NORTHERN TERRITORY OF AUSTRALIA

POLICE ADMINISTRATION AMENDMENT (FORENSIC PROCEDURES) ACT 2004

Act No. 57 of 2004

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NORTHERN TERRITORY OF AUSTRALIA

Act No. 57 of 2004

AN ACT

to amend the *Police Administration Act*

[Assented to 4 November 2004]
[Second reading 19 August 2004]

The Legislative Assembly of the Northern Territory enacts as follows:

1. Short title

This Act may be cited as the *Police Administration Amendment (Forensic Procedures) Act 2004*.

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 by inserting in subsection (1) in alphabetical order the following:

" 'corresponding jurisdiction' means any of the following in which a forensic law is in force:

       (a)   the Commonwealth, a State or another Territory;

       (b)   a foreign country prescribed by the Regulations;

'forensic law' means a law providing for the carrying out of a forensic procedure;

'forensic procedure' means an intimate procedure or non-intimate procedure;

'forensic procedure approval' means an approval to carry out a forensic procedure given by –

       (a)   a magistrate under section 145(4);

       (b)   a magistrate under section 31(4) or 31B(5) of the *Juvenile Justice Act*; or

       (c)   a member of the Police Force under –

            (i)   section 145A(1); or

            (ii)   section 31B(2) of the *Juvenile Justice Act*;

'proper authority', of a corresponding jurisdiction, means –

       (a)   the person performing functions in relation to the police force or service of the corresponding jurisdiction that correspond to the functions of the Commissioner; or

       (b)   an entity prescribed by the Regulations;

'responsible Minister', of a corresponding jurisdiction, means the Minister responsible for administering a forensic law of the jurisdiction;".

5.   Non-intimate procedures

Section 145A of the Principal Act is amended –

(a)   by omitting from subsection (1) "carry out or cause to be carried out" and substituting "approve the carrying out of"; and

(b)   by omitting subsection (2) and substituting the following:

"(2)   A member of the Police Force may, in accordance with the approval, carry out the non-intimate procedure.

"(2A) If the non-intimate procedure is the taking of a sample by buccal swab, a member of the Police Force may direct the person to provide the sample.".

6.   Voluntary non-intimate procedures

Section 145B of the Principal Act is amended by omitting subsections (4) and (5).

7.   Databases

Section 147 of the Principal Act is amended by omitting "intimate procedures and non-intimate procedures" (all references) and substituting "forensic procedures".

8.   Exchange of information in databases

Section 147A of the Principal Act is amended –

(a)   by omitting from subsection (1) "(1) The Minister" and substituting "The Minister";

(b)   by omitting from subsection (1) "kept under this Act and a database kept under a" and substituting "maintained under this Act and a database maintained under a forensic"; and

(c)   by omitting subsection (2).

9.   Repeal and substitution of section 147B

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

"147B. Access to and use of information stored in database

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

(a)   investigating an offence;

(b)   proceedings for an offence;

(c)   giving the information to the person to whom the information relates;

(d)   administering the database;

(e)   investigating a reportable death or disaster within the meaning of the *Coroners Act*;

(f)   locating a missing person;

(g)   identifying a deceased person or the remains of a deceased person;

(h)   an arrangement entered into under section 147A.

"(2)   However, if a non-intimate procedure is carried out in accordance with a person's consent under section 145B for investigating an offence, the information obtained from the procedure –

(a)   must not be used for investigating another offence other than a relevant offence; and

(b)   is inadmissible as evidence in any proceeding other than a proceeding for the offence or a relevant offence.

"(3)   In this section –

'relevant offence' means an offence that is a crime punishable by a term of imprisonment of 14 years or more.".

10.   Retaining and analysing samples

Section 147C of the Principal Act is amended by omitting subsection (3) and substituting the following:

"(3)   However, a DNA analysis of the sample must be a type or method of DNA analysis prescribed by the Regulations.

"(4)   In this section –

'sample' means anything obtained from carrying out a forensic procedure.".

11.   New sections 147E and 147F

The Principal Act is amended by inserting after section 147D in Part 7, Division 7 the following:

"147E.   Arrangements with corresponding jurisdictions for registration of forensic orders

"(1)   The Minister may enter into an arrangement with the responsible Minister of a corresponding jurisdiction providing for –

(a)   the registration by the Commissioner of orders authorising the carrying out of forensic procedures made under a forensic law of the responsible Minister's jurisdiction ('forensic procedure orders'); or

(b)   the registration under that forensic law of forensic procedure approvals.

"(2)   If the Minister enters into an arrangement under subsection (1), the proper authority of the corresponding jurisdiction may apply to the Commissioner for the registration, or the cancellation of registration, of a forensic procedure order.

"(3)   The application must be accompanied by a copy of the forensic procedure order certified by the person who made the order.

"(4)   If a forensic procedure order is registered by the Commissioner, the forensic procedure authorised by the order may be carried out in the Territory in accordance with –

(a)   for an intimate procedure –

    (i)   on an adult – section 145; or

    (ii)   on a juvenile – section 31 of the *Juvenile Justice Act*; or

(b)   for a non-intimate procedure –

    (i)   on an adult – section 145A; or

    (ii)   on a juvenile – section 31B of the *Juvenile Justice Act*.

"(5)   The forensic procedure may be carried out in the Territory as if an approval were given under the section mentioned in subsection (4)(a) or (b) for the procedure.

"(6)   In this section –

'adult' means a person who has attained the age of 18 years;

'juvenile' has the same meaning as in the *Juvenile Justice Act*.

"147F. Forensic material from corresponding jurisdictions

"(1)   Forensic material lawfully obtained (whether before or after the commencement of this section) under a forensic law of a corresponding jurisdiction may be kept, accessed and used in the Territory under this Division.

"(2)   Subsection (1) applies even if the material was obtained –

(a)   in circumstances in which this Division would not authorise the material to be obtained; or

(b)   in accordance with requirements that are less stringent than, or are otherwise substantively different to, the requirements applying under this Division.

"(3)   In this section –

'forensic material' means anything obtained from carrying out a forensic procedure, and includes the information obtained from an analysis of the thing.".