b) ensure that a prescribed device used for the purposes of a biometric identification procedure under this section is properly maintained and operated in accordance with the manufacturer's operating instructions and any guidelines issued under paragraph (a).

(4c) The Commissioner must, on application in a manner and form approved by the Commissioner made by a person who submitted to a biometric identification procedure, confirm in writing that the biometric data relating to the person derived from the biometric identification procedure has been deleted within the time required.

(4d) The Commissioner must, as soon as practicable after each 30 June, cause a report to be prepared about the operation of this section in respect of biometric identification procedures during the year ended on that 30 June.

(4e) Without limiting subsection (4d), a report relating to a year must include the following matters occurring under this section in that year:

(a) the number of biometric identification procedures undertaken;

(b) the number of positive identifications made using biometric identification procedures;

(c) the number of false identifications (if any) made using biometric identification procedures;

(d) details of prescribed devices used for the purposes of conducting biometric identification procedures (including operating procedures and the manner in which, and for how long, the devices retain biometric information obtained under this section);

(e) the number of arrests resulting from the identification of a person as a result of a biometric identification procedure;

(f) the number of prosecutions commenced for offences against—

(i) subsection (3)(a) involving a refusal or failure to comply with a requirement to submit to a biometric identification procedure under subsection (1); and

(ii) subsection (4a).

(4f) The Commissioner must submit the report to the Minister who must, as soon as reasonably practicable after receiving the report, cause copies of the report to be laid before each House of the Parliament.

(6) Section 74A(5)—before the definition of *personal details* insert:

biometric data means fingerprint data or any other prescribed data or data of a prescribed kind that describes physical characteristics of a person or part of a person that may be used to identify the person;

biometric identification procedure means a procedure in which biometric data relating to a person is obtained using a prescribed device and compared with other biometric data for the purposes of identifying the person;

(7) Section 74A(5)—after the definition of ***personal details*** insert:

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prescribed device means a device, or a device of a kind, prescribed by the regulations for the purposes of this section.