

SECOND READING SPEECH

Forensic Procedures Amendment Bill 2014

Madam Speaker, the *Forensic Procedures Amendment Bill 2014* makes a number of amendments to the *Forensic Procedures Act 2000*. The principle purpose of the Bill is to introduce forensic sampling procedures on children under the age of ten years in certain, very limited circumstances.

In addition, the Bill makes a number of minor and unrelated amendments in relation to the way in which the DNA database system is utilised. Some other very minor technical amendments are also contained in the Bill.

The *Forensic Procedures Act 2000* provides a framework for taking forensic samples from suspects in criminal investigations. It also provides for the taking of samples from other non-suspect people for purposes such as elimination of DNA from a crime scene or identifying missing or deceased persons.

Section 4 of the Act provides that the Act does not authorise the carrying out of procedures on a child under the age of 10 years. The section was included because the age of criminal responsibility is 10 years meaning a child under 10 cannot be charged, even with a serious offence.

It should be noted that this Bill in no way changes the law in relation to the age of criminal responsibility.

However, section 4 also acts to restrict the ability of police to take a sample from a young child for non-suspect purposes.

The Act currently provides for testing of people who are not suspects by classifying them as “volunteers”. Rather than categorising children under 10 as “volunteers”, this Bill will insert a new Part in the Act to regulate the collection, use and retention of forensic materials from children under 10. This approach avoids

complex amendments to other Parts of the Act and makes the law in relation to forensic procedures carried out on children under 10 easily accessible and understood by law enforcement authorities and the community.

This Bill amends the Act so that forensic procedures may be carried out on a child under 10 for purposes other than proving that child committed an offence. A sampling procedure will be allowed in the following situations:

- To identify the young child, if a police officer is of the opinion that the young child is lost or abandoned;
- To identify a deceased person, if the young child is the only person available to provide DNA for the purpose of identifying the deceased person;
- To identify or locate a missing person, if the young child is the only person available to provide DNA for the purpose of identifying or locating the missing person;
- To establish the young child's parentage, if the young child is not a victim of a crime to which the sampling procedure relates but the young child's DNA may provide evidence of the commission of a crime (for example to establish the father of a child born to a mother under the age of consent or incest cases); or
- To differentiate the young child's forensic material from other forensic material found at a particular crime scene.

The amendments limit the type of sampling procedures to be carried out on a child under 10 to the taking of a sample of saliva or sampling by a buccal swab (a swab of the inside of the cheek).

From a practical point of view, a buccal swab will often be performed by the child themselves if they are old enough to do so, it is a simple matter of rubbing a foam tip on a stick on the inside of the cheek.

A parent of a child may also take the sample, or it may be taken by a police officer, medical practitioner, nurse or dentist. A buccal swab is the preferred method of sampling, but for a child that is not keen to open their mouth, or a very young child who cannot understand a request to open their mouth, the outside of their mouth can be swabbed for saliva.

Allowing only these methods of sampling will ensure that children under 10 cannot be subjected to any of the more invasive forensic procedures. It should also be noted that there is no power to use any force against the child in order to obtain a sample.

Consent from the parent or guardian of the child will be required prior to the taking of a forensic sample. If consent is not obtained, either because a parent refuses or because there is no parent available, then a procedure can occur on the order of a magistrate.

In order to provide informed consent, a parent must be informed of the following matters:

- The purpose for which the procedure is to be carried out;
- The way in which the sampling procedure is to be carried out;
- That the sampling procedure may produce evidence that might be used in a court of law;
- That the sampling procedure will be carried out by an authorised person;
- That the parent may refuse to consent, but if they do a magistrate can make an order; and
- That the parent may withdraw consent at any time.

Any application to a magistrate is to be made in a closed court to protect the child. The Bill provides a list of matters that the magistrate is to take into account prior to making an order. These matters are: the age of the child, the best interests of the child,

whether the child understands what will be involved in carrying out the sampling procedure; any wishes of the child in relation to whether the procedure should be carried out (if the child is old enough to express these); the purpose for which the forensic procedure is required; and whether the carrying out of the sampling procedure is justified in all the circumstances.

A young child may be represented by a legal practitioner at a court application for a sampling procedure, the legal practitioner is to act in the best interests of the child.

A sampling procedure must be carried out in circumstances affording reasonable privacy to the young child and is to be carried out in a manner consistent with appropriate medical or other relevant professional standards. A parent or independent witness is to be present when a sampling procedure is carried out. There is provision for Police to exclude a parent if they believe that the parent may unreasonably interfere with or obstruct a sampling procedure. If a parent is excluded an independent witness is to be present. There is a penalty provided for parents who obstruct or interfere with sampling procedures or who contravene an order of a magistrate to make the child available for a sampling procedure. The penalty is a fine of up to 50 penalty units or imprisonment for not more than 2 years, and is a summary offence. These penalties are consistent with offences such as assaulting, resisting or wilfully obstructing a police officer in the execution of their duty or hindering or obstructing a person fulfilling a duty under the *Children, Young Persons and Their Families Act 1997*.

Information obtained from the analysis of forensic material taken from a young child may only be matched with other information for the specified purpose for which the forensic material was taken from the young child. Forensic material must be destroyed as soon as practicable after it is no longer required.

In addition to the above amendments, Forensic Science Service Tasmania has requested that the current definition of “DNA

database system” be amended to reflect the Macquarie dictionary definition of “database” which is “a large volume of information stored in a computer and organised in categories to facilitate retrieval”.

The current definition of “DNA database system” includes in parenthesis the words “(whether in computerised or other form and however described)” which distorts the generally accepted meaning of the word “database” and makes unclear what might fall within the widened definition. This amendment has been made to clarify the Department of Police and Emergency Management’s legal and administrative obligations under the Act.

Amendment to the definition of “serious crime” have also been made to include three offences under the Animal Welfare Act 1993. The offences proposed for inclusion are those under sections 8 (animal cruelty), 9 (aggravated animal cruelty) and 10 (baiting and shooting). Several offences under the *Firearms Act 1996*, being sections 9 (possession or use of firearms), 74 (unregistered firearms), 111 (possession of loaded firearm in public place), 112 (discharge of firearm in public place) and 113 (recklessly discharging firearm) are also to be included.

Allowing the sampling and testing of exhibits and alleged offenders in relation to these offences will greatly assist with investigations and the success of prosecutions.

The Bill makes amendments to section 58 of the Act to clarify that DNA records may be transmitted for the purposes of identifying missing and unknown deceased persons outside the context of a criminal investigation or prosecution. In addition, section 63 is amended to allow the disclosure of information on the DNA database for the identification of missing or unknown deceased persons.

Madam Speaker, I commend the Bill to the House.