

NORTHERN TERRITORY OF AUSTRALIA

POLICE ADMINISTRATION AMENDMENT ACT (NO. 2) 1998

No. 87 of 1998

TABLE OF PROVISIONS

Section

1. Short title
2. Commencement
3. Principal Act
4. Interpretation
5. Repeal and substitution:
 - "145. INTIMATE PROCEDURES
 - "145A. NON-INTIMATE PROCEDURES
 - "145B. VOLUNTARY NON-INTIMATE PROCEDURES"
6. Certain non-intimate procedures on persons in custody
7. Repeal and substitution:
 - "147. DATABASES
 - "147A. EXCHANGE OF INFORMATION IN DATABASES
 - "147B. ACCESS TO INFORMATION STORED IN DATABASES
 - "147C. RETAINING SAMPLES &C.
 - "147D. POWERS UNDER DIVISION ARE ADDITIONAL TO ANY OTHERS"



NORTHERN TERRITORY OF AUSTRALIA

No. 87 of 1998

AN ACT

to amend the *Police Administration Act*

[Assented to 9 December 1998]

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

1. SHORT TITLE

This Act may be cited as the *Police Administration Amendment Act (No. 2) 1998*.

2. COMMENCEMENT

This Act comes into operation on the date fixed by the Administrator by notice in the *Gazette*.

3. PRINCIPAL ACT

The *Police Administration Act* is in this Act referred to as the Principal Act.

4. INTERPRETATION

Section 4 of the Principal Act is amended —

- (a) by inserting after the definition of "dismiss" in subsection (1) the following:

Police Administration Amendment (No. 2)

"intimate procedure" includes the following procedures:

- (a) examining the body, either internally or externally;
 - (b) taking from the body a substance on or in the body;
 - (c) taking a sample of a substance on or in the body;
 - (d) taking a sample of blood (other than by a swab or washing from an external part of the body);
 - (e) taking a sample of pubic hair;
 - (f) taking a sample from the external genital or anal area or the buttocks by swab or washing;
 - (g) taking a sample from the external genital or anal area or the buttocks by vacuum suction, scraping or lifting by tape;
 - (h) taking a dental impression or an impression of a bite mark;
 - (j) taking a photograph, or an impression or cast, of a wound to the genital or anal area or the buttocks;
 - (k) taking an X ray;
 - (m) taking a sample of urine;
 - (n) in the case of a female —
 - (i) examining the breasts;
 - (ii) taking a sample from the breasts by swab or washing;
 - (iii) taking a sample from the breasts by vacuum suction, scraping or lifting by tape; and
 - (iv) taking a photograph, or an impression or cast, of a wound to the breast;" and
- (b) by inserting after the definition of "member" in subsection (1) the following:

Police Administration Amendment (No. 2)

"non-intimate procedure' includes the following procedures:

- (a) taking a sample of saliva or a sample by buccal swab;
- (b) examining a part of the body other than the genital or anal area or the buttocks or, in the case of a female, the breasts;
- (c) taking a sample of hair other than pubic hair;
- (d) taking a sample by swab or washing from any external part of the body other than the genital or anal area or the buttocks or, in the case of a female, the breasts;
- (e) taking a sample by vacuum suction, scraping or lifting by tape from any external part of the body other than the genital or anal area or the buttocks or, in the case of a female, the breasts;
- (f) taking a hand print, fingerprint, footprint or toe print;
- (g) taking a photograph of, or an impression or cast of a wound to, a part of the body other than the genital or anal area or the buttocks or, in the case of a female, the breasts;
- (h) taking a photograph of a person;".

5. REPEAL AND SUBSTITUTION

Section 145 of the Principal Act is repealed and the following substituted:

145. INTIMATE PROCEDURES

"(1) A member of the Police Force may arrange for a medical practitioner or registered dentist to carry out an intimate procedure on a person in lawful custody on a charge of an offence if the member believes on reasonable grounds that the procedure may provide evidence relating to the offence or any other offence punishable by imprisonment.

"(2) The intimate procedure may be carried out if -

- (a) the person consents in writing to it being carried out; or

Police Administration Amendment (No. 2)

(b) a magistrate approves it being carried out.

"(3) The member of the Police Force may apply to a magistrate for the approval —

(a) in person; or

(b) if that is not practicable — by telephone.

"(4) The magistrate may approve the intimate procedure being carried out if, after hearing —

(a) the member of the Police Force; and

(b) the person to whom the application relates,

he or she is satisfied that the member has reasonable grounds for the belief referred in subsection (1).

"(5) The approval is to be in writing and given to the member of the Police Force.

"(6) The member of the Police Force may proceed under the approval despite not having received it if he or she is informed of it by the magistrate by telephone.

"(7) A medical practitioner or registered dentist may carry out the intimate procedure in accordance with the approval given under subsection (4).

"(8) A member of the Police Force —

(a) may assist a medical practitioner or registered dentist to carry out the intimate procedure; and

(b) may use reasonable force when assisting the medical practitioner or registered dentist.

"(9) Before arranging for the intimate procedure to be carried out, the member of the Police Force must inquire whether the person wishes to have a medical practitioner or registered dentist of his or her own choice present when the procedure is carried out.

"(10) If the person wishes to have a medical practitioner or registered dentist present, the member of the Police Force must —

(a) provide reasonable facilities to enable the person to arrange for a medical practitioner or registered dentist to be present; and

Police Administration Amendment (No. 2)

- (b) unless it would be impracticable to do so - arrange for the intimate procedure to be carried out at a time when the medical practitioner or registered dentist can be present.

"(11) After the intimate procedure is carried out, the person must be provided with a copy of the report of the medical practitioner or registered dentist provided in respect of the procedure if the person requests it.

"(12) No action or proceeding, civil or criminal, can be commenced against a medical practitioner or registered dentist in respect of anything reasonably done by him or her in carrying out an intimate procedure under this section.

"(13) Nothing in this section prevents a medical practitioner or registered dentist from examining a person in lawful custody at the request of the person or treating the person for an illness or injury.

"(14) In this section, 'registered dentist' means a dentist or dental specialist registered under the *Dental Act*.

"145A. NON-INTIMATE PROCEDURES

"(1) Subject to any general orders or directions issued or given from time to time by the Commissioner of Police, a member of the Police Force holding the rank of Superintendent or a higher rank may carry out or cause to be carried out a non-intimate procedure on a person -

- (a) whom the member reasonably suspects has committed a crime; or
- (b) who is in lawful custody charged with an offence punishable by imprisonment.

"(2) A member of the Police Force authorised by a member holding the rank of Superintendent or a higher rank may cause a sample by buccal swab of a person to be taken by directing the person to provide the sample.

"(3) A person is not to be taken to have provided a sample unless the sample is sufficient to enable an analysis of it to be carried out.

"(4) A member of the Police Force may use reasonable force when exercising his or her powers under this section.

Police Administration Amendment (No. 2)

"145B. VOLUNTARY NON-INTIMATE PROCEDURES

"(1) Subject to any general orders or directions issued or given from time to time by the Commissioner of Police, a member of the Police Force holding the rank of Superintendent or a higher rank may carry out or cause to be carried out a non-intimate procedure on a person who consents to the non-intimate procedure being carried out.

"(2) The person's consent is to be in writing.

"(3) If the person is a juvenile within the meaning of the *Juvenile Justice Act*, the consent in writing of a parent or guardian of the person is also required before the non-intimate procedure may be carried out.

"(4) If a person consents to a non-intimate procedure being carried out for the purposes of the investigation of an offence, the information obtained from the procedure is inadmissible as evidence in any proceedings other than in proceedings in respect of the offence.

"(5) Subsection (4) does not apply if the offence is a crime punishable by a term of imprisonment of 14 years or more."

6. CERTAIN NON-INTIMATE PROCEDURES ON PERSONS IN CUSTODY

Section 146 of the Principal Act is amended —

(a) by omitting from subsection (1) all words after and including "take or" and substituting "carry out or cause to be carried out an identifying non-intimate procedure."; and

(b) by adding at the end the following:

"(3) In this section, 'identifying non-intimate procedure' means taking —

(a) prints of the hands, fingers, feet or toes; or

(b) photographs."

7. REPEAL AND SUBSTITUTION

Section 147 of the Principal Act is repealed and the following substituted:

"147. DATABASES

"(1) The Commissioner may maintain databases of any information obtained from carrying out intimate procedures and non-intimate procedures under this Act or any other Act.

"(2) Information may be recorded in the databases from intimate procedures and non-intimate procedures carried out before the commencement of this section.

147A. EXCHANGE OF INFORMATION IN DATABASES

"(1) The Commissioner may enter into an arrangement with the Commissioner of Police or other appropriate authority of a corresponding jurisdiction providing for the exchange of information recorded in a database kept under this Act and a database kept under a law of the corresponding jurisdiction.

"(2) In this section, 'corresponding jurisdiction' means the Commonwealth, a State or another Territory of the Commonwealth while it has in force a law that provides for intimate procedures and non-intimate procedures to be carried out.

"147B. ACCESS TO INFORMATION STORED IN DATABASE

"A person may only have access to or use information stored in the database maintained under this Act for the following purposes:

- (a) for the purposes of a criminal investigation;
- (b) for the purpose of making the information available to the person to whom the information relates;
- (c) for the purpose of administering the database;
- (d) for the purpose of an arrangement entered into under section 147A.

"147C. RETAINING SAMPLES &C.

"(1) The Commissioner may retain a sample for the period that he or she thinks fit.

"(2) A sample may be subjected to any analysis that the Commissioner thinks fit and any information obtained may be recorded in the databases maintained under this Act.

Police Administration Amendment (No. 2)

"(3) In this section, 'sample' means anything obtained in conducting an intimate procedure or a non-intimate procedure.

"147D. POWERS UNDER DIVISION ARE ADDITIONAL TO ANY OTHERS

"The powers given by this Division are in addition to and do not take away from any other powers that members of the Police Force have under any other law in force in the Territory."
