

Queensland



**POLICE POWERS AND
RESPONSIBILITIES
(FORENSIC PROCEDURES)
AMENDMENT ACT 2003**

Act No. 49 of 2003

Queensland



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RESPONSIBILITIES (FORENSIC
PROCEDURES) AMENDMENT ACT 2003**

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Queensland



**Police Powers and Responsibilities (Forensic
Procedures) Amendment Act 2003**

Act No. 49 of 2003

**An Act to amend the *Police Powers and Responsibilities Act 2000* and
the *Corrective Services Act 2000***

[Assented to 27 August 2003]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

1 Short title

This Act may be cited as the *Police Powers and Responsibilities (Forensic Procedures) Amendment Act 2003*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

PART 2—AMENDMENT OF POLICE POWERS AND RESPONSIBILITIES ACT 2000

3 Act amended in pt 2

This part amends the *Police Powers and Responsibilities Act 2000*.

4 Insertion of new s 3A

After section 3—

insert—

‘3A Notes in text

‘A note in the text of this Act is part of this Act.’.

5 Amendment of s 19 (General power to enter to arrest or detain someone or enforce warrant)

(1) Section 19(1)(c)—

renumber as section 19(1)(e).

(2) Section 19(1)—

insert—

‘(c) to detain a person named in a forensic procedure order or a registered corresponding forensic procedure order; or

(d) to detain a person who may be detained under an order made under section 298, 311, 312, 316, 318D or 318ZF;¹ or’.

6 Amendment of s 32 (Person may be required to state name and address)

Section 32(3)(b), after ‘summons’—

insert—

‘, order’.

7 Amendment of s 33 (Prescribed circumstances for requiring name and address)

(1) Section 33(c)(i), ‘notice; or’—

omit, insert—

‘notice or an order of a court made under section 298 or 318ZF;² or’.

1 Section 298 (Court may order taking of identifying particulars), 311 (Taking DNA sample from adult before court), 312 (Taking DNA sample after finding of guilt), 316 (Taking DNA sample from child), 318D (Application to court for order) or 318ZF (Order for person who fails to comply with reporting notice)

2 Section 298 (Court may order taking of identifying particulars) or 318ZF (Order for person who fails to comply with reporting notice)

(2) Section 33(c)(ii), ‘notice;’—

omit, insert—

‘notice or an order made under section 311, 312, 316, 318D or 318ZF;³’.

(3) Section 33—

insert—

‘(ca) an authorised examiner is about to perform a non-medical examination under a non-medical examination notice or under section 318ZF;’.

(4) Section 33(e), from ‘warrant’—

omit, insert—

‘warrant, forensic procedure order or registered corresponding forensic procedure order or serve on a person—

- (i) a forensic procedure order or registered corresponding forensic procedure order; or
- (ii) a summons; or
- (iii) another court document;’.

(5) Section 33—

insert—

‘(k) under chapter 8A, a qualified person for performing a forensic procedure is about to perform the forensic procedure on the person.’.

8 Renumbering and relocation of s 275 (Identification of suspects)

Section 275—

renumber as section 377A and *relocate* to chapter 9, part 5 after section 377.

³ Section 311 (Taking DNA sample from adult before court), 312 (Taking DNA sample after finding of guilt), 316 (Taking DNA sample from child), 318D (Application to court for order) or 318ZF (Order for person who fails to comply with reporting notice)

9 Replacement of ch 8, hdg and pt 1

Chapter 8, heading and part 1—

omit, insert—

‘CHAPTER 8—SEARCH POWERS FOR PERSONS IN CUSTODY

‘269 Application of ch 8

‘This chapter applies to a person if the person—

- (a) is lawfully arrested; or
- (b) is in lawful custody for a charge of an offence that has not been decided; or

Examples—

- 1. The person may be in lawful custody because bail has been refused or revoked or a condition of bail is contravened.
 - 2. The person may be in lawful custody pending the satisfaction of a condition on which the person is to be released on bail.
- (c) is in custody under a sentence for a period of imprisonment or, for a child, a detention order; or
 - (d) is otherwise lawfully detained under another Act.

‘270 Police officer may search person in custody

‘(1) A police officer may search and re-search a person to whom this chapter applies.

‘(2) A police officer may seize from the person anything found during the search that the police officer reasonably suspects may provide evidence of the commission of an offence.

‘(3) Also, the police officer may take and retain, while the person is in custody—

- (a) anything that may endanger anyone’s safety, including the person’s safety; or
- (b) anything that may be used for an escape; or

- (c) anything else the police officer reasonably considers should be kept in safe custody while the person is in custody.

‘271 Powers relating to thing taken from person taken to place of safety

‘(1) This section applies if a police officer takes a thing under section 270(3) from a person who is taken to a place of safety under section 210.⁴

‘(2) A police officer may give the thing—

- (a) if the place of safety is the person’s home—to a person at the home who is an adult member of the person’s family; or
- (b) if the place of safety is the home of a friend or relative of the person—to the friend or relative for safe keeping while the person is at the place; or
- (c) otherwise—to the person apparently in possession or in charge of the place of safety for safe keeping while the person is at the place.

‘(3) The person to whom the thing is given must give the police officer a signed receipt in the approved form for the thing and, if the place of safety is not the home of the person from whom the thing was taken, must return the thing to that person before the person voluntarily leaves the place of safety.’.

4 Section 210 (Additional case when arrest for being drunk in a public place may be discontinued)

10 Replacement of ch 8, pts 2–4 and pt 5, hdg

Chapter 8, parts 2 to 4 and chapter 8, part 5, heading—
omit, insert—

‘CHAPTER 8A—FORENSIC PROCEDURES

‘PART 1—QUALIFIED PERSONS AND AUTHORISING FORENSIC PROCEDURES

‘272 Who are qualified persons

‘(1) This section states who are “**qualified persons**” to perform forensic procedures.

‘(2) A doctor or dentist is a qualified person to perform an intimate forensic procedure and a non-intimate forensic procedure.

‘(3) A DNA sampler is a qualified person for taking a DNA sample.

‘(4) An authorised examiner is a qualified person to perform a non-intimate forensic procedure that is a non-medical examination.

‘(5) A police officer is a qualified person for taking identifying particulars.

‘(6) Without limiting subsections (2) to (5), a person who is specifically authorised under this chapter to perform a procedure that is a forensic procedure is a qualified person to perform the forensic procedure.

‘(7) If a qualified person may take a person’s identifying particulars under this chapter, the qualified person may also photograph the person’s identifying particulars.

‘273 Limitation on forensic procedures that dentist may perform

‘Despite section 272(2), a dentist may perform a forensic procedure only to the extent necessary to—

- (a) examine a person’s mouth; or
- (b) take a sample of a person’s saliva; or

- (c) take a dental impression of a person's mouth; or
- (d) examine a bite mark on a person.

'274 When forensic procedures are authorised

'(1) A forensic procedure may be performed on a person under this chapter if—

- (a) either of the following gives consent ("**forensic procedure consent**") to the procedure being performed—
 - (i) the person on whom it is proposed to perform the forensic procedure;
 - (ii) someone else authorised under part 2 to give consent for the person if the person is a child under 14 years or a person with impaired capacity; or
- (b) the procedure is performed under a forensic procedure order; or
- (c) this chapter otherwise authorises a qualified person to perform the procedure.

'(2) A person on whom it is proposed to perform a forensic procedure may in this chapter be referred to as a "**relevant person**".

'PART 2—OBTAINING CONSENT FOR FORENSIC PROCEDURE

'275 What pt 2 provides

'(1) This part states general rules—

- (a) for obtaining a forensic procedure consent from a person suspected of committing an offence; or
- (b) for obtaining a forensic procedure consent, that relates only to the taking of a DNA sample, from a person for any of the following purposes—
 - (i) to help decide whether or not the person may be a suspect in relation to an offence;

Example—

Members of the community may be asked to provide DNA samples for DNA analysis for comparison with the results of analysis of a DNA sample seized at a crime scene.

- (ii) to help locate a missing person;

Example—

A relative of a missing person may be asked to provide a DNA sample to help locate the missing person.

- (iii) to help identify a deceased person or the remains of a deceased person.

Example—

A person may be asked to provide a DNA sample to help decide whether a deceased person is a relative of the person.

Note—

See section 281 for the explanation that must be given to a person asked to give a forensic procedure consent.

‘(2) However, nothing in this part requires a police officer or other person to obtain consent under this part to perform a forensic procedure under this chapter that the person is not specifically required to have consent for.

‘(3) Also, nothing in this part requires a police officer to obtain a forensic procedure consent to perform a non-intimate forensic procedure on a person if the procedure does not involve the touching of the person by anyone other than the person or the taking of a DNA sample.

‘(4) Subject to subsection (1)(b), this part must not be construed as requiring a police officer to act under this part to obtain the consent of a person to the performance of a forensic procedure on the person if the person is not suspected of having committed an offence.

‘276 General rules about asking for consent

‘(1) A police officer may ask a relevant person, or another person who may act for the relevant person, to give a forensic procedure consent only if the police officer is satisfied the person’s ability to give the consent is not affected by alcohol or a drug.

‘(2) A police officer must not ask a relevant person, or another person who may act for the relevant person, to give a forensic procedure consent

for an intimate forensic procedure unless the police officer suspects the relevant person may have committed an indictable offence.

‘(3) This section applies whether or not the relevant person has been proceeded against for an offence for which the results of performing the forensic procedure may be relevant.

‘277 Special requirement for child of at least 14

‘(1) This section applies if a police officer reasonably suspects the relevant person is a child who is at least 14 years.

‘(2) The police officer may ask the child to give a forensic procedure consent.

‘(3) The police officer must ensure a support person is present when the explanation mentioned in section 281⁵ is given and when any consent is given.

‘(4) To assist the child to consider the explanation and decide whether or not to consent, the police officer must ensure the child is given a reasonable opportunity to speak to the support person in circumstances in which the conversation can not be overheard, if it is reasonably practicable to do so.

‘(5) Subsection (6) applies if the child gives a forensic procedure consent relating to the performance of a non-intimate forensic procedure.

‘(6) Before the procedure is performed a police officer must ask the child whether he or she wants a support person to be present while the procedure is being performed and, if the child wants a support person to be present, must ensure a support person is present while the procedure is being performed.

‘278 Special requirement for child under 14

‘(1) This section applies if a police officer reasonably suspects the relevant person is a child who is under 14 years.

‘(2) The police officer may ask a parent of the child to give a forensic procedure consent for the child.

5 Section 281 (General requirements for giving informed forensic procedure consent)

‘(3) If the parent gives a forensic procedure consent for the child authorising the taking of a sample for DNA analysis, the sample taken must be a DNA sample and not a sample of the child’s blood.

‘(4) Subsection (5) applies if the parent gives a forensic procedure consent for the child relating to the performance of a non-intimate forensic procedure.

‘(5) Before the procedure is performed a police officer must ask the child whether he or she wants a support person to be present while the procedure is being performed and, if the child wants a support person to be present, must ensure a support person is present while the procedure is being performed.

‘279 Special requirement for person with impaired capacity

‘(1) This section applies if a police officer reasonably suspects the relevant person is a person with impaired capacity.

‘(2) The police officer may ask the person to give a forensic procedure consent.

‘(3) However, the police officer must ensure a support person is present when the explanation mentioned in section 281 is given and when any consent is given.

‘(4) Also, to assist the person to consider the explanation and decide whether or not to consent, the police officer must ensure the person is given a reasonable opportunity to speak to the support person in circumstances in which the conversation can not be overheard, if it is reasonably practicable to do so.

‘(5) If the person does not have the capacity to give a forensic procedure consent, the police officer may ask a parent of the person to give the consent for the person.

‘(6) Subsection (7) applies if the parent gives a forensic procedure consent for the person relating to the performance of a non-intimate forensic procedure.

‘(7) Before the procedure is performed a police officer must ask the person whether he or she wants a support person to be present while the procedure is being performed and, if the person wants a support person to be present, must ensure a support person is present while the procedure is being performed.

‘280 Consent must be informed consent

‘(1) A police officer must ensure a person asked to give a forensic procedure consent is given the explanation required under section 281 and a reasonable time to consider the explanation.

‘(2) If, under section 278(2) or 279(5) a parent is asked to give a forensic procedure consent for a child or a person with impaired capacity and the child or person is not present when the explanation required under section 281 is given to the parent, a police officer—

- (a) must, to the extent that is reasonably practicable in the circumstances, give the child or person an explanation of the matters mentioned in section 281(1)(a) to (i); and
- (b) must tell the child or person that he or she may object to the performance of the forensic procedure.

‘281 General requirements for giving informed forensic procedure consent

‘(1) To enable a person to give an informed forensic procedure consent, a police officer must explain all the following to the person—

- (a) why it is proposed to perform the forensic procedure on the person;
- (b) whether it is proposed to perform an intimate forensic procedure or a non-intimate forensic procedure or both;
- (c) the general nature of the forensic procedure;
- (d) the class of qualified person who may perform the forensic procedure;
- (e) that the person may refuse to give the consent;
- (f) that if the person gives the consent, the person may withdraw the consent before the forensic procedure is performed or while it is being performed;
- (g) if a sample may be taken for DNA analysis and sections 278(3) and 306⁶ do not apply—

6 Sections 278 (Special requirement for child under 14) and 306 (Use of DNA analysis of DNA sample taken from child under 14)

-
- (i) that the person may limit the purpose for which the results of the DNA analysis may be used to the purpose stated by the police officer under paragraph (a); and
 - (ii) that unless the person limits the purposes of the consent in that way, the results of the DNA analysis of the sample may be included in QDNA and used in a way permitted under this chapter;
- (h) if a sample may be taken for DNA analysis and sections 278(3) and 306 do apply—
- (i) that the sample taken for DNA analysis must be a DNA sample and not a sample of blood; and
 - (ii) that a DNA analysis of the sample may be used only for the purpose stated by the police officer under paragraph (a);
- (i) that the forensic procedure may provide evidence that may be used in a court proceeding.

‘(2) The police officer may give the explanation by giving the person a statement, in the approved form, containing the explanation if it is appropriate in the circumstances to do so.

‘282 Recording consent

‘(1) If a police officer gives the explanation under section 281 orally, the giving of the explanation and any consent to perform the forensic procedure must, if reasonably practicable, be electronically recorded.

‘(2) Unless a forensic procedure consent is electronically recorded under subsection (1), it must be written and signed by the person giving the consent.

‘(3) If a child mentioned in section 277(1) or a person with impaired capacity gives a written forensic procedure consent, it must also be signed by the support person present when the consent is given.

‘(4) A person giving a written forensic procedure consent may give the consent by signing an approved form for the consent.

‘283 Qualified person may perform forensic procedure

‘A qualified person for performing a forensic procedure may perform the forensic procedure on a person under a forensic procedure consent.

‘PART 3—FORENSIC PROCEDURE ORDERS

‘284 Application of pt 3

‘(1) This part applies if a police officer is satisfied performing a forensic procedure on a person suspected of committing an indictable offence may provide evidence of the commission of the offence.

Note—

In some circumstances, procedures that are forensic procedures may be performed under part 4, 5 or 6.⁷

‘(2) Also, this part applies whether or not the relevant person is dead.

‘(3) A police officer may not apply for a forensic procedure order under this part in relation to a child if—

- (a) the only purpose of the application is to obtain authority to take a sample for DNA analysis; and
- (b) it is practicable to make an application under section 316 (“**other application**”) for an order to take a DNA sample from the child; and
- (c) it is likely that an order made under that section can be given immediate effect.

‘(4) A police officer may not apply for a forensic procedure order under this part in relation to a child if—

- (a) the only purpose of the application is to obtain authority to take an identifying particular within the meaning of the *Juvenile Justice Act 1992*, section 10; and

⁷ Part 4 (Identifying particulars), 5 (DNA procedures) or 6 (Non-medical examinations)

- (b) it is practicable to make an application under section 10 (also “**other application**”) of that Act for an order to take the identifying particular from the child; and
- (c) it is likely that an order made under that section can be given immediate effect.

‘(5) Without limiting subsection (3)(b) or (4)(b), it is taken not to be practicable to make the other application if the whereabouts of the child to whom it relates are not sufficiently known to the police officer to allow the officer to give notice of the other application to the child.

‘285 Application for forensic procedure order

‘(1) A police officer may apply to a magistrate in the approved form for an order (“**forensic procedure order**”) authorising a qualified person to perform an intimate or non-intimate forensic procedure, or both an intimate and a non-intimate forensic procedure, on the person named in the application.

‘(2) If the person is a child, the application must be made to a Childrens Court magistrate.

‘(3) The application—

- (a) must be sworn and state the grounds on which it is made; and
- (b) may be made whether or not the person has previously consented to the forensic procedure being performed.

‘(4) The magistrate may refuse to consider the application until the police officer gives the magistrate the information the magistrate requires about the application in the way the magistrate requires.

Example—

The magistrate may require additional information supporting the application to be given by statutory declaration.

‘286 Notice of application must ordinarily be given

‘(1) The person to whom the application relates must be given notice in the approved form of the application at least 7 days before the day the application is to be heard.

‘(2) The notice must state—

- (a) the grounds on which the application is made; and
- (b) the date when and the place where the application is to be heard; and
- (c) the person may appear at the hearing and be heard on the application; and
- (d) that if the person does not appear, the application may be decided in the absence of the person; and
- (e) if the police officer making the application knows the person is in lawful custody in another State, the effect of subsections (5) and (6) and the address of the place where the written submissions mentioned in subsection (5) may be sent.

‘(3) If the person appears at the time and place stated in the notice, the person is entitled to be heard on the application.

‘(4) If the person does not appear at the time and place stated in the notice, the application may be decided in the absence of the person.

‘(5) If the person is in lawful custody in another State, the magistrate may receive submissions about the application through the person’s lawyer, in writing from the person or by using technology allowing reasonably contemporaneous and continuous communication between the magistrate and the person.

‘(6) Written submissions made under subsection (5) need not be considered by the magistrate unless they are received at the place where the application is to be heard before the date the application is heard.

‘(7) Subsection (1) does not apply if the person is dead.

‘(8) This section is subject to section 287.

‘287 When notice of application need not be given etc.

‘(1) This section applies if the magistrate is satisfied—

- (a) a police officer has made a reasonable attempt to locate the person to whom the application relates and was unable to locate the person; or
- (b) the person is likely to abscond if given notice of the application; or

-
- (c) evidence that may be obtained by performing the forensic procedure to which the application relates on the person is likely to be lost or destroyed if the person is given notice of the application; or
 - (d) giving notice of the application to the person may jeopardise the investigation of any indictable offence the person is suspected of having committed because—
 - (i) evidence relating to the offence may be concealed, fabricated or destroyed; or
 - (ii) a witness may be intimidated; or
 - (iii) an accomplice or accessory of the person may take steps to avoid apprehension

‘(2) The person is not entitled to be given notice of the application under section 286 or to be heard on the application.

‘288 Making forensic procedure order

‘(1) A magistrate may make a forensic procedure order in relation to a person only if satisfied on the balance of probabilities there are reasonable grounds for believing performing the forensic procedure concerned on the person may provide evidence of the commission of an indictable offence the person is suspected of having committed (a “**suspected offence**”) and carrying out the forensic procedure is justified in the circumstances.

‘(2) In deciding whether performing the forensic procedure on the person is justified in the circumstances, the magistrate must balance the rights and liberties of the person and the public interest.

‘(3) In balancing those interests the magistrate may have regard to any of the following matters—

- (a) the seriousness of the circumstances surrounding the commission of the suspected offence and the gravity of that offence;
- (b) the degree of the person’s alleged participation in the commission of the suspected offence;
- (c) the age and physical and mental health of the person, to the extent they are known to the magistrate or can be reasonably discovered by the magistrate (by asking the person or otherwise);

- (d) if the person is a child or a person with impaired capacity—the welfare of the person;
- (e) whether there is a less intrusive but reasonably practicable way of obtaining evidence tending to confirm or disprove that the person committed the suspected offence;
- (f) if the person has been asked for and refused to give a forensic procedure consent in relation to the suspected offence—the reasons for the refusal to the extent they are known to the magistrate or can be reasonably discovered by the magistrate (by asking the person or otherwise);
- (g) if the person is in custody for the suspected offence—
 - (i) the period for which the person has already been detained; and
 - (ii) the reason for any delay in applying for the forensic procedure order;
- (h) any other matter the magistrate considers relevant to balancing those interests.

‘289 What forensic procedure order must state

‘A forensic procedure order must state—

- (a) the relevant person’s name; and
- (b) that a forensic procedure may be performed on the person by a qualified person; and
- (c) whether a qualified person may perform—
 - (i) an intimate forensic procedure; or
 - (ii) a non-intimate forensic procedure; or
 - (iii) both an intimate and a non-intimate forensic procedure; and
- (d) that a police officer may exercise the powers in section 291.

‘290 When forensic procedure order ends

‘(1) A forensic procedure order stops having effect when the forensic procedure authorised under the order is completed.

‘(2) However, if a doctor is performing an intimate forensic procedure under the order and decides to also perform a non-intimate procedure under section 318ZA(3),⁸ the order extends to the performance of the non-intimate procedure and stops having effect when both procedures are completed.

‘291 Powers for enforcing forensic procedure order

‘(1) For enforcing a forensic procedure order, a police officer has the following powers—

- (a) power to detain the relevant person for a reasonable time and take the person to a place with appropriate facilities and persons for performing the relevant forensic procedure;
- (b) power to direct the relevant person—
 - (i) to attend at a stated place on a stated day or between stated hours, within 7 days after the direction is given to the person to enable the relevant forensic procedure to be performed; and
 - (ii) to stay at the place for the time reasonably necessary to enable the relevant procedure to be performed.

‘(2) Subsection (1)(a) applies whether or not the relevant person is given a direction under subsection (1)(b).

‘292 Order must be given before forensic procedure is performed

‘(1) A police officer must give a copy of a forensic procedure order to a relevant person before a qualified person performs a forensic procedure on the person under the order.

‘(2) Subsection (1) does not apply if the person is unconscious or dead.

‘293 Qualified person may perform forensic procedure

‘A qualified person for performing a forensic procedure may perform the forensic procedure on a person under a forensic procedure order.

8 Section 318ZA (Doctor’s powers)

‘PART 4—IDENTIFYING PARTICULARS

‘Division 1—Particular provisions about taking identifying particulars

‘294 Taking identifying particulars of person in custody

‘(1) If a person is in custody for an identifying particulars offence the charge of which has not been decided, a police officer may take or photograph all or any of the person’s identifying particulars.

‘(2) If the person is to be released after arrest for the offence, a police officer may detain the person for the time reasonably necessary to take or photograph all or any of the person’s identifying particulars.

‘(3) If the offence involves the conduct of a number of persons acting alone or together, a police officer may photograph the person at the scene of the arrest before taking or photographing all or any of the person’s identifying particulars.

‘295 Taking identifying particulars—proceeding started by notice to appear or complaint and summons

‘(1) This section applies if a police officer decides to start a proceeding against a person, other than a child, for an identifying particulars offence by notice to appear or complaint and summons.

‘(2) Within a reasonable time before, or immediately after, serving the notice to appear or complaint and summons, a police officer may detain the person for the time reasonably necessary to take or photograph all or any of the person’s identifying particulars and take or photograph those particulars.

‘Division 2—Taking identifying particulars under identifying particulars notice

‘296 Application of div 2

‘This division applies if a police officer decides to start, or continues, a proceeding against a person, other than a child, for an identifying

particulars offence by notice to appear or complaint and summons and decides it is not necessary to immediately take the identifying particulars.

‘297 Identifying particulars notice may be given

‘(1) A police officer may, by written notice (**“identifying particulars notice”**) given to the person, require the person—

- (a) to report to a police officer at a stated police station or police establishment within 7 days after the issue of the notice to enable a police officer to take or photograph all or any of the person’s identifying particulars; and
- (b) to stay at the police station or police establishment for the time reasonably necessary to enable the identifying particulars to be taken or photographed.

‘(2) The identifying particulars notice—

- (a) may state the days and times within which the person must attend the police station or police establishment; and
- (b) must state—
 - (i) it is an offence to fail to comply with the notice; and
 - (ii) that, before the identifying particulars are taken, the person must produce satisfactory evidence of his or her identity; and
- (c) must be given to the person with the notice to appear or complaint and summons; and
- (d) must be signed by the police officer giving the notice.

‘(3) If the person attends at a police station or police establishment as required under the identifying particulars notice, a police officer may take or photograph all or any of the person’s identifying particulars.

‘Division 3—Taking identifying particulars under court order

‘298 Court may order taking of identifying particulars

‘(1) This section applies if, in a proceeding for an identifying particulars offence against a person other than a child, a court is satisfied it is

necessary to take or photograph the person's identifying particulars to help—

- (a) identify the person in relation to the offence or another offence the person is suspected of having committed; or
- (b) confirm the person's identity; or
- (c) find out the person's criminal history; or
- (d) keep criminal records.

‘(2) The court may make either of the following orders—

- (a) an order that a police officer may detain the person to enable a police officer to take or photograph all or any of the person's identifying particulars;
- (b) an order—
 - (i) that the person—
 - (A) report to a police officer at a stated police station or police establishment on a stated day or between stated hours within 7 days; and
 - (B) stay at the place for the time reasonably necessary to enable a police officer to take or photograph all or any of the person's identifying particulars; and
 - (ii) authorising a police officer to detain the person to enable a police officer to take or photograph all or any of the person's identifying particulars if the person does not comply with subparagraph (i).

‘(3) A person must not contravene an order made under subsection (2)(b), unless the person has a reasonable excuse.

Maximum penalty—2 years imprisonment.

‘(4) It is not a reasonable excuse for the person to contravene the order that complying with it may tend to incriminate the person.

‘299 Detention for taking identifying particulars

‘(1) A police officer may, to give effect to an order made under section 298(2)(a) or (b)(ii), detain the person.

‘(2) If the person is not already in custody, the time for which the person may be detained is—

- (a) 1 hour; or
- (b) a longer reasonably necessary time, having regard to the particular circumstances.

‘300 Who may take identifying particulars

‘Any police officer may take or photograph all or any of the identifying particulars of a person to whom an order made under section 298(2) relates.

‘Division 4—Destruction of identifying particulars

‘301 Destruction of identifying particulars

‘(1) If a person is found not guilty of an identifying particulars offence or is not further proceeded against for the offence, any identifying particulars taken under this part in relation to the offence must be destroyed within a reasonable time in the presence of a justice.

‘(2) Subsection (1) does not apply if—

- (a) the person has been proceeded against for another identifying particulars offence the charge of which has not been decided; or
- (b) the person has previously been found guilty of another identifying particulars offence, whether before or after the commencement of this section; or
- (c) the identifying particulars are required for the investigation of another identifying particulars offence the person is reasonably suspected of having committed; or
- (d) the person is not proceeded against for the identifying particulars offence because he or she has been found incapable of standing trial because of mental illness.

‘(3) If, because of subsection (2)(a), a person’s identifying particulars are not destroyed and the person is found not guilty of the other identifying particulars offence or the charge of that other offence is not proceeded with, the identifying particulars must be destroyed within a reasonable time after the relevant event happens.

‘(4) However, the identifying particulars must not be destroyed under subsection (3) if subsection (2) continues to apply to the person.

‘(5) In this section—

“**identifying particulars**”, of a person, includes a photograph of the identifying particulars.

‘PART 5—DNA PROCEDURES

‘Division 1—Preliminary provisions about DNA sampling and DNA analysis

‘302 Taking DNA sample by doctor or nurse

‘A DNA sampler who is a doctor or nurse may take a DNA sample from a person for DNA analysis under this chapter only if asked by a police officer to do so.

‘303 Commissioner may authorise police officers to take DNA samples

‘(1) The commissioner may authorise a police officer to take DNA samples.

‘(2) However, the commissioner may authorise a police officer only if the commissioner is satisfied the police officer—

- (a) has the necessary experience or expertise to be able to take the samples; or
- (b) has satisfactorily completed a course of training approved by the commissioner for the purpose.

‘304 Where DNA sample may be taken

‘A DNA sampler may take a DNA sample from a person at a location in any of the following places that provide reasonable privacy for the person—

- (a) a police station or police establishment;

- (b) a hospital;
- (c) a prison or detention centre;
- (d) another place the sampler considers is appropriate in the circumstances.

‘305 How DNA samples may be taken

‘A DNA sampler may take a DNA sample from a person only by—

- (a) having the person use a mouth swab to swab the person’s mouth;
or
- (b) collecting hair, including roots of the hair, from the person.

‘Division 2—Taking DNA sample from particular persons with consent

‘306 Use of DNA analysis of DNA sample taken from child under 14

‘(1) This section applies if a forensic procedure consent authorises a DNA sample to be taken from a child under 14 years.

‘(2) A DNA analysis of the sample may be used only for the purpose for which the consent was given.

‘307 Taking DNA sample from person with impaired capacity

‘(1) This section applies if a forensic procedure consent authorises a DNA sample to be taken from a person with impaired capacity.

‘(2) A police officer must ensure a support person is present when the sample is being taken if it is reasonably practicable to do so.

‘Division 3—Taking DNA samples after proceedings commenced and from certain prisoners

‘308 Taking DNA sample if proceeding started or continued against an adult by arrest, notice to appear or complaint and summons etc.

‘(1) This section applies if—

- (a) a police officer starts or continues a proceeding for an indictable offence against an adult by arrest; or
- (b) a police officer starts a proceeding for an indictable offence against an adult by a notice to appear or complaint and summons.

‘(2) A police officer may detain the person for a reasonable time, of not more than 1 hour, to obtain the approval of a senior officer under subsection (3) to take a DNA sample from the person.

‘(3) A police officer may, with the approval of a senior officer, detain the person for the time reasonably necessary to take a DNA sample from the person and, if necessary, take the person to a place mentioned in section 304(a), (b) or (d)⁹ for the purpose.

‘(4) Before approving the detention of the person, the senior officer must have regard to the rights and liberties of the person and the public interest.

‘(5) A DNA sampler may take a DNA sample for DNA analysis from a person detained under an approval of a senior officer under this section.

‘(6) In this section—

“senior officer” means—

- (a) if the police officer investigating the offence holds rank below the rank of senior sergeant—a police officer of at least the rank of senior sergeant; or
- (b) if the police officer investigating the offence holds the rank of senior sergeant or above—a police officer who is more senior than the investigating officer.

9 Section 304 (Where DNA sample may be taken)

‘309 DNA sample notice

‘(1) This section applies if a police officer—

- (a) starts or continues a proceeding for an indictable offence against an adult by arrest and intends to release the person under section 209(2)(b);¹⁰ or
- (b) decides to start, or continues, a proceeding for an indictable offence against an adult by a notice to appear or complaint and summons;

and decides it is not necessary to immediately take a DNA sample from the person.

‘(2) With the approval of a senior officer, a police officer may, by written notice (“**DNA sample notice**”), require the person to report to a police officer at a stated police station or police establishment to enable a DNA sampler to take a DNA sample from the person.

‘(3) The senior officer must not approve the issue of the DNA sample notice unless satisfied, having regard to the rights and liberties of the person and the public interest, taking a DNA sample is reasonably necessary in the particular circumstances.

‘(4) A DNA sampler may take a DNA sample for DNA analysis from a person who attends at a police station or police establishment as required under a DNA sample notice.

‘(5) In this section—

“**senior officer**” means—

- (a) if the police officer investigating the offence holds rank below the rank of senior sergeant—a police officer of at least the rank of senior sergeant; or
- (b) if the police officer investigating the offence holds the rank of senior sergeant or above—a police officer who is more senior than the investigating officer.

¹⁰ Section 209 (Additional case when arrest of adult may be discontinued)

‘310 Requirements for DNA sample notice

‘A DNA sample notice—

- (a) must require the relevant person to report to a police officer at a stated police station or police establishment—
 - (i) within 7 days after the issue of the notice; or
 - (ii) on a stated day or within stated hours within 7 days after the issue of the notice;to enable a DNA sampler to take a DNA sample from the person for DNA analysis; and
- (b) must state—
 - (i) it is an offence to fail to comply with the notice; and
 - (ii) that, before the DNA sample is taken, the person must produce to a police officer satisfactory evidence of his or her identity; and
- (c) must be given to the person—
 - (i) if section 309(1)(a) applies, with the notice to appear or summons mentioned in section 209(2)(b); or
 - (ii) if section 309(1)(b) applies, with the notice to appear or complaint and summons; and
- (d) must be signed by the police officer giving the notice.

‘311 Taking DNA sample from adult before court

‘(1) This section applies if, in a proceeding against an adult for an indictable offence, a court is satisfied it is reasonably necessary, having regard to the rights and liberties of the person and the public interest, to take a DNA sample for DNA analysis from the person.

‘(2) The court may make either of the following orders—

- (a) an order that a police officer may detain the person to enable a DNA sampler to take a DNA sample from the person for DNA analysis;
- (b) an order—
 - (i) that the person report to a police officer at a stated police station or police establishment within 7 days, or on a stated

day or within stated hours within 7 days, to enable a DNA sampler to take a DNA sample from the person for DNA analysis; and

- (ii) authorising a police officer to detain the person to enable a DNA sampler to take a DNA sample from the person for DNA analysis if the person does not comply with subparagraph (i).

‘(3) A person must not contravene an order made under subsection (2)(b), unless the person has a reasonable excuse.

Maximum penalty—2 years imprisonment.

‘(4) It is not a reasonable excuse for the person to contravene the order that complying with it may tend to incriminate the person.

‘(5) A DNA sampler may take a DNA sample for DNA analysis from a person who is detained under an order made under subsection (2)(a) or (b) or reports to a police station or police establishment as required under an order made under subsection (2)(b).

‘312 Taking DNA sample after finding of guilt

‘(1) This section applies if a court finds an adult guilty of an indictable offence, including an indictable offence that is dealt with summarily.

‘(2) The court may make either of the following orders—

- (a) an order that a police officer may detain the person to enable a DNA sampler to take a DNA sample from the person for DNA analysis;
- (b) an order—
 - (i) that the person report to a police officer at a stated police station or police establishment within 7 days, or on a stated day or within stated hours within 7 days, to enable a DNA sampler to take a DNA sample from the person for DNA analysis; and
 - (ii) authorising a police officer to detain the person to enable a DNA sampler to take a DNA sample from the person for DNA analysis if the person does not comply with subparagraph (i).

‘(3) A person must not contravene an order made under subsection (2)(b), unless the person has a reasonable excuse.

Maximum penalty—2 years imprisonment.

‘(4) It is not a reasonable excuse for the person to contravene the order that complying with it may tend to incriminate the person.

‘(5) A DNA sampler may take a DNA sample for DNA analysis from a person who is detained under an order made under subsection (2)(a) or (b) or reports to a police station or police establishment as required under an order made under subsection (2)(b).

‘(6) If the application for the order is not made at the time, or soon after, the person is found guilty of the indictable offence, the court must consider whether it is appropriate to make the order having regard to the period of time that has elapsed since the finding of guilt and any reason given for the delay in making the application.

‘313 Detention for taking DNA sample

‘(1) To give effect to an order made under section 311(2)(a) or (b)(ii) or 312(2)(a) or (b)(ii), a police officer may detain the person.

‘(2) If the person is not already in custody, the time for which the person may be detained is—

- (a) 1 hour; or
- (b) a longer reasonably necessary time, having regard to the particular circumstances.

‘314 Taking DNA sample from prisoner in corrective services facility

‘(1) This section applies to a prisoner who is serving a term of imprisonment for an indictable offence, including an indictable offence that is dealt with summarily.

‘(2) If the person is detained in a corrective services facility, a DNA sampler may, under an arrangement between the commissioner and the person in charge of the facility—

- (a) enter the facility; and

(b) detain the prisoner and take the prisoner to an appropriate place in the facility for the purpose of taking a DNA sample from the prisoner for DNA analysis; and

(c) take the DNA sample from the prisoner.

‘(3) A corrective services officer under the *Corrective Services Act 2000* may be present when the DNA sample is taken.

‘(4) This section expires 1 year after it commences.

‘315 Taking DNA sample from transferred prisoner

‘(1) This section applies to a transferred prisoner who is detained in a corrective services facility.

‘(2) A DNA sampler may, under an arrangement between the commissioner and the person in charge of the facility—

(a) enter the facility; and

(b) detain the prisoner and take the prisoner to an appropriate place in the facility for the purpose of taking a DNA sample from the prisoner for DNA analysis; and

(c) take the DNA sample from the prisoner.

‘(3) A corrective services officer under the *Corrective Services Act 2000* may be present when the DNA sample is taken.

‘(4) This section has effect from when section 314 expires.

‘(5) In this section—

“transferred prisoner” means—

(a) a prisoner who—

(i) was transferred to Queensland from another State under an arrangement under the *Prisoners (Interstate Transfer) Act 1982*; and

(ii) is serving a term of imprisonment for an indictable offence committed in the other State, even though the offence was dealt with summarily; or

(b) a prisoner who—

(i) is transferred to Australia from another country under the *International Transfer of Prisoners Act 1997* (Cwlth) and is

detained in a Queensland prison under an arrangement made under section 50 of that Act between the Governor-General and the Governor; and

Note—

The Governor may make the arrangement under the *Prisoners International Transfer (Queensland) Act 1997*, section 8.

- (ii) is serving a term of imprisonment for an offence that, if committed in Australia, would be an indictable offence.

‘316 Taking DNA sample from child

‘(1) This section applies if a police officer—

- (a) starts or continues a proceeding for an indictable offence against a child by arrest, notice to appear or complaint and summons; and
- (b) considers it is reasonably necessary to take a DNA sample from the child for DNA analysis.

‘(2) The police officer may apply to the Childrens Court for an order authorising a DNA sampler to take a DNA sample from the child for DNA analysis.

‘(3) The police officer must give notice of the application to—

- (a) the child; and
- (b) a parent of the child, unless a parent can not be found after reasonable inquiry; and
- (c) the chief executive (family services) or a person, nominated by that chief executive for the purpose, who holds an office within the department for which that chief executive has responsibility.

‘(4) The court may order the taking of a DNA sample if satisfied—

- (a) an indictable offence has been committed; and
- (b) the child is reasonably suspected of having committed the offence; and
- (c) a DNA analysis may tend to prove or disprove the child’s involvement in the offence.

‘(5) If the child will not be in custody when the sample is proposed to be taken, the order—

- (a) must require the child to report to a police officer at a stated police station or police establishment within 7 days, or on a stated day or within stated hours within 7 days, to enable a DNA sampler to take a DNA sample from the person for DNA analysis; and
- (b) authorise a police officer to detain the child and take the child to an appropriate place to enable a DNA sample to be taken from the child for DNA analysis if the child does not comply with paragraph (a).

‘(6) A child named in an order made under subsection (4) that contains a requirement mentioned in subsection (5) must not contravene the order, unless the child has a reasonable excuse.

Maximum penalty—10 penalty units.

‘(7) For subsection (6)—

- (a) it is a reasonable excuse for the child to contravene the order that a copy of the order has not been given to the child; and
- (b) it is not a reasonable excuse for the child to contravene the order that complying with it may tend to incriminate the child.

‘(8) A DNA sampler may take a DNA sample from the child if the child is in custody, attends at a police station or police establishment as required under an order made under subsection (5) or is detained under an order made under that subsection.

‘(9) To give effect to an order made under subsection (4) or (5)(b), a police officer may detain the child.

‘(10) If the child is not already in custody, the time for which the child may be detained is—

- (a) 1 hour; or
- (b) a longer reasonably necessary time, having regard to the particular circumstances.

‘(11) In this section—

“**parent**”, of a child, includes an approved foster carer of the child under the *Child Protection Act 1999*.

***‘Division 4—Taking DNA samples from prisoners released under
post-prison community based release orders***

‘317 Application of div 4 and non-application of pt 2

‘(1) This division applies to a prisoner who—

- (a) is serving a term of imprisonment for an indictable offence, including an indictable offence that is dealt with summarily; and
- (b) is the subject of a post-prison community based release order.

‘(2) Part 2 does not apply in relation to the asking for, or giving of, a forensic procedure consent under this division or the performance of the forensic procedure under the consent.

‘318 Definitions for div 4

In this division—

“post-prison community based release order” see the *Corrective Services Act 2000*, schedule 3.

“prescribed indictable offence” means any of the following indictable offences—

- an offence against the Criminal Code, section 210
- murder
- grievous bodily harm
- rape
- robbery.

Note—

For the offences see the Criminal Code, sections 210 (Indecent treatment of children under 16), 300 (Unlawful homicide), 320 (Grievous bodily harm), 349 (Rape) and 409 (Definition of “robbery”).

**‘318A Prisoner serving term of imprisonment for prescribed
indictable offence**

‘(1) This section applies if the indictable offence for which the prisoner is serving the term of imprisonment is a prescribed indictable offence.

‘(2) A police officer may by written notice given to the prisoner, require the prisoner to report to a police officer at a stated police station or police establishment to enable a DNA sampler to take a DNA sample from the prisoner for DNA analysis.

‘(3) The notice must be in the form of a DNA sample notice under section 310(a), (b) and (d).

‘(4) A DNA sampler may take a DNA sample for DNA analysis from a prisoner who attends at a place under the notice.

‘318B Prisoner serving term of imprisonment for other indictable offences

‘(1) This section applies if the indictable offence for which the prisoner is serving the term of imprisonment is not a prescribed indictable offence.

‘(2) A police officer may by notice in the approved form given to the prisoner ask the prisoner for a forensic procedure consent to the taking of a DNA sample from the prisoner.

‘(3) The prisoner may give the forensic procedure consent by signing an approved form for the consent.

‘(4) If the prisoner consents, a DNA sampler may take a DNA sample for DNA analysis from the prisoner.

‘318C General requirements for giving informed consent

‘(1) To enable the prisoner to give an informed consent, the approved form must state the following—

- (a) the results of the DNA analysis of the DNA sample may be included in QDNA and used in a way permitted under this chapter;
- (b) how a DNA sample may be taken and where it may be taken from;
- (c) the class of qualified person who may take the DNA sample;
- (d) that the prisoner may refuse to give the consent;
- (e) that if the prisoner gives the consent, the prisoner may withdraw the consent before the DNA sample is taken or while it is being taken;

- (f) that the results of the DNA analysis may provide evidence that may be used in a court proceeding.

‘318D Application to court under s 312 for order

‘(1) This section applies if a prisoner is asked to consent to the taking of a DNA sample under section 318B and the person fails to consent or withdraws the consent.

‘(2) A police officer may apply to a court under section 312 for an order under that section.

‘318E Court make order despite time that has elapsed since finding of guilt

‘(1) In deciding an application made under section 318D the time that has elapsed since the prisoner was found guilty of any indictable offence is immaterial.

‘(2) This section applies despite section 312(6).

‘318F Expiry of div 4

‘This division expires 1 year after it commences.

‘Division 5—Analysis and use of DNA samples

‘318G Power to analyse etc. DNA samples

‘(1) It is lawful for a police officer or a person acting under an arrangement between the commissioner and the chief executive (health)—

- (a) to perform a DNA analysis of a DNA sample taken under this chapter or received from a declared law enforcement agency; and
- (b) to perform any further analysis of a DNA sample that may be reasonably necessary for ensuring the accuracy of an earlier analysis; and
- (c) to keep a DNA sample and the results of a DNA analysis of the sample until they are required under this part to be destroyed; and

- (d) to take the steps reasonably necessary to ensure the results of the analysis are included in QDNA; and
- (e) to compare the results of a DNA analysis of a DNA sample with other results of DNA analyses of samples, whether or not DNA samples, to which the police officer or person has access.

‘(2) A DNA sample mentioned in subsection (1)(c) must be kept in a secure place.

‘(3) It is lawful for a police officer to use the results of any DNA analysis for performing any function of the police service.

‘318H When DNA sample taken from suspected person and results must be destroyed

‘(1) A DNA sample taken from a person suspected of having committed an indictable offence and the results of a DNA analysis of the sample must be destroyed within a reasonably practicable time after the end of 1 year from—

- (a) if the person’s arrest for the indictable offence is discontinued under section 208(1) or 211(6)¹¹—the day the arrest is discontinued; or
- (b) if the proceeding for the indictable offence is discontinued before a court—the day the proceeding is discontinued; or
- (c) if the person is found not guilty of the indictable offence, including on appeal—the day the person is found not guilty of the offence; or
- (d) if a proceeding for the indictable offence is not started within 1 year after the sample is taken—the day the sample is taken.

‘(2) Subsection (1) does not apply if—

- (a) the person has been proceeded against for another indictable offence the charge of which has not been decided; or
- (b) the person has been found guilty of another indictable offence, including an indictable offence dealt with summarily, whether before or after the commencement of this section; or

11 Section 208 (When arrest may be discontinued—general rule) or 211 (Additional case when arrest for minor drugs offence may be discontinued)

- (c) the DNA sample and the results of the DNA analysis of the sample are required for the investigation of another indictable offence the person is reasonably suspected of having committed; or
- (d) the person is not proceeded against for an indictable offence because he or she has been found unfit for trial because of mental illness.

‘(3) Subsection (1) does not apply if the DNA sample was taken under a forensic procedure consent and the person has not, under section 281(1)(g),¹² limited the purpose for which the sample may be used under the consent.

‘(4) Subsection (1) does not apply to a DNA sample taken from a prisoner under section 314 or 315 or division 4,¹³ or the results of a DNA analysis of the sample, other than to the extent subsection (1)(c) applies to the offence for which the person was imprisoned.

‘(5) For subsection (1), the results of a DNA analysis may be destroyed by deleting any information in QDNA that identifies the person from whom the DNA sample was taken with the results obtained by analysing the sample.

‘Division 6—DNA databases

‘318I State DNA database

‘(1) The commissioner may record information obtained by a DNA analysis of a DNA sample taken under this chapter in a database in Queensland that is approved by the commissioner (“QDNA”).

‘(2) The commissioner may also include in QDNA—

- (a) information held by or for the commissioner and obtained by a DNA analysis of either of the following—
 - (i) a sample, including blood, taken before or after the commencement of this section;

12 Section 281 (General requirements for giving informed forensic procedure consent)

13 Section 314 (Taking DNA sample from prisoner in corrective services facility), 315 (Taking DNA sample from transferred prisoner) or division 4 (Taking DNA samples from prisoners released under post-prison community based release orders)

-
- (ii) a thing a police officer reasonably suspects is evidence of the commission of an offence; and
 - (b) information obtained under an arrangement made under section 318ZY;¹⁴ and
 - (c) information obtained from a declared law enforcement agency if there is no arrangement made under section 318ZY relevant to the information.

‘(3) If the commissioner considers it appropriate, the information may also be included in an appropriate QDNA index.

‘(4) If the commissioner considers it appropriate, the commissioner may—

- (a) transfer information from one QDNA index to another QDNA index; or
- (b) use information in one QDNA index for the purposes of another QDNA index; or
- (c) compare information within a QDNA index; or
- (d) compare information in one QDNA with information in another QDNA index.

‘318J Transmitting information to CrimTrac

‘(1) The commissioner may transmit to CrimTrac information kept in QDNA for inclusion in the CrimTrac database for the purpose of CrimTrac, on behalf of the commissioner—

- (a) comparing the information; or
- (b) comparing the information with other information supplied to CrimTrac by a declared law enforcement agency.

‘(2) The comparison mentioned in subsection (1) may happen at any time.

‘(3) The commissioner may enter into an arrangement with CrimTrac about how, and in what circumstances, information transmitted to it by the commissioner may be compared, kept or otherwise managed.

14 Section 318ZY (Ministerial arrangements)

‘(4) Subsection (1) is not dependent on the existence of an arrangement made under section 318ZY.¹⁵

‘318K Use of QDNA or CrimTrac database

‘It is lawful for the commissioner to use QDNA or the CrimTrac database for performing any function of the police service.

‘318L Limitation on use of results of DNA analysis

‘(1) The use of the results of a DNA analysis under section 318G, 318I(4), 318J or 318K is subject to—

- (a) any limitation made under section 281(1)(g)¹⁶ that applies to that analysis; or
- (b) section 306.¹⁷

‘(2) The results of a DNA analysis must not be compared with the results of another DNA analysis that is in a QDNA index unless a table prescribed under a regulation permits the comparison.

‘(3) The table must not permit a comparison that is contrary to—

- (a) any limitation made under section 281(1)(g) that applies to that analysis; or
- (b) section 306.

‘(4) A regulation may exempt a comparison of the results of DNA analyses from subsection (2).

‘(5) A regulation may prescribe the types of QDNA indexes and the type of information that may be included in each index.

15 Section 318ZY (Ministerial arrangements)

16 Section 281 (General requirements for giving informed forensic procedure consent)

17 Section 306 (Use of DNA analysis of DNA sample taken from child under 14)

‘PART 6—NON-MEDICAL EXAMINATIONS

‘318M Application of pt 6

‘This part applies if a police officer is satisfied performing a non-medical examination on a person may provide evidence of the commission of an indictable offence.

‘318N Definition for pt 6

‘In this part—

“authorised police officer” means—

- (a) if the police officer seeking approval under section 318P(3)—
 - (i) holds rank below the rank of senior sergeant—a police officer of at least the rank of senior sergeant; or
 - (ii) holds the rank of senior sergeant or above—a police officer who is more senior than the police officer seeking approval; or
- (b) in any case—
 - (i) the police officer in charge of a police station or police establishment; or
 - (ii) a police officer performing functions for the police service as a scientific officer or scenes of crime officer.

‘318O Commissioner may authorise police officer to perform non-medical examinations

‘(1) The commissioner may authorise a police officer to perform non-medical examinations.

‘(2) However, the commissioner may authorise a police officer only if the commissioner is satisfied the police officer—

- (a) has the necessary experience or expertise to be able to perform the examinations; or
- (b) has satisfactorily completed a course of training approved by the commissioner for the purpose.

**‘318P Examination if proceeding started against adult by arrest,
notice to appear or complaint and summons**

‘(1) This section applies if a police officer—

- (a) starts or continues a proceeding for an indictable offence against an adult by arrest; or
- (b) starts a proceeding for an indictable offence against an adult by notice to appear or complaint and summons.

‘(2) A police officer may detain the person for a reasonable time, of not more than 1 hour, to obtain the approval of an authorised police officer under subsection (3) to perform a non-medical examination on the person.

‘(3) A police officer may, with the approval of an authorised police officer, detain the person for the time reasonably necessary to perform the examination on the person and, if necessary, take the person to a place with appropriate facilities for performing the examination.

‘(4) Before approving the detention of the person, the authorised police officer must be satisfied performing the examination may provide evidence of the commission of an indictable offence.

‘(5) An authorised examiner may perform a non-medical examination on a person detained under an approval of an authorised police officer under this section.

‘318Q Non-medical examination notice

‘(1) This section applies if a police officer—

- (a) starts or continues a proceeding for an indictable offence against an adult by arrest and intends to release the person under section 209(2)(b);¹⁸ or
- (b) decides to start, or continues, a proceeding for an indictable offence against an adult by notice to appear or complaint and summons;

and decides it is not necessary to immediately perform a non-medical examination on the person.

18 Section 209 (Additional case when arrest of adult may be discontinued)

‘(2) With the approval of an authorised police officer, a police officer may, by written notice (“**non-medical examination notice**”) given to the person, require the person to report to a police officer at a stated police station or police establishment to enable an authorised examiner to perform a non-medical examination on the person.

‘(3) Before approving the issue of a non-medical examination notice, the authorised police officer must be satisfied performing the examination may provide evidence of the commission of an indictable offence.

‘(4) An authorised examiner may perform a non-medical examination on a person who attends at a police station or police establishment as required under a non-medical examination notice.

‘318R Requirements for non-medical examination notice

‘A non-medical examination notice—

(a) must require the person to report to a police officer at a stated police station or police establishment—

(i) within 7 days after the issue of the notice; or

(ii) on a stated day or within stated hours within 7 days after the issue of the notice;

to enable an authorised examiner to perform a non-medical examination on the person; and

(b) must state—

(i) it is an offence to fail to comply with the notice; and

(ii) that, before the examination is performed, the person must produce to a police officer satisfactory evidence of his or her identity; and

(c) must be given to the person—

(i) if section 318Q(1)(a) applies, with the notice to appear or summons mentioned in section 209(2)(b); or

(ii) if section 318Q(1)(b) applies, with the notice to appear or complaint and summons; and

(d) must be signed by the police officer giving the notice.

‘PART 7—FORENSIC PROCEDURES PERFORMED BY DOCTORS AND DENTISTS

‘Division 1—Preliminary

‘318S Application of pt 7

‘(1) This part applies to the performance of a forensic procedure by a doctor or dentist under this chapter other than the taking of a DNA sample under part 5.¹⁹

‘(2) Nothing in this part requires a person who has custody of an independent person mentioned in section 318U(b) to deliver the independent person to the place where a forensic procedure is to be performed by a doctor or dentist.

‘(3) Also, nothing in this part requires a police officer to allow a relevant person to telephone or speak to an independent person, or allow an independent person to be present while a forensic procedure is being performed by a doctor or dentist—

- (a) if the police officer reasonably suspects the independent person is an accomplice or accessory of the relevant person; or
- (b) if the police officer considers that to do so is likely to result in—
 - (i) an accomplice or accessory of the relevant person taking steps to avoid apprehension; or
 - (ii) evidence being concealed, fabricated or destroyed; or
 - (iii) a witness being intimidated.

19 Part 5 (DNA procedures)

‘Division 2—Actions by police officers and presence of independent persons

‘318T When doctor or dentist may be asked to perform forensic procedure

‘(1) A police officer may ask a doctor or dentist to perform a forensic procedure on a person only if the performance of the procedure is authorised under a forensic procedure consent or a forensic procedure order.

‘(2) If the relevant forensic procedure is to be performed under a forensic procedure order, the police officer must give the doctor or dentist a copy of the order.

‘318U What person must be told before doctor or dentist performs a forensic procedure

‘Before a doctor or dentist performs a forensic procedure on a person, a police officer must tell the person—

- (a) if the procedure is authorised under a forensic procedure order—a forensic procedure may be performed on the person without the person’s consent because a forensic procedure order authorises its performance; and
- (b) that the person has the right to have 2 people (each of whom is an **“independent person”**) of his or her choice present while it is being performed; and
- (c) that, for exercising the right mentioned in paragraph (b), he or she may—
 - (i) telephone or speak to a friend or relative to inform that person of his or her whereabouts and ask the person to be present while the procedure is being performed; and
 - (ii) telephone or speak to a lawyer and arrange, or attempt to arrange, for the lawyer to be present while the procedure is being performed.

‘318V Arrangements for attendance of independent person

‘(1) The police officer must delay performing the forensic procedure for a reasonable time to allow the relevant person to telephone or speak to a person mentioned in section 318U(c).

‘(2) What is a reasonable time to delay performing the procedure to allow the relevant person to speak to an independent person will depend on the particular circumstances, including, for example, the relevant person’s age and the nature of the proposed procedure.

‘(3) If the relevant person arranges for an independent person to be present, the police officer must delay performing the procedure for a reasonable time to allow the independent person to arrive.

‘(4) What is a reasonable time to delay performing the procedure to allow the independent person to arrive will depend on the particular circumstances, including, for example—

- (a) how far the independent person has to travel to the place where the forensic procedure is to be performed; and
- (b) when the independent person indicated he or she would arrive at the place.

‘(5) The State is not responsible for paying any costs of the independent person’s attendance.

‘(6) Unless special circumstances exist, a delay of more than 2 hours may be unreasonable.

‘318W Speaking to and presence of independent person

‘(1) This section applies if the independent person arrives.

‘(2) If the relevant person asks to speak to the independent person, the investigating police officer must—

- (a) as soon as practicable, provide reasonable facilities to enable the relevant person to speak to the independent person; and
- (b) if the relevant person is a child and it is reasonably practicable to do so—allow the relevant person to speak to the independent person in circumstances in which the conversation can not be overheard; and

- (c) in any case—if the independent person is a lawyer and it is reasonably practicable to do so, allow the relevant person to speak to the lawyer in circumstances in which the conversation can not be overheard.

‘(3) If the relevant person asks that the independent person be present while the forensic procedure is being performed, the investigating police officer must allow the independent person to be present and give advice to the relevant person during the performance of the procedure.

‘318X Absence of independent person does not affect lawfulness of custody etc.

‘(1) This section applies if a relevant person wishes to have an independent person present while a forensic procedure is being performed on the person and—

- (a) after having indicated that he or she is willing and able to attend—the independent person fails to attend within a reasonable time; or
- (b) evidence is likely to be lost or destroyed if the forensic procedure is delayed to allow the independent person to attend.

‘(2) The lawfulness of the detention in custody of the relevant person or of the performance of the forensic procedure is not affected by the absence, while the procedure is being performed, of the independent person.

‘318Y When police officer may exclude independent person

‘(1) If a police officer considers an independent person is unreasonably interfering with the performance of a forensic procedure, the police officer may exclude the independent person from being present while the procedure is being performed.

‘(2) Before excluding the independent person, the police officer must—

- (a) warn the person not to unreasonably interfere with the performance of the procedure; and
- (b) tell the person that he or she may be excluded from being present if he or she continues to unreasonably interfere with the performance of the procedure; and
- (c) give the person 1 opportunity to stop unreasonably interfering.

‘318Z Action by police officer if independent person excluded

‘(1) This section applies if a police officer excludes an independent person from being present while a forensic procedure is being performed on a person.

‘(2) The police officer must—

- (a) advise the person that he or she may telephone or speak to another independent person, to ask the person to be present while the procedure is being performed; and
- (b) if the person arranges for another independent person to be present—delay the performance of the procedure for a reasonable time to allow the other independent person to be present while the procedure is being performed.

‘(3) Also, the police officer must arrange for someone else to be present while the procedure is being performed if the person on whom the procedure is being performed—

- (a) is a child or a person with impaired capacity; and
- (b) has not arranged for another independent person to be present while the procedure is being performed.

‘Division 3—Performing forensic procedures**‘318ZA Doctor’s powers**

‘(1) This section applies if a police officer asks a doctor under section 318T to perform a forensic procedure on a person.

‘(2) The doctor may perform a forensic procedure that may provide evidence of the commission of the offence to which the forensic procedure consent or forensic procedure order relates.

‘(3) If the doctor is performing an intimate forensic procedure and considers it reasonably necessary to also perform a non-intimate forensic procedure or a medical examination the doctor may also perform a non-intimate forensic procedure or a medical examination on the person that may provide evidence of the commission of the offence.

‘(4) The doctor may act under subsection (3) whether or not it is necessary to do so to enable the doctor to perform the intimate forensic procedure.

‘318ZB Dentist’s powers

‘(1) This section applies if a police officer asks a dentist to perform a forensic procedure on a person under section 318T.

‘(2) The dentist may perform a forensic procedure to the extent mentioned in section 273 that may provide evidence of the commission of the offence to which the forensic procedure consent or forensic procedure order relates.

‘318ZC Samples and results of analysis to be given to person

‘(1) A doctor or dentist who takes a sample or other thing from another person in performing an intimate forensic procedure under this chapter must give the other person, or someone nominated by the person, a part of the sample or thing or an equivalent sample or thing for the other person’s own purposes.

‘(2) However, subsection (1) does not apply if—

- (a) it is not practicable to give a part of the sample or thing or an equivalent sample or thing to the other person; or

Example—

The size of the sample taken is too small to effectively provide the person with an equivalent sample.

- (b) in the case of a sample, an equivalent sample for the purpose may be taken from the other person’s body at any time.

Example—

A sample of blood taken for DNA analysis.

‘(3) Also, if a doctor considers complying with subsection (1) may be inappropriate because, for example, the part or equivalent sample or thing may be used to, or could, transmit a communicable disease, the doctor may instead send, at the other person’s expense, the part or equivalent sample or thing to a doctor nominated by the other person or by the other person’s lawyer for safe custody.

‘(4) If the other person or the other person’s lawyer does not nominate a doctor, the doctor taking the sample or thing need not provide the part or equivalent sample or thing and the part or equivalent sample or thing intended to be given to the other person may be destroyed.

‘(5) As soon as reasonably practicable after a police officer is given the results of an analysis conducted using a sample or other thing taken as mentioned in subsection (1), the police officer must give the person to whom the results relate, or someone nominated by the person, a copy of the results.

‘PART 8—MATTERS RELATING TO PERFORMING FORENSIC PROCEDURES

‘318ZD Right to interpreter

‘(1) This section applies if a police officer reasonably suspects a relevant person is unable, because of an inadequate knowledge of the English language or a physical disability, to speak with reasonable fluency in English.

‘(2) Before a qualified person performs a forensic procedure under a forensic procedure consent or a forensic procedure order, the police officer must arrange for the presence of an interpreter and delay performing the procedure until the interpreter is present.

‘318ZE Power to analyse samples

‘(1) It is lawful for a person to analyse a sample, substance, impression, photograph or other thing taken under this chapter.

‘(2) It is lawful for a police officer to keep the thing and the results of the analysis for use in a proceeding for an offence.

‘(3) It is lawful for the commissioner to use the thing or results of the analysis for performing any function of the police service.

‘(4) This section is subject to section 301 and part 5, division 5.²⁰

‘318ZF Order for person who fails to comply with reporting notice

‘(1) This section applies if a police officer reasonably believes that a person has failed to comply with a reporting notice.

‘(2) A police officer may apply to a magistrate in the approved form for an order authorising a police officer to detain the person to perform any forensic procedure to which the reporting notice relates for the time reasonably necessary to perform the procedure.

‘(3) A magistrate may make the order if the magistrate is satisfied on the balance of probabilities that the person failed to comply with a reporting notice and making the order is justified in the circumstances.

‘(4) The person named in the application is not entitled to be given notice of, or to be heard on, the application.

‘(5) A qualified person for the forensic procedure to which the order relates may perform the procedure on the person.

‘(6) In this section—

“reporting notice” means an identifying particulars notice, DNA sample notice, non-medical examination notice or a notice under section 318B(2).²¹

‘318ZG Detention for performing forensic procedure

‘To give effect to an order made under section 318ZF(3), a police officer may detain the person for—

- (a) 1 hour; or
- (b) a longer reasonably necessary time, having regard to the particular circumstances.

20 Section 301 (Destruction of identifying particulars) and part 5 (DNA procedures), division 5 (Analysis and use of DNA samples)

21 Section 318B (Prisoner serving term of imprisonment for other indictable offences)

‘318ZH General power for performing forensic procedure

‘(1) This section applies for performing a forensic procedure under this chapter.

‘(2) A police officer may give any reasonably necessary directions for ensuring the procedure is performed.

‘(3) If the procedure is being performed under a forensic procedure consent, it is not an offence for the person who gave the consent or the person to whom it relates to fail to comply with a direction given under subsection (2).

‘(4) In performing the forensic procedure, a qualified person may use any equipment necessary for the purpose.

‘318ZI Help with, and use of force for, performing forensic procedure

‘(1) This section applies if a qualified person may perform a forensic procedure on a person.

‘(2) The qualified person may ask another person to give reasonably necessary help.

‘(3) If the forensic procedure is an intimate forensic procedure, the person asked to help the doctor or dentist must be—

- (a) a person of the same sex as the person who is to undergo the procedure; or
- (b) another doctor or another dentist;

unless a person mentioned in paragraph (a) or (b) can not reasonably be called on.

‘(4) It is lawful for the qualified person and the person helping to use reasonably necessary force for performing the procedure.

‘318ZJ General power to require further attendance

‘(1) This section applies if a person attends at a stated place as required by an order, requirement or direction (“**original direction**”) to have a forensic procedure performed on the person and a police officer considers it is not reasonably practicable to perform the forensic procedure because—

- (a) a qualified person who may perform the procedure is not available to perform the procedure; or

(b) equipment required to perform the procedure is not available at the place; or

(c) for another reason it is impracticable to perform the procedure.

‘(2) A police officer may direct the person (“**later direction**”) to attend the place or another place for the performance of the relevant forensic procedure at a stated reasonable time on a stated reasonable day.

‘(3) A later direction has effect as an extension of the original direction.

‘318ZK Protecting the dignity of person in performing a non-intimate forensic procedure

‘(1) If it is reasonably necessary for performing a non-intimate forensic procedure on a person, a police officer may ask the person to remove stated items of the person’s clothing.

‘(2) Subsection (3) applies if a direction under section 318ZH(2) relating to a non-intimate forensic procedure requires a person to remove stated items of the person’s clothing.

‘(3) If it is reasonably necessary for clothing other than outer garments to be removed, the police officer—

(a) must not require the person to remove more clothing than is necessary for the procedure to be performed; and

(b) if reasonably practicable, must ensure the procedure is not performed—

(i) in the presence of someone whose presence is not required while the procedure is being performed; or

(ii) where someone not involved in performing the procedure can see the procedure being performed.

‘318ZL Effect of withdrawal of consent

‘(1) This section applies if a forensic procedure is being performed under a forensic procedure consent.

‘(2) If the person who gave the consent withdraws the consent, the person performing the procedure and any person helping that person must immediately stop performing the procedure.

‘(3) Subsection (4) applies if the procedure is to be, or is being, performed on—

- (a) a child under 14 years; or
- (b) a person with impaired capacity and the consent was given for the person by a parent of the person.

‘(4) The person who consented to the procedure being performed is taken to have withdrawn the consent if the child or person with impaired capacity objects to the performance of the procedure or resists while the procedure is being performed.

‘(5) Withdrawal of consent does not affect the admissability in evidence of—

- (a) anything observed, taken or collected before the consent was withdrawn; or
- (b) an analysis done on anything taken or collected before the consent was withdrawn; or
- (c) anything else done under this chapter in relation to a thing mentioned in paragraph (a) or an analysis mentioned in paragraph (b).

‘318ZM Powers under this part are additional to other powers

‘The powers a person has under this part are additional to, and are not limited by, the powers the person otherwise has under this chapter.

‘PART 9—CORRESPONDING FORENSIC PROCEDURE ORDERS

‘318ZN Definitions for pt 9

‘In this part—

“appropriate person” means—

- (a) the person performing functions in relation to the police force or service of the Commonwealth or another State that correspond to the functions of the commissioner; or
- (b) another authority prescribed under a regulation.

“responsible Minister” means a Minister of the Commonwealth or of another State responsible for the administration of a law that authorises the performance of any forensic procedure.

‘318ZO Arrangements with the Commonwealth and other States

‘The Minister may, for the State, enter into an arrangement with a responsible Minister providing for—

- (a) the registration by the commissioner of orders for performing forensic procedures made under the law of the responsible Minister’s jurisdiction (**“corresponding forensic procedure orders”**); or
- (b) the registration of forensic procedure orders under the law of the responsible Minister’s jurisdiction.

‘318ZP Registration of orders

‘(1) An appropriate person may apply to the commissioner for the registration, or the cancellation of registration, of a corresponding forensic procedure order.

‘(2) The application must be accompanied by a copy of the corresponding forensic procedure order, certified by the person who made it.

‘318ZQ Effect of registration

‘On registration of a corresponding forensic procedure order by the commissioner, the order has effect and may be enforced as if it were a forensic procedure order made under this chapter.

‘PART 10—OFFENCES

‘318ZR Unlawful supply of destroyable DNA sample

‘(1) A person must not unlawfully supply a destroyable DNA sample to another person for DNA analysis for the purpose of including the results of the analysis in QDNA or the CrimTrac database knowing that the material was a destroyable DNA sample.

Maximum penalty—2 years imprisonment.

‘(2) In this section—

“destroyable DNA sample” means a DNA sample for which the time in which it must be destroyed under section 318H has passed.

‘318ZS Unlawful supply of DNA sample

‘(1) A person must not unlawfully supply a DNA sample to another person for DNA analysis for the purpose of including the results of the analysis in QDNA or the CrimTrac database.

Maximum penalty—2 years imprisonment.

‘(2) In this section—

“a DNA sample” means a DNA sample that is not related to the performance at any time of a function of the police service or a function authorised under this chapter.

‘318ZT Unlawful use of stored information

‘(1) A person must not access information stored in QDNA or the CrimTrac database (**“stored information”**) other than to perform a function of the police service or a function authorised under this chapter.

Maximum penalty—2 years imprisonment.

‘(2) Subsection (1) does not apply to—

- (a) stored information that can not be used to discover the identity of any person; or
- (b) accessing information stored in the CrimTrac database if the access is authorised under another law.

‘318ZU Unlawful matching of DNA analysis results

‘(1) A person must not knowingly do anything that results in a DNA record being compared with another DNA record, other than as permitted under this chapter.

Maximum penalty—2 years imprisonment.

‘(2) Subsection (1) applies whether or not the DNA record is compared with DNA records kept on the same or a separate part of QDNA or the CrimTrac database.

‘(3) It is not an offence to match DNA records in contravention of subsection (1) only for the purpose of administering QDNA or the CrimTrac database.

‘(4) In this section—

“**DNA record**” means a record on QDNA or the CrimTrac database of the results of a DNA analysis.

‘318ZV Unlawful recording of identifying information on QDNA

‘(1) A person must not knowingly cause identifying information about a person that is obtained from a DNA sample taken from the person under this chapter to be recorded in QDNA after the time the sample to which the information relates is required under section 318H to be destroyed.

Maximum penalty—2 years imprisonment.

‘(2) In this section—

“**identifying information**”, about a person, means information that identifies the person.

‘318ZW Unlawful retention of results of DNA analysis in QDNA

‘(1) A person must not wilfully retain in QDNA the results of a DNA analysis after the time the results are required to be destroyed under section 318H.

Maximum penalty—2 years imprisonment.

‘(2) A person does not commit an offence against subsection (1) if the results of the DNA analysis have been destroyed as mentioned in section 318H(5).

‘318ZX Unlawful disclosure of information

‘(1) A person who has access to information stored in QDNA or the CrimTrac database must not unlawfully disclose the information to anyone else.

Maximum penalty—2 years imprisonment.

‘(2) A person may only disclose information stored in QDNA or the CrimTrac database for one or more of the following purposes—

- (a) to perform a function of the police service;
- (b) for a purpose authorised under this or another Act;
- (c) in accordance with an arrangement made under section 318ZO or 318ZY;
- (d) to make the information available, as permitted under a regulation, to the person to whom the information relates;
- (e) to administer QDNA or the CrimTrac database;
- (f) for a coronial inquest or investigation.

‘(3) This section does not apply to information that can not be used to discover the identity of a person.

‘PART 11—OTHER PROVISIONS**‘318ZY Ministerial arrangements**

‘(1) The Minister may, for the State, make an arrangement with a declared law enforcement agency, or a responsible Minister of another jurisdiction, relating to any of the following—

- (a) access by the declared law enforcement agency or an entity of the other jurisdiction to DNA material held by the commissioner;
- (b) access by the commissioner to DNA material held by a declared law enforcement agency or an entity of the other jurisdiction;
- (c) the use by the declared law enforcement agency, an entity of the other jurisdiction or the commissioner of the DNA material.

‘(2) An arrangement may recognise that access to, and comparison of, the results of DNA analyses may be by use of the CrimTrac database.

‘(3) The commissioner may, under an arrangement made under this section, provide access to DNA material held by the commissioner or stored on the CrimTrac database to a declared law enforcement agency or an entity of another jurisdiction.

‘(4) The commissioner may use DNA material to which the commissioner has access under an arrangement made under this section for performing any function of the police service.

‘(5) In this section—

“**DNA material**” means—

- (a) the results of DNA analyses of things whether or not stored on a database; or
- (b) things on which DNA analyses have been performed.

“**responsible Minister**”, of another jurisdiction, means a Minister of the Commonwealth or another State responsible for the administration of a law that authorises the taking of a sample for DNA analysis.

‘318ZZ Application of other laws

‘(1) This chapter does not limit or exclude the operation of another law of the State relating to any of the following—

- (a) performing a forensic procedure, including a procedure not mentioned in this chapter;
- (b) without limiting paragraph (a), performing a breath analysis or a breath test or producing samples of blood or urine to determine the level of alcohol or drugs, if any, present in a person’s body;
- (c) taking forensic samples, including samples not mentioned in this chapter;
- (d) taking identification evidence;
- (e) searching a person;
- (f) keeping or using anything taken or information obtained because of an activity described in paragraphs (a) to (e).

‘(2) It is lawful for a person to exercise a power under this chapter to do something mentioned in subsection (1) even though the other law specifies the way the power may or must be exercised.

‘318ZZA Forensic material lawfully obtained in another jurisdiction

‘(1) This section applies to forensic material lawfully obtained under the law of another jurisdiction, whether before or after the commencement of this section.

‘(2) The material may be retained and used in this State for performing a function of the police service despite the material having been obtained in circumstances in which this Act would not authorise the material to be obtained, or under requirements that are less stringent, or otherwise substantially different to, the requirements that would apply under this Act.

‘(3) In this section—

“**forensic material**” means anything obtained by performing a forensic procedure and includes the results of the analysis of the thing.

‘318ZZB Evidentiary provision

‘(1) A certificate signed by the commissioner and stating any of the following is evidence of what it states—

- (a) on a stated day and at a stated time a stated police officer authorised the performance of a stated forensic procedure on a stated person;
- (b) a stated police officer was on a stated day an authorised examiner;
- (c) a stated person was on a stated day a DNA sampler;
- (d) the way in which a DNA sample taken from a stated person was handled and stored;
- (e) a stated person took or sent a stated DNA sample from a stated place to another stated place;
- (f) a stated person received a stated DNA sample at a stated place;

(g) a certificate given under the *Evidence Act 1977*, section 95A,²² relates to a stated DNA sample taken from a stated person.

‘(2) If, in a criminal proceeding, the prosecuting authority intends to rely on the certificate, it must at least 10 business days before the hearing day, give a copy of the certificate to the defendant or the defendant’s lawyer.

‘(3) If the defendant intends to challenge a matter stated in the certificate, the defendant must, at least 3 business days before the hearing day, give the prosecuting authority notice, in the approved form, of the matter to be challenged.

‘(4) If the defendant acts under subsection (3), the certificate stops being evidence of the matter to be challenged.

‘(5) In this section—

“**hearing day**” means the day the hearing of the criminal proceeding starts.

“**prosecuting authority**” means the entity responsible for prosecuting the criminal proceeding.

‘CHAPTER 8B—BLOOD AND URINE TESTING OF PERSONS SUSPECTED OF COMMITTING SEXUAL OR OTHER SERIOUS ASSAULT OFFENCES’.

11 Replacement of ch 8, pt 5, div 1, hdg (Preliminary)

Chapter 8, part 5, division 1, heading—

omit, insert—

‘PART 1—PRELIMINARY’.

12 Amendment of s 319 (Purpose of pt 5)

(1) Section 319, heading, ‘**pt 5**’—

omit, insert—

²² *Evidence Act 1977*, section 95A (DNA evidentiary certificate)

'ch 8B'.

(2) Section 319, 'part'—

omit, insert—

'chapter'.

13 Amendment of s 320 (Application of pt 5)

(1) Section 320, heading, 'pt 5'—

omit, insert—

'ch 8B'.

(2) Section 320, 'part'—

omit, insert—

'chapter'.

14 Amendment of s 321 (Certain Acts do not apply to this part)

Section 321, 'part'—

omit, insert—

'chapter'.

15 Replacement of ch 8, pt 5, div 2, hdg (Taking blood and urine samples)

Chapter 8, part 5, division 2, heading—

omit, insert—

'PART 2—TAKING BLOOD AND URINE SAMPLES'.

16 Replacement of ch 8, pt 5, div 3, hdg (General)

Chapter 8, part 5, division 3, heading—

omit, insert—

'PART 3—GENERAL'.

17 Amendment of s 329 (Restriction on disclosure of results of analysis)

Section 329, ‘this part’—

omit, insert—

‘this chapter’.

18 Amendment of s 330 (Certain evidence inadmissible)

Section 330, ‘part’—

omit, insert—

‘chapter’.

19 Amendment of s 420 (Application of pt 3)

(1) Section 420(2)(b) and (c)—

omit, insert—

‘(b) a sample or other thing taken or collected from a person under chapter 8A; or’.

(2) Section 420(2)(d), ‘chapter 8, part 5’—

omit, insert—

‘chapter 8B’.

20 Amendment of s 445 (Offence to contravene direction or requirement of police officer)

(1) Section 445(2), after ‘police officer’—

insert—

‘, including a requirement or direction contained in a notice given by a police officer,’.

(2) Section 445—

insert—

‘(5) It is not a reasonable excuse for a person not to comply with a requirement or direction given by a police officer under chapter 8A²³ that complying with the requirement or direction would tend to incriminate the person.’.

21 Amendment of s 451 (Obtaining warrants, orders and authorities, etc., by telephone or similar facility)

(1) Section 451(1), after ‘division 2’—

insert—

‘, a forensic procedure order’.

(2) Section 451—

insert—

‘(5) Subsection (1) applies to a forensic procedure order only if the person to whom the application for the order relates is not entitled to be given notice of the application under section 287(2) or the person is dead.’.

22 Amendment of s 453 (Presumption about exercise of powers under prescribed authority)

Section 453(c), ‘the entry’—

omit, insert—

‘the exercise of the power’.

23 Amendment of ch 13, pt 2, hdg (Transitional provisions)

Chapter 13, part 2, heading, after ‘PROVISIONS’—

insert—

‘**FOR POLICE POWERS AND RESPONSIBILITIES ACT 2000**’.

23 Chapter 8A (Forensic procedures)

24 Insertion of new ch 13, pt 3

Chapter 13, after section 473—

insert—

‘PART 3—TRANSITIONAL PROVISIONS FOR POLICE POWERS AND RESPONSIBILITIES (FORENSIC PROCEDURES) AMENDMENT ACT 2003

‘474 Definitions for pt 3

‘In this part—

“amending Act” means the *Police Powers and Responsibilities (Forensic Procedures) Amendment Act 2003*.

“commencement” means the commencement of the provision in which the term is used.

“pre-amended Act” means this Act or a provision of this Act as in force before its amendment by the amending Act and includes another provision relevant to the provision.

‘475 Identifying particulars

‘(1) Something—

- (a) started under the pre-amended Act, chapter 8, part 2,²⁴ and not finished before the commencement may be continued under chapter 8A, part 4,²⁵ of this Act; or
- (b) done under the pre-amended Act, chapter 8, part 2, has effect as if it was done under chapter 8A, part 4, of this Act.

‘(2) Without limiting subsection (1)—

- (a) an identifying particulars notice given to a person under the pre-amended Act, section 272 has effect as an identifying particulars notice properly given under chapter 8A, part 4 of this Act; and

24 Pre-amended Act, chapter 8 (Powers in relation to persons in custody), part 2 (Gathering information for identifying suspects)

25 Chapter 8A (Forensic procedures), part 4 (Identifying particulars)

- (b) a court order made under the pre-amended Act, section 273, has effect as a court order made under section 298²⁶ of this Act.

‘476 Medical and dental procedures

‘(1) This section applies if, immediately before the commencement, there is in force—

- (a) a consent to the performance of a medical or dental procedure given under the pre-amended Act, section 285;²⁷ or
- (b) an order of a magistrate authorising the performance of a medical or dental procedure made under the pre-amended Act, section 290.²⁸

‘(2) The pre-amended Act, chapter 8, part 3,²⁹ continues to apply for performing the medical or dental procedure as if the amending Act had not been enacted.

‘(3) Anything obtained under the consent or order may be dealt with or used as if it were obtained under a forensic procedure consent or forensic procedure order.

‘477 DNA procedures

‘(1) Subsection (2) applies if, immediately before the commencement, there is in force—

- (a) a consent to the taking of a DNA sample given under the pre-amended Act, chapter 8, part 4, division 3;³⁰ or
- (b) an approval of a commissioned officer given under the pre-amended Act, section 307 for the detention of a person for the time reasonably necessary to take a DNA sample from the person; or

26 Section 298 (Court may order taking of identifying particulars)

27 Pre-amended Act, section 285 (Consent to be recorded)

28 Pre-amended Act, section 290 (Making of order)

29 Pre-amended Act, chapter 8 (Powers in relation to persons in custody), part 3 (Medical and dental procedures)

30 Pre-amended Act, chapter 8 (Powers in relation to persons in custody), part 4 (DNA procedures), division 3 (Taking DNA samples with consent)

- (c) a DNA sample notice under the pre-amended Act, section 308; or
- (d) an order of a court made under the pre-amended Act, section 309(2)(b), 310(2)(b) or 312.³¹

‘(2) The pre-amended Act, chapter 8, part 4,³² continues to apply in relation to the consent, approval, notice or order as if the amending Act had not been enacted.

‘(3) An application made to the Childrens Court under the pre-amended Act, section 312 that has not been decided by the court before the commencement has effect and may be dealt with as an application made to the court under section 316³³ of this Act.

‘478 Police officers authorised to take DNA samples

‘A police officer who, immediately before the commencement, is a police officer authorised under the pre-amended Act, section 297(3), by the commissioner to take DNA samples is taken to be authorised by the commissioner under section 303³⁴ of this Act.

‘479 Taking of certain DNA samples

‘(1) This section applies in relation to the pre-amended Act, sections 310, 311 and 316.³⁵

‘(2) Despite the omission of the sections by the amending Act—

- (a) the declarations in the pre-amended Act, sections 310(4), 311(4) and 316(5) continue to have effect in relation to the offences to which they applied immediately before the commencement; and
- (b) a DNA sample taken as mentioned in the pre-amended Act, section 310(5) or 311(5) continues not to have been unlawfully

31 Pre-amended Act, section 309 (Taking DNA sample from adult before court), 310 (Taking DNA sample after finding of guilt) or 312 (Taking DNA sample from child)

32 Pre-amended Act, chapter 8 (Powers in relation to persons in custody), part 4 (DNA procedures)

33 Section 316 (Taking DNA sample from child)

34 Section 303 (Commissioner may authorise police officers to take DNA samples)

35 Pre-amended Act, sections 310 (Taking DNA sample after finding of guilt), 311 ((Taking DNA sample from prisoner) and 316 (When DNA samples and results must be destroyed)

taken merely because the indictable offence of which the person from whom it was taken was found guilty was dealt with summarily.

‘480 QDNA

‘(1) A database approved by the commissioner under the pre-amended Act, section 317 (“**section 317 database**”) is taken to be approved under section 318I of this Act.

‘(2) Anything lawfully stored in a section 317 database immediately before the commencement may continue to be stored in QDNA or the CrimTrac database and may be used under this Act.

‘481 Certain arrangements made by Minister

‘(1) This section applies if, before the commencement of section 318ZY,³⁶ the Minister lawfully made an arrangement with a declared law enforcement agency or a responsible Minister of another jurisdiction relating to a matter mentioned in section 318ZY(1) and the arrangement is of a type that could, after that commencement, be entered into under that section.

‘(2) After the commencement of section 318ZY, the arrangement entered into is taken to have been entered into under that section.

‘(3) In this section—

“**responsible Minister**” has the same meaning as it has in section 318ZY.

‘482 Provision for ch 11, pt 3

‘(1) This section applies to a sample or other thing to which the pre-amended Act, section 420(2)(b), (c) or (d)³⁷ applied before the commencement.

‘(2) From the commencement—

36 Section 318ZY (Ministerial arrangements)

37 Pre-amended Act, section 420 (Application of pt 3)

- (a) if the pre-amended Act, section 420(2)(b) or (c) applied, the sample or other thing is taken to have been taken or collected under chapter 8A³⁸ of this Act; and
- (b) if the pre-amended Act, section 420(2)(d) applied, the sample is taken to have been taken under chapter 8B³⁹ of this Act.’

25 Amendment of sch 4 (Dictionary)

(1) Schedule 4, definitions “commissioned officer”, “DNA database”, “DNA sample”, “DNA sample notice”, “DNA sampler” and “take”—

omit.

(2) Schedule 4—

insert—

“**appropriate person**” for chapter 8A, part 9, see section 318ZN.

“**attend**”, a police station or police establishment under a direction, order or requirement, includes stay at the police station or police establishment for the time reasonably necessary for the purpose for which the attendance is directed, ordered or required.

“**authorised examiner**” means a police officer authorised by the commissioner under section 318O.

“**authorised police officer**”, for chapter 8A, part 6, see section 318N.

“**corresponding forensic procedure orders**” see section 318ZO.

“**CrimTrac**” means the CrimTrac Agency established under the *Public Service Act 1999* (Cwlth), section 65.⁴⁰

“**CrimTrac database**” means a database kept by the CrimTrac Agency containing information about the results of DNA analyses.

“**DNA sample**” means—

- (a) a sample of a person’s hair, including roots of the hair, other than hair from—

38 Chapter 8A (Forensic procedures)

39 Chapter 8B (Blood and urine testing of persons suspected of committing sexual or other serious assault offences)

40 *Public Service Act 1999* (Cwlth), section 65 (Establishment etc. of Executive Agencies)

- (i) the genital or anal area; or
- (ii) the buttocks; or
- (iii) if the person is a female—the breasts; or
- (b) a sample obtained by swabbing a person’s mouth.

“DNA sample notice” see section 309(2).

“DNA sampler” means—

- (a) a police officer authorised under section 303 to take DNA samples; or
- (b) a doctor; or
- (c) a nurse.

“forensic procedure” means—

- (a) an intimate forensic procedure; or
- (b) a non-intimate forensic procedure.

“forensic procedure consent” see section 274(1)(a).

“forensic procedure order” see section 285(1).

“function of the police service” includes an investigation conducted by a police officer for a declared law enforcement agency.

“guardian”, of a person who is an adult, means a guardian appointed under the *Guardianship and Administration Act 2000* for the adult.

“independent person”, for chapter 8A, part 7, see section 318U(b).

“indictable offence”, in relation to a reference to that term as including an indictable offence dealt with summarily, includes an indictable offence dealt with summarily whether or not the Criminal Code, section 659⁴¹ applies to the indictable offence.

“intimate forensic procedure” means all or any of the following procedures—

- (a) a procedure performed on a person’s external genital or anal area, buttocks or, for a female, breasts, that involves—
 - (i) an external examination of the relevant part of the body; or

41 Criminal Code, section 659 (Effect of summary conviction for indictable offences)

- (ii) taking a sample from the relevant part of the body, by swab, washing, vacuum suction, scraping, or by lifting by tape; or
- (iii) photographing the relevant part of the body; or
- (iv) making an impression or cast from the relevant part of the body; or
- (v) measuring the relevant part of the body;
- (b) a procedure performed on a person that involves—
 - (i) an internal examination of a body cavity; or
 - (ii) taking a sample of the person’s hair from—
 - (A) the genital or anal area; or
 - (B) the buttocks; or
 - (C) if the person is a female—the breasts; or
 - (iii) taking a sample, by swab or washing, from a body cavity other than the mouth; or
 - (iv) removing a substance or thing from a body cavity other than the mouth; or
 - (v) taking an X-ray of a part of the person’s body; or
 - (vi) taking a dental impression; or
 - (vii) taking a sample of the person’s blood or urine.

“non-intimate forensic procedure” means a procedure performed on a person, other than an intimate forensic procedure, that involves all or any of the following—

- (a) an examination of an external part of the person’s body, that requires clothing to be removed or contact with the person’s body;
- (b) taking a sample from a part of the person’s body, by swab, washing, vacuum suction, scraping, or by lifting by tape;
- (c) photographing a part of the person’s body;
- (d) making an impression or cast of a part of the person’s body;
- (e) taking a DNA sample;
- (f) taking a sample of saliva;

(g) taking a sample from, or from under, a fingernail or toenail;

(h) taking identifying particulars.

“non-medical examination” means a non-intimate forensic procedure, other than taking a DNA sample or palm prints, fingerprints, handwriting, voiceprints or footprints.

“non-medical examination notice” see section 318Q(2).

“parent”, of a person, for chapter 8A, means a parent or guardian of the person and includes—

(a) for an Aboriginal person, a person, who under Aboriginal tradition, is regarded as a parent of the person; or

(b) for a Torres Strait Islander person, a person, who under Island custom, is regarded as a parent of the person;

but does not include an approved foster carer of the person under the *Child Protection Act 1999*.

“post-prison community based release order”, for chapter 8A, part 5, division 4, see section 318.

“prescribed indictable offence”, for chapter 8A, part 5, division 4, see section 318.

“QDNA” see section 318I(1).

“QDNA index” means an index of a kind prescribed under a regulation containing information derived from, or relating to, the results of DNA analyses.

“qualified person”, in relation to a forensic procedure, see section 272.

“registered corresponding foreign procedure order” means a corresponding foreign procedure order registered under section 318ZP.

“responsible Minister”, for chapter 8A, part 9, see section 318ZN.

“take”, for chapters 8, 8A and 8B, includes collect.

“unlawfully” means without authorisation, justification or excuse by law.’.

(3) Schedule 4, definition “enforcement act”, paragraph (d), ‘269(4)’—

omit, insert—

‘270(3)’.

(4) Schedule 4, definition “identifying particulars”—

insert—

‘(g) a measurement of any part of the person’s body, other than the person’s genital or anal area, buttocks or, for a female, breasts.’.

(5) Schedule 4, definition “identifying particulars notice”, ‘272’—

omit, insert—

‘297(1)’.

(6) Schedule 4, definition “relevant person”, paragraph (f)—

omit, insert—

‘(f) for chapter 8A—see section 274(2)’.

(7) Schedule 4, definition “time out”, paragraph (k)(ii) and (iii)—

omit, insert—

(ii) the performance of a forensic procedure; or

(iii) the taking of a blood or urine sample under chapter 8B by a doctor or nurse; and’.

PART 3—AMENDMENT OF CORRECTIVE SERVICES ACT 2000

26 Act amended in pt 3

This part amends the *Corrective Services Act 2000*.

27 Amendment of s 14 (Directions to prisoners)

(1) Section 14(1)(d)—

renumber as section 14(1)(e).

(2) Section 14—

insert—

- ‘(d) to ensure a prisoner attends at a place to enable a DNA sampler to take a DNA sample from the prisoner under the *Police Powers and Responsibilities Act 2000*, section 314 or 315 or chapter 8A, part 5, division 4;⁴² or’.

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⁴² *Police Powers and Responsibilities Act 2000*, section 314 (Taking DNA sample from prisoner in corrective services facility) or 315 (Taking DNA sample from transferred prisoner) or chapter 8A, part 5, division 4 (Taking DNA samples from prisoners released under post-prison community based release orders)