

## CLAUSE NOTES

### FORENSIC PROCEDURES AMENDMENT ACT 2014

**Clause 1: Short title**

Provides that the Act may be cited as the *Forensic Procedures Amendment Act 2014*.

**Clause 2: Commencement**

Provides that the Act commences on the Royal Assent.

**Clause 3: Principal Act**

Where the term Principal Act is used in this Bill, it is a reference to the *Forensic Procedures Act 2000*.

**Clause 4: Section 3 amended (Interpretation)**

The clause makes a number of minor amendments to definitions in the Principal Act. It also inserts two new definitions, a definition of “sampling procedure” and a definition of “young child”. This is because these amendments introduce these two terms. Clause 4 also adds several offences to the existing definition in the Principal Act of “serious offence”.

**Clause 5: Section 4 substituted**

This clause repeals section four of the Principal Act and replaces it with a new section 4. Subclause (1) restates the position currently presented in section 4 – that the Act does not apply to a person under 10 years of age. Subclause (2) provides an exception to the rule in subclause(1) to allow a sampling procedure to be carried out on a person who is under the age of 10 years if the sampling procedure is carried out in accordance with Part 4B, which this Bill inserts in to the Principal Act.

- Clause 6:       Section 8 amended (Circumstances for carrying out forensic procedure)  
Changes the wording of section 8 from “under the age of 15 years” to “between the ages of 10 and 14 years (both years inclusive)”. This is a change to the wording of this section only and does not change the operation of the Act in any manner.
- Clause 7:       Section 12 amended (Circumstances in which police officer may order non-intimate forensic procedure)  
Corrects an error in terminology in the section 12(5) of the Principal Act.
- Clause 8:       Section 14 amended (Application for forensic procedure order)  
Changes the wording only of section 14 of the Principal Act, not the operation of the section.
- Clause 9:       Section 15 amended (Securing the presence at hearing of a suspect or charged person who is under 15 and not in custody)  
Changes only the wording of section 15 of the Principal Act, not the operation of the section.
- Clause 10:      Section 16 amended (Procedure at forensic procedure application hearing if suspect or charged person under 15)  
Changes only the wording of section 16 of the Principal Act, not the operation of the section.
- Clause 11:      Section 18 amended (Application for interim forensic procedure order)  
The amendments to subsection (1) changes only the wording of this subsection, not the operation of the subsection. The amendments to subsection (2) correct an error in terminology in this subsection.

- Clause 12: **Section 19 amended (Interim forensic procedure order)**  
The amendments to subsection (1) changes only the wording of this subsection, not the operation of the subsection. The amendments to subsection (2) correct an error in terminology in this subsection.
- Clause 13: **Section 29 amended (Circumstances for carrying out forensic procedures on volunteers)**  
Changes only the wording of section 29(2) of the Principal Act, not the operation of the section.
- Clause 14: **Section 30 amended (Informing volunteer of parent of forensic procedure)**  
Changes only the wording of section 30 of the Principal Act, not the operation of the section.
- Clause 15: **Section 32 amended (Application for order to retain forensic material, &c.)**  
Changes only the wording of section 32(3) of the Principal Act, not the operation of the section.
- Clause 16: **Part 4B inserted**  
Inserts, after section 34C of the Principal Act, Part 4B – Sampling Procedures on Children under 10 years of Age:
- 34D Circumstances for carrying out sampling procedures on young children**  
A sampling procedure can only be carried out with the informed consent of the parent of a young child or on the order of a magistrate. A parent gives informed consent under this Part if the parent consents after a police officer has requested the parent to consent and informed the parent in accordance with section 34E.
- 34E Information to be provided before giving consent to sampling procedure**

If a police officer requests a parent to consent to a sampling procedure the police officer must inform the parent of the matters outlined in this section.

### **34F Withdrawal of consent to sampling procedure**

A parent may inform the police officer to whom consent was given, or an Officer of Police that the parent withdraws their consent to the carrying out of the sampling procedure. The sampling procedure must not occur or, if it has commenced, not be completed. However, a sampling procedure may still occur on the order of a magistrate.

### **34G Application for order of Magistrate**

Where a parent does not consent, or withdraws consent, a police officer may apply to a magistrate for an order authorising the carrying out of a sampling procedure on a young child. This section specifies how an application is to be made and what information it is to include.

### **34H Notice of hearing of application**

A copy of an application to a magistrate, along with notice of the time and place of the hearing of the application, must be served on the parent of the young child to whom the application relates.

### **34I procedure at sampling procedure application**

An application is to be held in a closed court. A young child may be represented by a legal practitioner. The legal practitioner must act in the best interests of the child. The legal practitioner or parent of a child may cross examine the applicant for the order, with the leave of the magistrate call or cross examine any other witness, and address the magistrate. A magistrate must not give leave to call or cross examine other witnesses unless the magistrate is satisfied that it is in the interests of justice. Subclause (6) outlines the

matters a magistrate must take into account when making an order for a sampling procedure.

### **34J Sampling procedure order**

A magistrate may make a sampling procedure order for the purposes outlined in this section. The magistrate must give reasons for the order and ensure a written record of the order is kept and a copy of it provided to the applicant. The order may specify the time, place and manner in which the sampling procedure is to occur. A magistrate can order the parent of the young child to make the child available for the sampling procedure. If the parent fails to comply with this order there is a penalty of a fine not exceeding 50 penalty units or a term of imprisonment not exceeding 2 years.

### **34K General rules for carrying out sampling procedure**

Provides how a sampling procedure is to be carried out and who may carry it out. A person authorised to carry out a procedure may ask another person for assistance, this will allow, for example, a parent to take a sample from their child if this is convenient.

### **34L Presence of parent or witness while sampling procedure is carried out**

A sampling procedure must be carried out in the presence of a parent, or, where a parent of a young child is unavailable an independent witness is to be present. Subclause 3 provides that if a parent or independent witness unreasonable interferes with or obstructs the carrying out of a sampling procedure they may be excluded and the procedure may continue in their absence. At subclause 4 an Officer of Police is also provided with power to notify a parent in writing that they are not to be present at the sampling procedure in the Officer of Police believes

that the parent may unreasonably interfere with, or obstruct, the carrying out of the sampling procedure.

### **34M Presence of police officers during the sampling procedure**

Outlines when police officers may be present during the carrying out of a sampling procedure.

### **34N Limit on use of forensic material taken under this Part**

Information obtained from the analysis of forensic material taken may only be matched with other information if that matching is for the purpose for which the forensic material was taken from the young child.

**Clause 17: Section 38 amended (Withdrawal of consent)**  
Changes the wording of section 38(1) of the Principal Act from “under the age of 15 years” to “between the ages of 10 and 14 years (both years inclusive)”. This is a change to the wording of this section only and does not change the operation of the Act in any manner.

**Clause 18: Section 44 amended (Presence of parent or witness while forensic procedure is carried out)**  
Changes the wording variously in section 44 of the Principal Act from “under the age of 15 years” to “between the ages of 10 and 14 years (both years inclusive)”. This is a change to the wording of this section only and does not change the operation of the Act in any manner.

**Clause 19: Section 51B inserted**  
After section 51A of the Principal Act, the following section is inserted in Part 7:

### **51B Destruction of forensic material taken under Part 4B**

Provides that material obtained under the Act, or any information obtained from the analysis of such material, must be destroyed as soon as practicable after the material is no longer required.

**Clause 20: Section 53 amended (Use of information on DNA database system)**

Allows access to the DNA database system for the purpose of forensic comparison with forensic material obtained under the new Part 4B.

**Clause 21: Section 58 amended (Database information)**

Allows the Minister to enter into arrangements with other Ministers in other Australian jurisdictions to share information in relation to identifying a deceased person or identifying or locating a missing person.

**Clause 22: Section 63 amended (Disclosure of information)**

Allows a person to disclose information stored on the DNA database system for the purpose of identifying a deceased person or identifying or locating a missing person.

**Clause 23: Repeal of Act**

Is a standard clause included in all amending Acts. All amendments made by an amending Act are taken to be incorporated in to the Principal Act when the amending Act commences. As such, the amending Act does not need to remain on the statute books. An automatic repeal provision is the most expedient manner in which to remove the now defunct Act from the statute book.