



Audit of compliance with the *Criminal Law (Forensic Procedures) Act 2007*

September 2023

OFFICIAL

Ombudsman SA
Level 8, 95 Grenfell Street
Adelaide SA 5000

General enquiries: (08) 8226 8699
Toll free (outside Adelaide Metro Area) 1800 182 150

Web: www.ombudsman.sa.gov.au

OFFICIAL



To:

**The Honourable Kyam Maher MLC
Attorney-General (South Australia)**

I present this report on the 2022-2023 audit to monitor compliance with the *Criminal Law (Forensic Procedures) Act 2007*, as required by section 57 of that Act.

I note your obligation under section 57 to cause copies of this report to be laid before each House of Parliament within 12 sitting days of receiving it.

A handwritten signature in black ink, which appears to read 'Steven Strelan'. The signature is fluid and cursive, with a large initial 'S'.

**Steven Strelan
Deputy Ombudsman
Ombudsman SA**

21 September 2023



Contents

Executive summary	1
Background and Ombudsman jurisdiction.....	3
Staff undertaking forensic procedures	9
Volunteers and victims procedures	10
Suspects procedures	16
Retention and Assimilation Orders.....	26
Offenders Procedures	27
Forensic Procedures on deceased persons.....	28
Blood testing for communicable diseases	29
The DNA database system	31
Appendix 1: Summary of audit results.....	35
Appendix 2: Relevant definitions	52

Executive summary

This is a report on an audit undertaken by Ombudsman SA to monitor compliance with the provisions of the *Criminal Law (Forensic Procedures) Act 2007* (CL(FP) Act) during the period 1 July 2022 to 30 June 2023 (the audit/this audit).

As was the case for the 2021-2022 audit period, the audit results showed that compliance continues to be the norm, and the number of compliant procedures appears to have increased. Most statutory requirements appear to have been fully complied with and where this was not the case, compliance against the relevant provisions was more common than not.

I acknowledge SA Police's co-operation with the audit. I am also pleased to note that SA Police has continued to take steps to implement my previous recommendations.

I would particularly like to acknowledge the diligence of SA Police's DNA Management Unit in coordinating the timely delivery of documents for the audit. Their efforts have assisted considerably in the conduct of the audit.

The audit identified that there is scope for improvement to ensure compliance with the legislation (in terms of actual compliance or recording compliance) in the following areas by ensuring that:

- a person is only subjected to a forensic procedure where they are suspected of a serious offence, and that offence is accurately recorded
- where an intrusive procedure involves taking of photographs requiring exposure of, or contact with, the genital or anal area, the buttocks, or the breasts of a female person or a transgender or intersex person who identifies as female the procedure must be carried out by or in the presence of a medical practitioner or registered nurse
- confirmation is provided that relevant parties have been notified of the results of blood testing for communicable diseases
- forensic material is analysed and destroyed promptly following a request for destruction from a relevant person.

I have included recommendations only where I consider that the issue raised is particularly significant or there is a relatively high level of non-compliance.

I refer to the table at Appendix 1 for a breakdown of the audit results.

While the CL(FP) Act does not provide the Ombudsman with specific power to make recommendations, I have made suggestions as to improvements to practice as follows:

Recommendation 1

That the Commissioner of Police remind relevant police officers to ensure that simple forensic procedures are not conducted unless the person is suspected of a serious offence at the time of the procedure and that the relevant serious offence is accurately recorded on the PD429 form.

Recommendation 2

That the Commissioner of Police remind relevant police officers that the taking of photographs of a respondent where the procedure involves exposure of, or contact with, the genital or anal area, the buttocks, or the breasts of a female person or a transgender or

OFFICIAL

intersex person who identifies as female must be carried out by or in the presence of a medical practitioner or registered nurse.

Recommendation 3

That the Commissioner of Police consider amending the PD430A form to include a check box to confirm whether or not all relevant parties have been notified of the results of blood testing for communicable diseases.

Recommendation 4

That the Commissioner of Police remind the DNA Management Unit to notify promptly and follow up regularly with Forensic Science South Australia where a person has requested destruction of their forensic material after analysis to encourage the timely destruction of the relevant sample.

I provided a draft of this report to the Commissioner of Police for comment. The Commissioner of Police subsequently provided a response advising that he accepts Recommendations 1, 2, and 4. The Commissioner of Police advised that he did not accept Recommendation 3 in its draft form, and has provided additional information in relation to the circumstances surrounding the draft recommendation. Having considered that information, I have amended Recommendation 3 to the wording above.

I also provided draft copies of this report to Forensic Science SA, and representatives from Yarrow Place Rape and Sexual Assault Service and the Women's and Children's Health Network. I have received no comments from those parties.

Background and Ombudsman jurisdiction

1. The *Criminal Law (Forensic Procedures) Act 2007* (**the CL(FP) Act**) allows for the carrying out of forensic procedures to obtain evidence relevant to the investigation of criminal offences and for other purposes.
2. Section 57 of the CL(FP) Act provides that the Ombudsman must audit compliance with the Act on an annual basis. In particular, section 57 provides:
 - (1) The Ombudsman must conduct an annual audit to monitor compliance with this Act.
 - (2) The Commissioner of Police must ensure that the Ombudsman is provided with such information as it may require for the purpose of conducting an audit under this section.
 - (3) A report on an annual audit must be presented to the Attorney-General on or before 30 September in each year.
 - (4) The Attorney-General must, within 12 sitting days after receipt of a report under this section, cause copies of the report to be laid before each House of Parliament.
3. While the CL(FP) Act provides police officers and others with significant statutory powers to facilitate the collection and management of forensic evidence, it also imposes safeguards or limits to those powers. Those limits ensure, for example, that procedures are only conducted where necessary and that individuals' rights are balanced against the public interest in collecting and retaining evidence. Compliance with such statutory safeguards is clearly important in terms of protecting rights and in maintaining public confidence in law enforcement agencies. Non-compliance may also give rise to the exclusion of evidence in certain circumstances. Section 47 of the CL(FP) Act provides:
 - (1) If a police officer or other person with responsibilities under this Act (other than a person acting as an appropriate representative of a protected person under this Act) contravenes a requirement of this Act in relation to—
 - (a) a forensic procedure; or
 - (b) forensic material obtained from a forensic procedure; or
 - (c) a DNA profile derived from such forensic material,evidence obtained as a result of the forensic procedure is not admissible in evidence against the person on whom the procedure was carried out unless—
 - (d) the person does not object to the admission of the evidence; or
 - (e) the court is satisfied that the evidence should be admitted in the interests of the proper administration of justice despite the contravention.
4. This audit considers compliance with the CL(FP) Act and the *Criminal Law (Forensic Procedures) Regulations 2022* (**the CL(FP) Regulations**) during the period 1 July 2022 to 30 June 2023 (**the audit period**).
5. Pursuant to section 9(1) of the *Ombudsman Act 1972*, the Ombudsman delegated his powers under the CL(FP) Act to me as Deputy Ombudsman to conduct the audit. The

Ombudsman did so having declared a potential conflict of interest and out of an abundance of caution.¹

Audit scope and methodology

6. The majority of forensic procedures carried out in South Australia are conducted by police officers. Records relating to those procedures are vetted and held by the DNA Management Unit of the SA Police Forensic Services Branch.
7. The audit reviewed written records for the following procedures for the 2022-23 audit period:
 - victims and volunteers' procedures
 - suspects simple identity procedures
 - suspects procedures authorised by a senior police officer
 - offenders procedures
 - forensic procedures on deceased persons
 - blood testing for communicable diseases
 - requests for destruction of victims and volunteers material from the DNA database.
8. The audit viewed 79 audio-visual records of intrusive procedures carried out on suspects.
9. As there were no retention or assimilation orders made during the audit period, the audit did not inspect any records in relation to those procedures.
10. The table below sets out the volume of each type of procedure carried out by or on behalf of SA Police during the audit period and the sample size for each procedure type examined during the audit.

Volume of procedures and audit sample sizes

Type of procedure/ Orders made	Number of procedures carried out/ Orders made during the audit period	Number of procedures/ Orders examined by Ombudsman SA	Percentage of procedures/ Orders examined by Ombudsman SA
Volunteers and victims procedures	659	213	32.3%
Simple identity procedures	7136	803	11.3%
Offenders procedures	1	1	100%

¹ Mr Wayne Lines declared a potential conflict of interest on the grounds that his son-in-law is a Senior Constable with SA Police, whose duties involve conducting procedures that could be subject to the audit.

OFFICIAL

Authorised Procedures	210	94	44.8%
Forensic procedures on deceased persons	24	24	100%
Blood testing for communicable diseases	3 ²	3	100%
Requests for destruction of DNA material	25	25	100%

11. Division 1 of Part 3 of the CL(FP) Act contains provisions that apply to all forensic procedures:
- forensic procedures must be carried out humanely and with care
 - to avoid, as far as reasonably practicable, offending genuinely held cultural values or religious beliefs; and
 - to avoid inflicting unnecessary physical harm, humiliation or embarrassment ³
 - forensic procedures must be carried out in the presence or view of no more persons than are necessary⁴
 - any subject of a forensic procedure who is not reasonably fluent in English is entitled to be assisted by an interpreter⁵
 - forensic procedures must be carried out in a way that is consistent with appropriate medical and professional standards⁶
 - an authorised representative must be present to witness a forensic procedure carried out on a protected person.⁷
12. This audit has assessed a sample of written and audio-visual material against these overarching requirements of the CL(FP) Act, as well as the specific provisions particular to each audited forensic procedure. In doing so, the audit also had regard to the SA Police General Order 'Forensic procedures,' and the Forensic Services Branch DNA Management Unit Standard Operating Procedures relevant to each forensic procedure.
13. This audit has also considered the views of representatives from Yarrow Place Rape and Sexual Assault Service and the Women's & Children's Health Network in relation to forensic procedures carried out on victims of sexual assault. Those views are discussed in the 'Volunteers and victims procedures' section of this report below.

² Seven procedures involved blood testing for communicable diseases, however in four instances the relevant sample was obtained by consent. The three remaining instances involved senior police orders.

³ Section 21(1).

⁴ Section 21(2).

⁵ Section 22.

⁶ Section 23.

⁷ Section 25(2).

14. This report sets out my views in relation to compliance with the CL(FP) Act, including where it was unclear whether compliance had been achieved or not.⁸ Appendix 1 provides a summary in table format of findings against relevant provisions of the Act.
15. As with previous audits, I have taken the liberty of making informal recommendations⁹ where I consider changes to procedures may improve practice. I emphasise that the audit continues to demonstrate improved compliance with the CL(FP) Act, and accordingly my four recommendations are simply suggestions for improvements to practice.

2021 - 2022 Audit Report Recommendation

16. The 2021-2022 audit report included 11 recommendations. At the time of publication of that report, the Acting Commissioner of Police advised that she had accepted Recommendations 1 - 7, 10 and 11, and had noted the second part of Recommendation 9. The Acting Commissioner also advised that she supported Recommendation 8, noting that it is for SA Health to determine how best to use its resources. The Commissioner of Police has advised that the compliance actions have in the table below have taken place.

	Recommendation	SA Police response and compliance actions
Recommendation 1	That the Commissioner of Police consider amending the form PD425 to clarify that a relevant person for the purpose of authorising a forensic procedure on a volunteer or victim who is a protected person, and an appropriate representative for witnessing a forensic procedure carried out on a volunteer or victim who is a protected person, have different definitions. The forms should clearly indicate that an appropriate representative must be chosen in accordance with the hierarchy of section 25(3), and evidence of consideration is to be recorded where a relative or friend is not available.	The PD425 has been amended as recommended.
Recommendation 2	That the Commissioner of Police consider amending the PD425 form to include: <ul style="list-style-type: none"> • a question, or question similar to, 'In the case of an intrusive procedure (where section 21(3) applies), is it reasonably practicable to have [a] person conducting the procedure of the same gender as client?' with a Yes or No tick box • a question, or question similar to, 'If no, does client consent to FME with a person conducting the procedure NOT of the same gender?' with a Yes or No tick box. 	The PD425 has been amended as recommended.

⁸ I have redacted any references to specific procedures in this report to avoid disclosing information contrary to section 50 of the CL(FP) Act.

⁹ The CL(FP) Act does not require the Ombudsman to make recommendations.

OFFICIAL

Recommendation 3	That the Commissioner of Police consider amending the form PD184A, used for recording volunteers and victims procedures, to remove the term 'Transsexual' under the criteria of Sex, and replace it with the term 'Intersex'.	The PD184A has been updated to include sex assigned at birth check boxes from both female and male, and a free text field to record gender identity in place of transgender and intersex check boxes.
Recommendation 4	That the Commissioner of Police consider amending the relevant forms to include a prompt to ask the suspect the following question: 'Do you have a relative or friend that you wish to have present?' The form should have a checkbox to record 'Yes' or 'No', and space to record reasons if the suspect requests a relative or friend, and a relative or friend is unavailable.	The PD431 has been amended as recommended.
Recommendation 5	That the Commissioner of Police remind relevant police officers that a copy of the PD430 must be given to the suspect and that fact recorded on the form at the time of completing the application.	An all SAPOL email was sent to police officers with the reminder as recommended.
Recommendation 6	That the Commissioner of Police remind relevant police officers of the importance of completing the entirety of the PD431, including that a copy of the record must be given to the suspect at the time when the order is made.	Forensic Services Branch has implemented a monthly audit, and reminders are sent by DNA Management Unit to relevant police officers on submission of PD431s.
Recommendation 7	That the Commissioner of Police remind relevant police officers of the requirements of the General Order 'Forensic procedures', namely, that once the audio-visual recording has commenced, they should: <ul style="list-style-type: none"> • introduce themselves • invite all other persons present to introduce themselves • seek an acknowledgement from the suspect that no persons other than those identified are present in the room. 	An all SAPOL email was sent to police officers with the reminder as recommended.
Recommendation 8	That the Commissioner of Police consider making SA Police training material for contracted nurses available to SA Health to distribute as appropriate.	The training has been made available to SA Health as recommended.
Recommendation 9	That the Commissioner of Police: <ul style="list-style-type: none"> • remind relevant police officers that alternative provider options must be explored to ensure compliance with section 21(3) of the CL(FP) Act, and • the suspect's preference as to the sex of the person carrying out the procedure should be recorded on the PD431. 	An all SAPOL email was sent to police officers with the reminder as recommended.
Recommendation 10	That the Commissioner of Police amend the aide memoire to include a prompt for senior police officers to advise that the suspect may, at their own expense, organise for a medical practitioner of their choice to witness the procedure and	The Senior Police Officers' aide memoire has been amended as recommended.

OFFICIAL

	provide space to record the suspect's response.	
Recommendation 11	That the Commissioner of Police remind relevant police officers of the importance of restricting access to forensic procedures to those persons who are necessary for the carrying out of the procedure and/or to satisfy any relevant statutory requirements	An all SAPOL email was sent to police officers with the reminder as recommended.

Staff undertaking forensic procedures

17. Section 24(2) of the CL(FP) Act prescribes who may conduct a forensic procedure:¹⁰

24—Who may carry out forensic procedure

- (1) A person who carries out a forensic procedure must be—
- (a) a medical practitioner; or
 - (b) a person who is qualified as required by the regulations to carry out forensic procedures of the relevant type.
18. Regulation 8(1)(a) of the CL(FP) Regulations provides that ‘a person who is a registered nurse is qualified to carry out a forensic procedure of any type except the taking of a dental impression’.
19. SA Police contracts with an external provider for the provision of medical services at certain SA Police locations. As a part of that contractual arrangement, the registered nurses employed by the external provider undertake forensic procedures under the CL(FP) Act.
20. Registered nurses employed by the external provider are therefore authorised to undertake most forensic procedures. Based upon the procedures audited, it is apparent that the majority of intrusive forensic procedures are carried out by registered nurses, who are trained in how to undertake forensic procedures by staff from the SA Police Medical Section.
21. Having reviewed the training materials provided during the 2020-21 audit, including the course learning outcomes, and training video, I consider that they appropriately address the requirements of the CL(FP) Act and emphasise the rights of the individual subject to the procedure.
22. Having viewed a number of audio-visual recordings of intrusive forensic procedures carried out by the external provider, the audit has not identified any issues with registered nurses’ ability to carry out intrusive forensic procedures in accordance with the requirements of the CL(FP) Act.

¹⁰ Section 55(5) of the CL(FP) Act similarly prescribes who may carry out forensic procedures on deceased persons.

Volunteers and victims procedures

23. Volunteers and victims procedures may be carried out on persons who are not under suspicion of a serious offence¹¹ and either:
- the relevant person consents to the carrying out of the procedure expressly (orally or in writing or by giving some other unequivocal indication of consent);¹² or
 - a senior police officer authorises the carrying out of the procedure.¹³
24. 629 volunteers and victims procedures were carried out by or on behalf of SA Police during the audit period. 213 records of those forensic procedures were inspected by the audit, which amounts to a sample of 32.3% of the total procedures carried out. The audit reviewed the following paperwork: PD425 forms (Victims and Volunteers Procedures - Consent Form), PD184A forms (Medical Record for Sexual Assault Examination), and other forms created by SA Health and the Women's and Childrens Health Network.
25. The audit observed in relation to records reviewed that:
- in all cases where a volunteers and victims procedure was carried out on a person who is not a protected person, the relevant consent was obtained¹⁴
 - in the majority of cases, the procedures that were carried out showed a high level of compliance with the relevant legislative requirements concerning victims and volunteers procedures.

Protected persons

Consent by a relevant person

26. The CL(FP) Act contains specific provisions for the authorisation of volunteers and victims procedures carried out on 'protected persons'.¹⁵
27. Before a volunteers or victims procedure is carried out on a protected person:
- consent must be obtained from a **relevant person** as defined in section 6 of the CL(FP) Act unless a senior police officer authorises the procedure pursuant to section 9 of the CL(FP) Act¹⁶
 - a police officer or the person who is to carry out the procedure must explain to the protected person that the procedure will not be carried out if the person objects to the procedure¹⁷
 - the procedure must not be carried out or, if commenced, is not to be continued on a protected person if the person objects or resists the procedure.¹⁸

¹¹ Section 7(2)(a) of the CL(FP) Act.

¹² Section 8(a) and (b) of the CL(FP) Act.

¹³ Section 9 of the CL(FP) Act.

¹⁴ 165 of the 213 procedures reviewed.

¹⁵ A child under the age of 16 years; or a person physically or mentally incapable of understanding the nature and consequences of a forensic procedure.

¹⁶ Section 7(2)(b) of the CL(FP) Act.

¹⁷ Section 11(1) of the CL(FP) Act.

¹⁸ Section 11(2) of the CL(FP) Act.

28. From the documents reviewed by the audit, 47 procedures were carried out on protected persons, none of which were authorised by a senior police officer. Accordingly all 47 procedures required that consent be obtained from a relevant person. In 41 cases, consent was obtained from a relevant person in accordance with the hierarchy set out in section 6.
29. In four instances, it was unclear whether a relevant person had provided consent to the procedures.¹⁹ In these instances, a parent of the protected person (child) had signed a form created by SA Health for Child Protection Services. However, this form did not provide sufficient information to demonstrate that the signature related to the granting of consent for the relevant procedures. The audit noted that these forms were generally less detailed than those created by SA Police for conducting forensic procedures, and it was therefore difficult to determine compliance with the CL(FP) Act.²⁰
30. In contrast to the above, the audit noted that in two instances, forms created by the Women's and Children's Health Network for Child Protection Services did contain sufficient information to assess and determine compliance with the Act.²¹ The audit therefore encourages the uniform use of the most recently updated forms created by the Women's and Children's Health Network where forensic procedures are undertaken for Child Protection Services.
31. In two instances, consent to undergo the procedure was provided by a representative from the Department for Child Protection.²² In both of these instances, a parent of the relevant protected person was in attendance as an appropriate representative to witness the procedure. Those parents are also recorded as having been provided the explanation of consent and are recorded as having been the relevant person to provide consent in Part A of the PD425 form. However, at part C of the PD 425, consent appears to have been provided by a supervisor at the Department for Child Protection who was not present for the procedure. It is unclear in these instances why the parent of the protected person did not provide consent, or why a representative of the Department for Child Protection may have been a more suitable relevant person in the circumstances.

Appropriate representative to witness procedure

32. Section 25(2) of the CL(FP) Act states that where a forensic procedure is carried out following an authorisation under a Division of Part 2, and that procedure is carried out on a protected person within the meaning of that same Division, ***an appropriate representative*** must be present to witness the procedure.
33. Section 25(3) of the CL(FP) Act provides a hierarchy which applies to the selection of an appropriate representative:

An appropriate representative may be -

- (a) a relative or friend chosen by, or acceptable to, the protected person; or

¹⁹ [REDACTED]

²⁰ For instance, the audit was unable to determine whether sections 11(1) and (2), or section 21(2) had been complied with.

²¹ [REDACTED]

²² [REDACTED]

- (b) If there is no available person within the above category - an advocate for the protected person nominated by a government or private agency with responsibilities for the care of protected persons of the relevant class; or
 - (c) If there is no available person within either of the above categories - a person, who is not a police officer or person involved in the investigation of the suspected offence (if any), chosen by a police officer in charge of a police station or, where relevant, the investigating police officer.
34. I observe that the process for authorising a forensic procedure on a volunteer or victim is set out in Part 2, Division 1 of the CL(FP) Act. Under that Division, where a volunteer or victim is a protected person, the *relevant person* for providing consent in the case of a child is the closest available next of kin, or in any other case, a person's guardian or closest available next of kin.²³
35. However, a *relevant person* within the meaning of Part 2, Division 1 of the CL(FP) Act is not necessarily always going to be the same as an appropriate representative as defined by the hierarchy under section 25(3).
36. In 44 instances, an appropriate representative appears to have been selected in accordance with the hierarchy, and was either a parent, family member or a person selected by the protected person.
37. In one instance, a 'case worker' is listed as the appropriate representative.²⁴ Without further evidence, it is not apparent that the appropriate representative was selected in accordance with the hierarchy. While it may be the case that a protected person may not have the closest available next of kin available to witness a procedure, it does not automatically preclude a different relative or friend of the protected person's choice from being present.
38. As discussed in the 2021-22 audit, to fulfil the requirements of an appropriate representative under section 25(3), consideration must be given to whether a relative or friend can be present, before a representative can be selected from the subsequent categories. I re-iterate that a person conducting a forensic procedure on a protected person must turn their mind to the hierarchy set out in the legislation and should explain why a particular appropriate representative has been selected.
39. One record appears to indicate that no appropriate representative was present to witness the procedure.²⁵ In another instance, the record states that the protected person declined to have an appropriate representative present to witness the procedure.²⁶ While it may be the case that a protected person does not wish to have others present for the procedure, compliance with section 25(2) the CL(FP) Act requires that a protected person *must* have an appropriate representative witness the procedure.

²³ Section 6 of the CL(FP) Act.

²⁴ [REDACTED]

²⁵ [REDACTED]

²⁶ [REDACTED]

Intrusive procedures

Conduct of section 21(3) intrusive procedures

40. If reasonably practicable, a forensic procedure that involves exposure of, or contact with, the genital or anal area, the buttocks or the breast region of a female person or a transgender or intersex person who identifies as female (a **section 21(3) procedure**), must not be carried out by a person of a different sex to the victim or volunteer (other than at the person's request).²⁷
41. I consider that there has been a continued high level of compliance with the legislative requirements in carrying out section 21(3) procedures on volunteers and victims.
42. The audit considered 80 section 21(3) procedures carried out within the audit period.
43. Records of 72 procedures indicated that those procedures were carried out on a volunteer or victim by a person of the same sex as required by section 21(3) of the CL(FP) Act.
44. Two of the records do not provide any explanation as to why it was not reasonably practicable for a practitioner of the same sex to carry out the procedure, nor do they record whether the victim had consented to the procedure being carried out by a person of the different sex.²⁸ In three instances, the records indicate that the male victim consented to the procedure being carried out by a person of a different sex.²⁹
45. In two instances, the victims were listed as transgender males, however the procedures were carried out by female practitioners. In those instances, the relevant PD184A forms recorded that the procedure was carried out by a person of the same sex.³⁰ Similarly, a victim recorded as gender fluid was recorded as having the procedure performed by a person of the same sex.³¹ While the legislation only requires that a person *identifying as female* must have the procedure undertaken by someone of the same sex, and this may be an area that should be considered for legislative reform, I consider that it would be best practice to record the whether a transgender male, or person identifying as male or gender fluid, consents to the procedure being carried out by a person of a different sex.

Right to interpreter

46. Of the 213 volunteers and victims procedures audited, 208 procedures were recorded as being carried out on a person fluent in English. In four of the five remaining procedures, an interpreter was provided to the person undergoing the procedure. In one instance,³² the PD425 recorded that the person was not fluent in English, however no interpreter details were provided. As such, it is unclear whether the person undergoing the procedure was afforded the right to an interpreter. Given the otherwise

²⁷ Section 21(3) of the CL(FP) Act.

²⁸

²⁹

³⁰

³¹

³²

high level of compliance, I do not intend to make any recommendations in relation to this aspect of the procedures.

Forensic procedures to be carried out humanely

47. Section 21(1) of the CL(FP) Act requires that a forensic procedure must be carried out humanely and with care:
- to avoid, as far as reasonably practicable, offending genuinely held cultural values or religious beliefs; and
 - to avoid inflicting unnecessary physical harm, humiliation or embarrassment.
48. During the course of the audit, I met with representatives from Yarrow Place Rape and Sexual Assault Service and the Women's & Children's Health Network (**the representatives**) regarding procedures carried out on victims of sexual assault.³³ Those representatives explained the issues they have experienced in carrying out intrusive forensic procedures on victims while complying with the requirements of the CL(FP) Act. In particular, the representatives noted that while certain requirements of the Act may be necessary to ensure that suspects subject to intrusive forensic procedures are treated appropriately, those same requirements are not always suitable or beneficial in the context of intrusive victims procedures.
49. The representatives noted that strict compliance with the requirements of the CL(FP) Act in the case of victims procedures may have a detrimental effect on the welfare of the victim and the relationship between health practitioner and victim. The representatives consider that a trauma-informed approach to victims procedures would be preferable.
50. The requirement to provide a reasonable opportunity to arrange for the attendance, at the person's expense, of a medical practitioner of the person's choice to witness the forensic procedure (section 25(1)) can give rise to lengthy delays during the examination, and have an adverse impact upon the collaborative relationship between the practitioner carrying out the procedure and the victim of sexual assault.
51. The requirement to offer the victim the making of an audio-visual recording of the procedure (section 26(1)(b)) has been highlighted as a particular concern to those carrying out intrusive victims procedures. The representatives noted that a sexual assault can include the non-consensual collection of images and videos as part of the assault experience. Accordingly, asking the victim whether they would like an audio-visual recording to be made can have the effect of retraumatising the victim. Moreover, the representatives noted that the CL(FP) Act does not explain the purpose of the audio-visual recording, so the practitioners carrying out the procedures are unable to provide sufficient information to victims as to who may view the recording to allow for informed consent.
52. The representatives also noted that the requirement that a section 21(3) intrusive procedure be carried out by someone of the same sex may not be appropriate in all

³³ Meeting between officers of Ombudsman SA and Dr Suzi Pedler, Medical Coordinator of Yarrow Place Rape and Sexual Assault Service and Dr Jane Edwards, Medical Unit Head of the Women's & Children's Health Network on 21 June 2023.

circumstances, particularly where a child victim is assaulted by someone of the same sex.

53. The difficulty encountered by the practitioners undertaking intrusive procedures upon victims of sexual assaults highlights a possible inconsistency in the legislation insofar as compliance with particular provisions of the CL(FP) Act may not be compatible with the overarching requirement that forensic procedures are carried out humanely and with appropriate care. While I do not propose to make any recommendations in respect of this issue, I would like to draw this matter to the attention of the Attorney-General and SA Police for further discussion with the relevant Health and Child Protection agencies.

Suspects procedures

54. Suspects procedures can be carried out on persons who are suspected of a serious offence.³⁴ A 'serious offence' is defined as an indictable offence, or a summary offence that is punishable by imprisonment.³⁵
55. Suspects procedures can only be conducted if they consist of a 'simple forensic procedure' or the procedure is authorised by a senior police officer.³⁶

Simple forensic procedures

56. Simple forensic procedures are forensic procedures consisting of one or more of:
- a simple identity procedure
 - a gunshot residue procedure
 - a forensic procedure prescribed by regulation.
- Simple identity procedures comprise forensic procedures consisting of one or more of:
- taking of prints of hands or fingers
 - taking of forensic material from a person by buccal swab or finger-prick for the purpose of obtaining a DNA profile of that person.³⁷
57. A total of 7,136 simple forensic procedures were carried out on suspects during the audit period. The audit inspected 803 records relating to simple forensic procedures carried out on suspects (PD429 forms). This equates to 11.2% of the total number of simple forensic procedures carried out.
58. The majority of records demonstrated full compliance with the terms of the CL(FP) Act, continuing the trend from previous years.
59. Apart from six instances, records of suspects procedures clearly indicated that the person was suspected of a serious offence.³⁸ In three instances, the relevant section of the form was either incomplete or missing.³⁹ In one instance the PD429 form did not contain sufficient information to demonstrate that the offence fell within the definition of 'serious offence.'⁴⁰ In two instances, the PD429 forms initially recorded a summary offence punishable by fine only, which appears to have been later changed to a serious offence without explanation.⁴¹ I consider that it would be preferable to include an explanation as to why the nature of the offence had been altered in order to ensure that a forensic procedure is not unnecessarily carried out on a person who is not suspected of a serious offence.

³⁴ Section 14(2)(a) of the CL(FP) Act.

³⁵ Section 3 of the CL(FP) Act.

³⁶ Section 14(2)(b) of the CL(FP) Act.

³⁷ Section 3(1) of the CL(FP) Act.

³⁸

³⁹

⁴⁰

⁴¹

60. In my view, this is a significant issue. If a person is not suspected of a serious offence at the time when a procedure is undertaken, there is no statutory basis to undertake the procedure. If relevant offences are not properly recorded at the time of the procedure, I cannot be satisfied that the procedure was lawful.

61. Therefore, I RECOMMEND:

Recommendation 1

That the Commissioner of Police remind relevant police officers to ensure that simple forensic procedures are not conducted unless the person is suspected of a serious offence at the time of the procedure and that the relevant serious offence is accurately recorded on the PD429 form.

62. Section 30 of the CL(FP) Act requires that before a suspect or offender forensic procedure is carried out on a person, a police officer must inform the person that:

- reasonable force may be used to carry out the procedure
- if the person obstructs or resists the procedure, evidence of that fact may be admissible in proceedings against them.

63. It was unclear from one of the records inspected whether the warning was given.⁴² It was unclear in a further instance whether the warning was understood as the suspects answer was not transcribed.⁴³ In two instances, the suspect simply replied 'No'.⁴⁴ In such circumstances, ideally the officer should re-explain the warning and/or ask the suspect what it is they don't understand. In one instance, where the suspect initially replied 'no' the officer re-explained the warning while their body worn camera was turned on, the suspect then replied 'yes'.⁴⁵ I consider this to be exemplary compliance.

64. While some further clarification in these two instances would have been ideal, I am mindful that 99% of the records inspected clearly indicated that the warning was given and understood and other records showed further attempts to ensure that a suspect comprehended the warning. Accordingly, I do not consider it necessary to make a recommendation.

65. Section 24 of the CL(FP) Act provides that the person who carries out a forensic procedure must be a medical practitioner or a person who is qualified as required by the regulations to do so. All records inspected relating to simple forensic procedures indicated compliance with section 24.

42
43
44
45

Right to an Interpreter

66. Of the 803 simple identity procedures audited, 766 procedures were recorded as carried out on a person fluent in English. In 18 of the 36 remaining procedures, an interpreter was provided to the person undergoing the procedure.
67. In 11 of the remaining procedures, it was unclear whether the person required an interpreter, as the check box relating to fluency in English was not checked, and therefore it was unclear whether the suspect was entitled to the assistance of an interpreter.⁴⁶
68. With respect to the eight further procedures, the suspects were recorded as not being fluent in English, however no interpreter details were included.⁴⁷ It may be the case that the person did not request an interpreter in these circumstances, however this was not clear from the records inspected. I consider it would be best practice for relevant police officers to note whether the person has declined to exercise their right to have an interpreter present.

Protected persons

69. Section 25(2) of the CL(FP) Act provides
- If, in accordance with an authorisation under a Division of Part 2, a forensic procedure is to be carried out on a person who is a protected person within the meaning of that Division, an appropriate representative must be present to witness the forensic procedure.
70. Section 25(3) of the CL(FP) Act provides a hierarchy for the selection of an appropriate representative:
- An appropriate representative may be -
- (a) A relative or friend chosen by, or acceptable to, the protected person; or
 - (b) If there is no available person within the above category - an advocate for the protected person nominated by a government or private agency with responsibilities for the care of protected persons of the relevant class; or
 - (c) If there is no available person within either of the above categories - a person, who is not a police officer or person involved in the investigation of the suspected offence (if any), chosen by a police officer in charge of a police station or, where relevant, the investigating police officer.
71. Of the 803 simple forensic procedures inspected, 183 of the procedures were carried out on protected persons. Of those records, only four indicated that a relative or a close friend was not present for the procedure as the appropriate representative, and as such, in the majority of cases it was appropriate for no further details to be recorded on the form.
72. In one record, the appropriate representative was described as 'legal guardian'. While a legal guardian would likely meet the definition in section 25(3)(b) of the CL(FP) Act, it is not clear why the legal guardian was chosen over a friend or family member. It was

⁴⁶

⁴⁷

additionally unclear in a further two records why the appropriate representative was a member of the Red Cross, and in one record, a 'teacher'.⁴⁸

73. Evidence demonstrating consideration of whether a representative from category 25(3)(a) was available was not recorded in any of the above four instances.
74. I note that compliance with consideration of the hierarchy pursuant to section 25(3) of the CLFP Act has improved, and I am also pleased to note that SA Police has now changed the relevant forms to include relevant prompts in compliance with my previous recommendation.⁴⁹ In those circumstances, I do not consider that a further recommendation is necessary.

Procedures carried out pursuant to orders of senior police officers

75. During the audit period, 210 suspects were the subject of forensic procedures that were carried out pursuant to orders made by senior police officers. I refer to these as 'authorised procedures'.
76. The audit team examined 94 records relating to authorised procedures. This equates to 45% of the total number of authorised procedures carried out.
77. Documentation inspected included copies of applications for orders authorising forensic procedures (PD430), orders authorising suspects forensic procedures (PD431) and senior police officers' records of applications for orders or authorisations (PD436). The senior police officer is also assisted by an aide memoire. Copies of the aides memoire were also provided to the audit.
78. In addition, the audit viewed 79 of the audio-visual records associated with authorised procedures.
79. In last year's audit I noted that two of the sample audio-visual records were unable to be viewed as they were corrupted. In this year's audit, one record was technically inaccessible.⁵⁰ One instance also only included AV of the hearing, and not of the actual forensic procedure.⁵¹

Applications re suspects procedures

80. For suspects procedures that are not simple forensic procedures, an application must be made to a senior police officer.⁵² The application must:
- be made in writing by a police officer
 - state the nature of the suspected offence and the grounds for suspecting the suspect committed the offence
 - state the nature of the procedure or procedures for which the order is sought and the grounds for suspecting the procedure or procedures could produce evidence of value to the investigation of the suspected offence.⁵³

48 [REDACTED]

49 Recommendation 4 in my 2021-22 Audit Report.

50 [REDACTED]

51 [REDACTED]

52 Section 15(1) of the CL(FP) Act.

53 Section 15(2) of the CL(FP) Act.

81. All records inspected for the audit period indicated compliance with those requirements.
82. A copy of the application must be given to the suspect unless the application is of 'special urgency'. None of the procedures audited this year were recorded as being of special urgency. I note that it was unclear in one instance whether a copy of the application was given to the suspect as the confirmation box on the PD430 was not completed.⁵⁴
83. In all of the audited procedures, a senior police officer conducted an informal hearing before making the order as required by section 16 of the CL(FP) Act.

Authorisation of the procedure and order

Reasonable grounds to suspect respondent had committed a serious offence

84. In all of the audited procedures, it was recorded that the senior police officer was satisfied that there were reasonable grounds to suspect that the respondent had committed a serious offence.⁵⁵

Reasonable grounds to suspect procedure could produce evidence of value

85. I note that for the purposes of auditing this section, the PD430 and PD436 need to be read together.⁵⁶
86. While generally, it was recorded that the senior police officer was satisfied that the procedure or procedures could produce evidence of value, in one instance, not all of the procedures applied for were authorised.
87. The senior police officer was persuaded by the applicant's lawyer, who argued that as there was no information to suggest the applicant had suffered injuries, that the removal of the suspect's clothing to inspect for same was unnecessary. The senior officer was also persuaded that the taking of blood was unnecessary given the passage of time since the alleged offence. As such, only three of the five forensic procedures applied for were approved.⁵⁷
88. I consider that the above instance demonstrates that the process used by SA Police is being appropriately implemented and that it provides for relevant and sensible checks upon the exercise of powers under the CL(FP) Act.

The public interest

89. Section 19(1) of the CL(FP) Act provides that a senior police officer may authorise the carrying out of the forensic procedure if, after conducting the hearing, they are satisfied that:
- (a) there are reasonable grounds to suspect the respondent has committed a serious offence; and
 - (b) there are reasonable grounds to suspect that the procedure could produce material of value to the investigation of that offence; and

⁵⁴ [REDACTED]

⁵⁵ Section 19(1)(a) of the CL(FP) Act.

⁵⁶ Section 19(1)(b) of the CL(FP) Act.

⁵⁷ [REDACTED]

- (c) the public interest in obtaining evidence to prove or disprove the respondent's guilt outweighs the public interest in ensuring that private individuals are protected from unwanted interference.

90. In weighing the above public interest factors against one another, section 19(2) requires the senior police officer to have regard to:
- the seriousness of the suspected offence
 - the extent to which the procedure is necessary for the proper investigation of the offence
 - any likely effects of the procedure on the suspect's welfare given their age, physical and mental health and cultural and ethnic background
 - whether there is a less intrusive but reasonably practicable way of obtaining evidence of the same or similar probative value to confirm or disprove that the suspect committed the offence
 - any other relevant factors.
91. There has been a year-on-year improvement in the recording of the public interest factors and I am pleased to report that this year's audit revealed, in relation to records audited, 100% compliance with the requirement to record and balance relevant public interest factors.

Opportunity for suspect to make representations at hearing

92. Audited records indicated full compliance with the requirements associated with conducting the hearing, specifically the requirement that the suspect or their representative must be given a reasonable opportunity to make representations at the hearing.⁵⁸

Record of order

93. The senior police officer must make a written record of their order and their reasons for making it.⁵⁹ I am pleased to report 100% compliance in relation to records audited.

Protected Persons

94. Section 17(2) of the CL(FP) Act requires that protected persons must be represented at an informal hearing by an appropriate representative and may be represented by a legal practitioner.
95. An appropriate representative is defined under section 25(3) as:
- (a) a relative or friend, chosen by, or acceptable to the protected person; or
 - (b) if there is no available person within [category (a)] - an advocate for the protected person nominated by an agency with responsibilities for the care of protected persons of the relevant class; or
 - (c) if there is no available person within either [category (a) or (b)] - a person, who is not a police officer or person involved in the investigation of the suspected offence

⁵⁸ Section 17(4) of the CL(FP) Act.

⁵⁹ Section 19(3) of the CL(FP) Act.

(if any), chosen by a police officer in charge of a police station or, where relevant, the investigating police officer.⁶⁰

96. Twenty three instances were audited where the suspect was a protected person. Of those 23 instances, it was recorded that 20 were afforded an appropriate representative as defined above. In three instances, a suspect was represented by an advocate pursuant to section 25(3)(b).⁶¹ While this is compliant, the records in relation to those instances did not demonstrate that consideration was first given to a relative or friend under section 25(3)(a). Notwithstanding this, given that the protected person was provided with an appropriate representative in each instance, compliance with this section appears to be high.
97. In one additional instance,⁶² the suspect appeared to be behaving in a manner that did not clearly demonstrate a reasonable level of apprehension of the circumstances of their situation and the information being provided to them. While the PD436 provides adequate explanation as to why the Senior Police Officer did not consider the suspect a protected person, the suspect's classification as *not* a protected person appears inconsistent with the audio-visual record. In this instance, I consider that it would have been appropriate to exercise an abundance of caution and have an appropriate witness present. As this one instance appears to be an outlier, I do not intend to make a recommendation.

Conduct of the procedures

98. Of the 94 authorised procedures audited this year, the audit team viewed 79 audio-visual recordings of the procedures.

Introductions

99. In the previous three audit years, the former Deputy Ombudsman and I reported that the audit team encountered some difficulty assessing sections 25(2) and 21(2) of the CL(FP) Act, as persons present in procedures were often out of view of the camera and were not identified by the investigating officer.
100. In light of this, the former Deputy Ombudsman recommended that the General Order 'Forensic procedures' be amended to include a direction that police officers making audio-visual records of intrusive procedures introduce themselves, invite all other persons present to introduce themselves, and seek an acknowledgment from the suspect that no other persons than those identified are present in the room.
101. The Commissioner of Police amended the General Order 'Forensic procedures' accordingly.
102. It was observed in the current audit that some audio-visual records of procedures were compliant with this General Order, however many other records did not comply.

⁶⁰ Section 25(3) of the CL(FP) Act.

⁶¹ [REDACTED]

⁶² [REDACTED]

103. In two cases, the procedures were undertaken without anyone in the room introducing themselves.⁶³ In a further six cases, at least one person in the room was not introduced, including either a police officer, a nurse or the suspect.⁶⁴ As I have previously made this recommendation, I consider it appropriate to remind SA police of their obligations pursuant to the general order that the audio-visual recording identify the suspect undergoing the procedure, and all persons in the room in accordance with the General Order.

Section 30 Warning

104. A police officer must issue a section 30 warning to the suspect prior to carrying out the forensic procedure. According to the written records audited, compliance with this obligation was 100%. As the warning is sometimes administered in the audio-visual record, the audit chose to audit compliance against this aspect in relation to the matters where audio-visual of the procedure was recorded, namely, in 79 instances.
105. In 31 instances, inspection of the audio-visual record did not demonstrate that the warning was given. It could be that the warning was given and not recorded, but that is not clear from the records available to the audit.
106. It is essential that a suspect understands that reasonable force may be used and that evidence of obstruction or resistance may be used against them. Further, failure to give the warning may result in the suspect challenging the admissibility of the evidence in court.
107. In many of the audio-visual records audited, the warning was provided on camera. In my view, this is best practice. Where the warning is given on camera, it mitigates against the risk that if the PD431 is not filled out, SA Police can provide documented evidence of the warning being administered.

Humane treatment

108. Section 21(1) of the CL(FP) Act provides that 'a forensic procedure must be carried out humanely and with care' and 'to avoid inflicting unnecessary physical harm, humiliation or embarrassment'. The audio-visual records inspected indicated that procedures were generally carried out respectfully and humanely.
109. There was one case that did not appear to demonstrate good practice. The health practitioner attending to conduct a penile swab appears to insert the swab into the urethra of the suspect.⁶⁵ This procedure is at odds with the SA Police training which repeatedly instructs nurses not to insert the swab into the urethra. It is significant that this was performed on a protected person, namely, a minor.
110. This particular matter also suggested poor compliance with other requirements, namely:
- no one was introduced when the AV recording commenced
 - the section 30 warning was not recorded on camera

63

64

65

- the PD431 erroneously recorded that the matter was of special urgency
- the nature of the suspected offence was poorly described.

111. I would be grateful if SA Police undertakes to provide me with any further information about this matter, and undertakes to provide the health practitioner and Senior Police Officer with appropriate guidance to ensure compliance.

Forensic procedure carried out by person of same sex

112. Under section 21(3) of the CL(FP) Act, if reasonably practicable, a forensic procedure that involves exposure of, or contact with, the genital or anal area, the buttocks, or the breast region of a female person or a transgender or intersex person who identifies as female, must not be carried out by a person of a different sex to the suspect (other than at the person's request). Of the audio-visual authorised procedures inspected by Ombudsman SA Officers, 41 procedures involved the exposure of, or contact with, a suspect's genitals. In six of these procedures, the forensic procedure was carried out by a person of the same sex.

113. In 35 instances the procedure was carried out by a person of a different sex. In one instance, a person of a different sex was specifically requested by the respondent, and I consider that this does not raise any issues of non-compliance. In the remaining 34 instances the relevant PD431 records that there was 'no male/female nurse available,' but does not describe any attempts to locate a person of the same sex to carry out the procedure. As I have addressed this issue in the Criminal Law Forensic Procedures Audit 2021-22, I do not intend to make any further recommendations. However, I re-iterate that relevant police officers should explore and record attempts to locate a provider of the same sex when section 21(3) forensic procedures are carried out.

Persons qualified to carry out a forensic procedure

114. All but one of the records inspected demonstrated that the person carrying out the forensic procedure was qualified to do so. In one instance, the procedure involved a police officer taking photographs of a person's genital area. I note that the CL(FP) Act prescribes that an intrusive forensic procedure may only be carried out by a medical practitioner or registered nurse (with the assistance of a police officer if required).⁶⁶ In this case, neither a medical practitioner nor registered nurse was present during the procedure. However, I am pleased to note that this oversight was noted by the DNA Management Unit upon review of the relevant orders.

115. Therefore, I RECOMMEND:

Recommendation 2

The Commissioner of Police remind relevant officers that the taking of photographs of a respondent where the procedure involves exposure of, or contact with, the genital or anal area, the buttocks, or the breasts of a female person or a transgender or intersex person who identifies as female must be carried out by or in the presence of a medical practitioner or registered nurse.

⁶⁶ Section 24(1) of the CL(FP) Act and regulation 8(1)(a) of the CL(FP) Regulations 2022.

Medical practitioner of choice

116. Section 25(1) of the CL(FP) Act requires that, if an intrusive forensic procedure is to be carried out on a person, the person must be allowed a reasonable opportunity to arrange for the attendance, at their own expense, of a medical practitioner of their choice to witness the procedure.

I am pleased to report there was full compliance with this obligation in relation to all 80 instances audited.

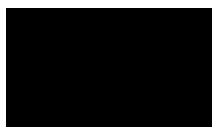
Forensic procedure not carried out in presence of more persons than necessary

117. Section 21(2) of the CL(FP) Act provides that a 'forensic procedure must not be carried out in the presence or view of more persons than are necessary for properly carrying out the procedure and satisfying any relevant statutory requirements'.
118. Most forensic procedures appear to occur in the presence of two police officers and a person qualified to perform the forensic procedure. In the case of protected persons, it is also common for the authorised representative to be present.
119. Compliance with this section 21(3) was high, although in three instances it was not possible to audit as the camera was placed facing a wall,⁶⁷ the footage of the forensic procedure was not provided,⁶⁸ and one instance was corrupted.⁶⁹
120. In last year's audit, there were nine instances where SA Police was not compliant with section 21(3). I am pleased to see this improvement.

Provision of an interpreter

121. Section 22(a) provides that if a person on whom a forensic procedure is to be carried out is not reasonably fluent in English, the person is entitled to be assisted by an interpreter. Section 22(b) also states that the person may request to have an interpreter present during the procedure. 91 records indicated that the requirement for an interpreter was not relevant.
122. In three instances, interpreters assisted a person at the hearing for the procedure. In the remaining instance, a lawyer present for the suspect advised that the applicant required an interpreter, the senior police officer determined that an interpreter was not necessary as the suspect had been living in Australia for more than 10 years and had been conversing in English confidently.⁷⁰

67
68
69
70



Retention orders

123. When forensic material has been obtained from a victim or volunteer who was a protected person, a police officer can apply for an order that the material be retained even if the relevant person (who gave consent to the procedure) requests destruction of the material. Such an order is referred to as a 'retention order'.
124. Section 36 of the CL(FP) Act sets out the grounds on which a senior police officer makes an order. Section 38 of the CL(FP) Act sets out the requirements for making an application for a retention order and the process and the requirements for the hearing of an application. I note that section 38 also applies to applications made for assimilation orders.
125. I am advised that no applications for retention orders were made during the audit period.

Assimilation orders

126. When forensic material is obtained from a victim or volunteer, a senior police officer can make an order that the material be treated as if it were material obtained as a result of a suspects procedure.⁷¹ The effect of this is that the material will be stored on the suspects/offenders index of the DNA database and that it can no longer be subject to applications for and orders of destruction.⁷²
127. A senior police officer can make an assimilation order if satisfied that there are reasonable grounds to suspect that the volunteer or victim in question has committed a serious offence and:
- there are reasonable grounds to suspect that the forensic material obtained from the victim or volunteer may be of value to the investigation of that offence, or
 - the forensic material consists of material taken from the volunteer or victim for the purpose of obtaining a DNA profile from them.⁷³
128. I am advised that no assimilation orders were made by SA Police in the relevant period.

⁷¹ Section 37 of the CL(FP) Act.

⁷² Section 37 and 39 of the CL(FP) Act.

⁷³ Section 37 of the CL(FP) Act.

Offenders procedures

129. Section 20 of the CL(FP) Act permits simple identity procedures to be carried out on:
- (a) persons who are serving terms of imprisonment, detention or home detention in relation to an offence;
 - (b) persons who are being detained as a result of being declared liable to supervision under Part 8A of the *Criminal Law Consolidation Act 1935* (the CLCA) by a court dealing with a charge of an offence;
 - (c) persons who have been convicted of a serious offence;
 - (d) persons who are declared liable to supervision under Part 8A of the CLCA by a court dealing with a charge of a serious offence;
 - (e) persons who are registrable offenders under the *Child Sex Offenders Registration Act 2006*.
130. These are known as 'offenders procedures'. I understand that the numbers of procedures carried out on offenders is very small, given that most offenders will have undergone simple identity procedures at the time of their apprehension and SA Police have for a number of years made concerted efforts to obtain samples from those offenders whose offending pre-dated the commencement of the CL(FP) Act.
131. One offender procedure⁷⁴ was conducted during the audit period with the records indicating that the conditions of section 20 were met; that is, the procedure was a simple identity procedure conducted on a person who had been convicted of a serious criminal offence.
132. Further, the record inspected indicated compliance with the requirements of the CL(FP) Act in that:
- the procedure was conducted by a person qualified as required by the CL(FP) Regulations⁷⁵
 - the person was warned that reasonable force could be used to carry out the procedure and that, if they obstructed or resisted the procedure, evidence of that fact might be admissible in proceedings against them.⁷⁶

⁷⁴ [REDACTED]

⁷⁵ Section 24 of the CL(FP) Act.

⁷⁶ Section 30 of the CL(FP) Act.

Forensic procedures on deceased persons

133. Section 55(1) of the CL(FP) Act provides that a senior police officer may authorise the carrying out of a forensic procedure on the body, a body part, human tissue or human remains of a deceased person if satisfied that the evidence so obtained is likely to assist either in the investigation of a serious offence, or in the identification of the deceased. The officer is required to complete form PD435, which is an 'authorisation for a forensic procedure on a deceased person'.
134. Written authorisations were given under this provision on 24 occasions during the audit period and the audit team inspected all 24 records, which all constituted forensic procedures.
135. A forensic procedure for purposes of the CL(FP) Act is limited to 'a procedure carried out by or on behalf of South Australia Police or a law enforcement authority' which consists of:
- taking prints of hands, fingers, feet or toes
 - examination of a person's body requiring the removal of clothing of, or physical contact with, the person
 - taking biological or other material from a person's body
 - taking an impression or cast from a person.
136. All of the instances audited indicated that a senior police officer authorised the procedure.
137. In four instances, the senior police officer only noted that the procedure was required for a 'coronial inquiry', and the nature of the offence was not stated.⁷⁷ It would be best practice for the officer to state the nature of the offence being investigated, or otherwise, that the procedure was requested for the purposes of identification.
138. In three instances, there was no record of the procedure authorised.⁷⁸ Given the small sample size, I do not propose to make a recommendation about this because in each circumstance the 'forensic procedure requested' part of the PD435 was also filled out. I would nevertheless be grateful if the Commissioner would remind relevant employees that completion of each part of the PD435 is required.
139. All instances audited provided that the procedure was carried out by a medical practitioner or a person who was qualified by the regulations to carry out that procedure.

⁷⁷

⁷⁸

Blood testing for communicable diseases

140. Three forensic procedures that consisted of the taking of a sample of blood to test for communicable diseases were carried out during the audit period. The audit inspected the records for each of those procedures.
141. The taking of a sample of blood is an intrusive procedure and as the three procedures were carried out on suspects, audio-visual records must be made.⁷⁹ Given the high degree of compliance with this aspect of audit in previous years, I chose not to inspect the audio-visual records this year, and instead audited the paper records.
142. Pursuant to section 20B of the CL(FP) Act, a senior police officer (**authorising officer**) may authorise the taking of a sample of blood from a person to test for communicable diseases, if satisfied that:
 - the person is suspected of a prescribed serious offence; and
 - it is likely that a person engaged in prescribed employment came into contact with, or was otherwise exposed to, biological material of the person as a result of the suspected offence.⁸⁰
143. The relevant document for inspection, PD430A, sufficiently demonstrated that in all instances, the authorising officer was satisfied that the above requirements had been met. I consider it pertinent to also note that the PD430A appears to contain a Risk Matrix to assist authorising officers in forming such a view.
144. To comply with section 20B(2) of the CL(FP) Act, the authorising officer must:
 - make a written record of the grounds on which they determined that the forensic procedures should be carried out; and
 - provide a copy of the record to the person from whom a sample of blood was sought.⁸¹
145. I am pleased that all of the PD430As audited contained a detailed written record of the grounds on which the procedure was authorised.
146. Regulation 5(1)(a)(i) and (ii) of the CL(FP) Regulations requires the authorising officer, before the procedure is carried out, to give the person written notice that:
 - a sample of the person's blood is taken pursuant to section 20B of the Act; and
 - the blood will be tested for communicable diseases.⁸²
147. The PD430A contains a section titled 'notice to suspect', the contents of which set out the above requirements. In one matter the authorising officer did not complete this section.⁸³
148. In accordance with regulation 5(1)(c), the authorising officer must invite the person to nominate a medical practitioner to receive a copy of the results of the testing. In the same matter mentioned above, the applying officer asked the appropriate representative this question at the hearing, but the form remained incomplete.

⁷⁹ Section 26(1)(a) of the CL(FP) Act.

⁸⁰ Section 20B(1)(a) and (b) of the CL(FP) Act.

⁸¹ Section 20B(2) of the CL(FP) Act.

⁸² Regulation 5(1)(a)(i) and (ii) of the CL(FP) Regulations.

⁸³ [REDACTED]

149. The Commissioner of Police must take reasonable steps to notify the person from whom the sample of blood was taken of the results of the test (or their nominated medical practitioner).⁸⁴ There was no information in relation to each of the three instances audited of steps being taken to notify the suspect of the results of the test.⁸⁵
150. Reasonable steps must also be taken to notify each affected employee of the results of the testing.⁸⁶ There was no information in relation to the three procedures audited to show steps being taken to notify each 'affected person' of the results of the test.
151. Following discussions with the DNA Management Unit in response to my provisional report, I have been advised that the relevant notifications had been provided in all but one of the procedures.⁸⁷ In that instance, the notification was not provided as the medical practitioner present did not accept the request to carry out the forensic procedure. This instance appears to be an exception, therefore I have amended my draft recommendation, which read:

Recommendation 3

That the Commissioner of Police remind relevant police officers that the PD430A must be filled out completely, and that appended to a completed copy of the PD430A should be communications/correspondence to the relevant parties that provide notice of the results of the forensic procedure.

152. In light of the further information provided by the DNA Management Unit, I consider that it is not necessary to remind relevant police officers to complete the PD 430A in full. With respect to the provision of results, SA Police has also raised concerns with appending the notices of results to the PD430A form, as these contain sensitive medical information. I agree that it is not necessary to attach the results of the blood testing to the PD430A form, however, it is apparent from the audit's review of the form that it does not contain sufficient information to determine whether the blood testing results have been provided to the parties as required by regulations 4B and 4C. The Commissioner of Police has agreed to review the contents of PD430A form for this purpose, therefore I RECOMMEND:

Recommendation 3

That the Commissioner of Police consider amending the PD430A form to include a check box to confirm whether or not all relevant parties have been notified of the results of blood testing for communicable diseases.

⁸⁴ Regulation 4B.

⁸⁵ [REDACTED]

⁸⁶ Regulation 4C.

⁸⁷ [REDACTED]

The DNA database system

153. Part 5 of the CL(FP) Act sets out the requirements for the storage of information about forensic procedures on the DNA database system.
154. Section 41(1) gives the Commissioner of Police the power to maintain a DNA database system. A series of administrative agreements between the Commissioner and the Director of Forensic Science SA whereby the Commissioner has delegated the maintenance and administration of the database to the Director has been in place since the enactment of the current Act's precursor, the *Criminal Law (Forensic Procedures) Act 1988*. The current Memorandum of Administrative Agreement was executed on 2 November 2020.
155. By virtue of section 41(2)(a) of the current Act, the Attorney-General is permitted to enter into arrangements with their counterparts in other Australian jurisdictions for the exchange of information recorded in the South Australian DNA database system and databases kept under corresponding laws.
156. Further, section 41(2)(b) allows the Attorney-General to enter into arrangements with the Minister responsible for the administration of a corresponding law of the Commonwealth or with the Australian Crime Commission,⁸⁸ providing for transmission of information recorded in the South Australian database to the Commission for the purpose of the Commission doing any, or all, of the following:
 - (a) causing the information transmitted to form part of a national database
 - (b) comparing the information transmitted with other information on a national database
 - (c) identifying any matches between the information transmitted and other information on a national database
 - (d) transmitting information about matches to the Commissioner of Police
 - (e) any other thing required to be done under the corresponding law or otherwise authorised by law.
157. It is an offence under the CL(FP) Act to access information stored on the South Australian database without the authorisation of the Commissioner and for any purpose other than those provided by section 45(2). Similarly it is an offence to disclose information stored on the DNA database for any purpose not authorised under section 50.
158. The DNA Management Unit has advised of the following procedures in place to prevent unauthorised disclosure of information stored on the DNA database:
 - the SAPOL General Order, Forensic Procedures addresses the confidentiality requirements of section 50 of the CL(FP) Act
 - the requirements of section 50 of the CL(FP) Act forms part of the Buccal Swab Training Course which is completed by all SAPOL members
 - instances of suspected unauthorised disclosure of information under the CL(FP) Act by SAPOL employees are reported to SAPOL's Ethical and Professional Services Branch and may result in training, managerial advice and/or sanction
 - the DNA Management Unit is subject to a quarterly audit conducted by SAPOL employees not attached to Unit. The purpose of this audit is to evaluate

⁸⁸ Now known as the Australian Criminal Intelligence Commission (**the ACIC**).

- awareness of DNA Management Unit employees with regard to maintaining confidentiality of DNA information
- access to the Forensic Science South Australia Laboratory Information Management System (LIMS) is limited to SAPOL employees that require access to conduct their core duties.

159. The DNA Management Unit has confirmed that for the audit period there were no instances of unauthorised access.
160. Section 42 of the CL(FP) Act also creates a number of offences in relation to the storage of information, noting that it is an offence to store a DNA profile derived from forensic material obtained by carrying out a forensic procedure on a database other than the DNA database system, unless certain exceptions apply, such as on a backup database. The DNA Management Unit has confirmed that SAPOL did not keep a further backup database during the audit period.
161. DNA profiles derived as a result of volunteers or victims procedures may only be stored on the DNA database system if the relevant person has consented to such storage.⁸⁹ Further, such DNA profiles cannot be compared to other profiles stored on the database if the person has imposed a condition to that effect.⁹⁰
162. During the audit period, there were four instances of volunteers' material being retained on the DNA database for unlimited purposes.⁹¹ In three instances the relevant consent form, PD428, had been completed and signed by the relevant persons and were fully compliant with the requirements of section 43(1). In the fourth instance, the person who had undergone the forensic procedure was deceased and consent was provided by the next of kin,⁹² the appropriate relevant person for the purposes of section 6 of the CL(FP) Act.

Destruction of forensic material obtained by carrying out volunteers and victims procedure

163. If forensic material is obtained from a volunteer or victim, the person who carries out the procedure must give the person a written statement explaining that person's right to request destruction of the material.⁹³
164. Part G of PD425 contains a written statement which is provided to the volunteer or victim clearly explaining that requests for destruction are to be made in writing to the attention of the Officer in Charge, DNA Management Unit, with the inclusion of an email address. In 99% of records inspected,⁹⁴ the PD425 indicated that the statement had been provided. In one remaining instance,⁹⁵ the statement was not provided at the time, as the person undergoing the procedure was not conscious, and the relevant person consenting was overseas. However, an email accompanying the record indicated that the information would be provided once the person was able to engage with the service undertaking the procedure. In the other instance, the person declined to take the written statement.⁹⁶ Noting the high level of compliance, I do not consider it necessary to make a recommendation.

⁸⁹ Section 43(1) of the CL(FP) Act.

⁹⁰ Section 45(3)(a) of the CL(FP) Act.

⁹¹ [REDACTED]

⁹² [REDACTED]

⁹³ Section 12(1) of the CL(FP) Act.

⁹⁴ 211 of 213 records inspected.

⁹⁵ [REDACTED]

⁹⁶ [REDACTED]

165. The Commissioner of Police must ensure that forensic material obtained from a person by carrying out a volunteers and victims procedure is destroyed within 21 days after receiving a request for destruction from the person who consented to the procedure.⁹⁷
166. I have been advised that the DNA Management Unit is subject to a monthly audit conducted by a SAPOL member not attached to the Unit, the purpose of which is to evaluate legislative compliance with the timeframes for destruction requests.
167. During the audit period, a total of 25 requests for destruction of forensic material were received. In 20 instances, the forensic material was destroyed within the required 21-day period.
168. In two instances, the request for destruction was received by the Missing Persons Investigation Section, but not provided to the DNA Management Unit for approximately two and four weeks after the request was made.⁹⁸ Following receipt of the request by the DNA Management Unit, the forensic material was destroyed within 21 days.
169. In one instance, the only record provided consisted of the request for destruction, but the notification of destruction was not included.⁹⁹ In this instance it is unclear whether the material was destroyed within 21 days.
170. In two instances the request for destruction specified that the material be destroyed after analysis by Forensic Science SA.¹⁰⁰ In one instance Forensic Science SA did not analyse the material until approximately 17 months after the request had been received.¹⁰¹ The forensic material was then destroyed by the DNA Management Unit within 21 days. In the second instance, the analysis of the forensic material occurred approximately 3 months after the request for destruction was received.¹⁰² The forensic material was then destroyed by DNA Management Unit within 21 days of finalisation. It is unclear in the first instance why Forensic Science SA required 17 months to analyse the sample provided, particularly where other records demonstrate that samples have been analysed within 3 to 4 months.¹⁰³
171. For the purposes of compliance with the CL(FP) Act, forensic material is required to be destroyed within 21 days of the request. In the circumstances, I consider that it is unreasonable for a person who has consented to a DNA procedure to wait 17 months for the destruction of forensic material after sending a request.

⁹⁷ Section 39(1) of the CL(FP) Act.

⁹⁸

⁹⁹

¹⁰⁰

¹⁰¹

¹⁰²

¹⁰³ For instance,

172. Therefore, I RECOMMEND:

Recommendation 4

That the Commissioner of Police remind the DNA Management Unit to notify promptly and follow up regularly with Forensic Science South Australia where a person has requested destruction of their forensic material after analysis to encourage the timely destruction of the relevant sample.

Appendix 1: Summary of audit results

Volunteers and victims procedures

Provision	Sample size	Proportion of sample size that complied	Non-compliant procedures	Proportion of sample size where it was unclear whether procedure was compliant	Comment
Person was not suspected of having committed the offence that was being investigated (s7(2))	213	100%	0%	0%	
Relevant person consented to procedure (s7(2)) by providing express consent or some other unequivocal indication of consent (s 8)	207	97%	0%	0%	
Relevant person withdrew consent and procedure discontinued (s10(1))	0	N/A	N/A	N/A	No relevant person withdrew consent in the procedures audited
Relevant person withdrew consent but senior police officer authorised continuation of procedure (s10(3))	0	N/A	N/A	N/A	
Senior police officer authorised carrying out of procedure (s7(2))	0	N/A	0%	0%	
Senior police officer satisfied that it was impracticable/inappropriate to obtain consent from	0	N/A	0%	0%	Relevant person, or a person related to associated with him or her, was under suspicion in relation to a criminal offence

OFFICIAL

Provision	Sample size	Proportion of sample size that complied	Non-compliant procedures	Proportion of sample size where it was unclear whether procedure was compliant	Comment
relevant person and that carrying out of procedure is justified (s9)					
Senior police officer's authorisation was in writing and specified procedure authorised (s9)	0	N/A	0%	0%	
Explained to protected person that procedure would not be carried out if protected person objected to it (s11(1))	47	91.5%	0%	8.5%	Four records consisted of forms created by SA Health containing minimal information
Procedure discontinued where protected person objected to or resisted it (s11(2))	4	N/A	N/A	100%	Unclear due to lack of detail in forms
Forensics procedure carried out humanely? (s21(1))	0	N/A	N/A	N/A	Not audited as paper records only.
Procedure involves exposure of, or contact with, genital or anal area, buttocks, or breasts of female person and carried out by person of same sex as victim or volunteer if reasonably practicable (s21(3))	80	90%	10%	0%	In five instances it was not reasonably practicable to obtain a person of the same sex, and the victim or volunteers consented. In three instances transgender male or gender fluid persons were treated as female for the purposes of the procedure.

OFFICIAL

Provision	Sample size	Proportion of sample size that complied	Non-compliant procedures	Proportion of sample size where it was unclear whether procedure was compliant	Comment
Not carried out in the presence or view of more people than necessary (s21(2))	74	97%	0%	99%	Relevant box not marked on PD 184A
Duty to observe relevant medical or other professional standards (s23)	0	N/A	N/A	N/A	Not audited given the absence of audio-visual records.
Person qualified to carry out the procedure (s24(1))	213	100%	0%	0%	
Person not reasonably fluent in English is to be assisted by an interpreter (s22)	5	83%	N/A	17%	Details not completed in relevant PD425
Where the procedure on protected person, an appropriate person present to witness procedure (s25(2))	47	93.6%	0%	6.4%	In one instance, consideration of the hierarchy under section 25(3) was not recorded. In two instances, no witnesses appear to have been present
Where an intrusive procedure, the victim or volunteer must be allowed reasonable opportunity to arrange for attendance of medical practitioner of their choice to witness procedure (s25(1))	80	89%	0%	11%	Relevant box not checked on forms.

OFFICIAL

Provision	Sample size	Proportion of sample size that complied	Non-compliant procedures	Proportion of sample size where it was unclear whether procedure was compliant	Comment
Audio-visual record must be made of an intrusive procedure where requested by victim or volunteer (s26(1)(b))	0	N/A	0%	N/A	No requests made.
Relevant person given a written statement explaining their right to request destruction of forensic material (s12(1))	213	99%	0%	1%	One person declined to take statement; another unconscious at the time (relevant person overseas)
Forensic material destroyed within 21 days of receipt of request (s39(5))	25	80%	16%	4%	<p>There were two instances where the victim or volunteer asked for forensic material to be destroyed only after analysis was completed.</p> <p>In two instances the request for destruction was not passed on to DNA Management Unit for some weeks,</p> <p>In one instance no record has been provided to demonstrate that the material has been destroyed.</p>

Suspects procedures

Simple forensic procedures

Provision	Sample size	Proportion of sample size that complied	Non-compliant procedures	Proportion of sample size where it was unclear whether procedure was compliant	Comment
The procedure consisted of a simple identity procedure	803	99.8%	0%	.02%	Relevant pages incomplete or missing
Suspected of a serious offence (s 14(2))	803	99%	0%	1%	In five instances, the relevant offence was missing from the form. In one instance, the category of the offence was unclear. In two instances, the initial summary offences had subsequently been changed to serious offences.
Suspect reasonably fluent in English or assisted by interpreter (s22)	803	97.6%	0%	2.4%	In 11 instances the relevant check boxes were not marked. In 8 instances no interpreter details were provided.
Appropriate representative present to witness authorised procedure on protected person (s25(2))	183	98%	0%	2%	In 3 instances, where the appropriate representative was listed as a volunteer or teacher, it was unclear whether the relevant hierarchy had been considered.
Written record provided of any directions given where person not in lawful custody (s29))	0	N/A	N/A	N/A	

OFFICIAL

Warning provided to the suspect that (a) reasonable force could be used to carry out the procedure and (b) that if the suspect obstructed or resisted the procedure, evidence of that fact might be admissible in proceedings against the suspect (s30)	803	99.2%	0%	0.8%	<p>In one instance, the PD429 did not record whether the warning had been provided.</p> <p>In three other instances, where the warning was provided, no response was recorded from the suspect.</p> <p>In two instances, it appears that the suspect did not understand the warning.</p>

OFFICIAL

Procedures authorised by senior police officers

Provision	Sample size	Proportion of sample size that complied	Non-compliant procedures	Proportion of sample size where it was unclear whether procedure was compliant	Comment
Written application for senior police officer's order made (s15(2))	94	100%	0%	0%	
Did the application state the nature of the suspected offence and the grounds for suspecting the respondent had committed the offence (s15(2)(b))	94	100%	0%	0%	
The suspected offence was a serious offence	94	100%	0%	0%	
The application stated the nature of the forensic procedure for which the order was sought and the grounds for suspecting that the procedure could produce evidence of value to the investigation	94	100%	0%	0%	
Copy of application given to respondent (s15(3))	94	98.9%	0%	1.1%	In 1 cases, it was unclear whether this had occurred as the relevant parts of the form were not completed.
A copy of the application given to the senior police officer in writing by email, fax, by hand or, if not	94	100%	0%	0%	

OFFICIAL

Provision	Sample size	Proportion of sample size that complied	Non-compliant procedures	Proportion of sample size where it was unclear whether procedure was compliant	Comment
reasonably practicable read over the telephone? (s15(4))					
Senior police officer conducted informal hearing (s16)	94	100%	0%	0%	
The respondent a protected person and, if so, were they represented by an appropriate representative at the hearing (s17(2))	23	100%	0%	0%	
The appropriate representative a relative or friend chosen by the protected person and, if not, was an appropriate explanation provided? (s 17(2))	23	87%	0%	13%	In three instances it was unclear whether the hierarchy at section 25(3) had been considered.
Senior police officer satisfied that there were reasonable grounds to suspect respondent had committed serious offence (s19(1)(a))	94	100%	0%	0%	
Senior police officer satisfied that there were reasonable grounds to suspect that procedure	94	100%	0%	0%	

OFFICIAL

Provision	Sample size	Proportion of sample size that complied	Non-compliant procedures	Proportion of sample size where it was unclear whether procedure was compliant	Comment
could produce evidence of value to investigation (s19(1)(b))					
Senior police officer satisfied that public interest in obtaining evidence outweighed public interest in ensuring individuals are protected from unwanted interference (s19(1)(c))	94	100%	0%	0%	
Respondent or representative given reasonable opportunity to make representations at hearing (s17(4))	94	100%	0%	0%	
Senior police officer made written record of order and reasons for making it (s19(3))	94	100%	0%	0%	

OFFICIAL

Provision	Sample size	Proportion of sample size that complied	Non-compliant procedures	Proportion of sample size where it was unclear whether procedure was compliant	Comment
Copy of order given to respondent (s19(4))	94	100%	0%	0%	
NOTE: The following data relates only to the 79 audio-visual recordings reviewed.					
Suspect provided warning (s30)	79	60%	0%	40%	Note: 100% compliance on paper. However, in 31 instances the warning was not recorded or unable to be view on the audio-visual recordings.
Forensic procedures to be carried out humanely (s21(1))	79	96%	0%	4%	Audio-visual record unable to be viewed in two instances. In one instance, procedure appears to inflict unnecessary pain upon the subject, a protected person.
Duty to observe relevant medical or other professional standards (s23)	7	96%	0%	4%	As above
If not reasonably fluent in English, was an interpreter afforded to the suspect (s22)	3	100%	0%	0%	

OFFICIAL

Provision	Sample size	Proportion of sample size that complied	Non-compliant procedures	Proportion of sample size where it was unclear whether procedure was compliant	Comment
Procedure involved exposure of, or contact with, genital or anal area, or buttocks, or breasts of female and carried out by person of same sex as suspect (s21(3))	41	17%	83%	0%	In 34 instances, a person of the same sex was recorded as not being available.
Intrusive forensic procedure and suspect allowed reasonable opportunity to arrange for attendance of medical practitioner to witness same (s25(1))	79	100%	0%	0%	
If the procedure an intrusive procedure, an audio-visual record made of the same	79	97%	0%	3%	In one instance the video file was corrupted In one instance only audio was recorded
Appropriate representative present to witness authorised procedure on protected person (s25(2))	23	87%	0%	13%	In three instances, it was unclear whether the relevant hierarchy had been considered
Not more people present than necessary (s21(2))	79	96%	0%	4%	In three instances it was not possible to determine the number of persons present.

OFFICIAL

Provision	Sample size	Proportion of sample size that complied	Non-compliant procedures	Proportion of sample size where it was unclear whether procedure was compliant	Comment
The person who carried out the procedure qualified to carry out that procedure(s 24(1))	79	98.7%	0%	1.3%	In one instance, an intrusive procedure was not carried out by or in the presence of a medical professional or registered nurse as required.

Procedures on deceased persons

Provision	Sample size	Proportion of sample size that complied	Non-compliant procedures	Proportion of sample size where it was unclear whether procedure was compliant	Comment
Did a senior police officer authorise the carrying out of the forensic procedure?	24	100%	0%	0%	
Senior police officer satisfied that evidence obtained from procedure likely to assist with investigation of serious offence or identification of deceased (s55(1))	24	83.3%	0%	16.7%	Four procedures listed 'coronial inquiry' as the grounds for the procedure without specifying a relevant offence.
Authorisation in writing and specified procedure to be carried out (s55(1))	24	87.5%	0%	12.5%	In three instances, the procedure authorised to be carried out was not specified.
Procedure carried out by medical practitioner or person qualified as required by the regulations to carry out the procedure (s55(5))	24	100%	0%	0%	
Where required to enter premises to conduct forensic procedure, police officer must make a reasonable attempt to	0	N/A	N/A	N/A	

OFFICIAL

Provision	Sample size	Proportion of sample size that complied	Non-compliant procedures	Proportion of sample size where it was unclear whether procedure was compliant	Comment
contact the occupier of the premises (s55(3))					

OFFICIAL

Blood testing for communicable diseases

Provision	Sample size	Proportion of sample size that complied	Non-compliant procedures	Proportion of sample size where it was unclear whether procedure was compliant	Comment
Senior police officer satisfied that person suspected of a prescribed serious offence (s20B(1)(a))	3	100%	0%	0%	
Senior police officer satisfied that it is likely that a person engaged in prescribed employment came into contact with, or was exposed to, biological material of the suspected person (s20B(1)(b))	3	100%	0%	0%	
Senior police officer made written record of grounds on which they determined that sample of blood should be taken (s20B(2))	3	100%	0%	0%	
Copy of written record given to suspected person (s20B(2))	3	66.6%	0%	33.3%	In one instance, the relevant box was not marked.
Person not reasonably fluent in English is to be assisted by an interpreter (s22)	0	N/A	N/A	N/A	

OFFICIAL

Provision	Sample size	Proportion of sample size that complied	Non-compliant procedures	Proportion of sample size where it was unclear whether procedure was compliant	Comment
Before procedure carried out, senior police officer gave suspected person written notice that a sample of their blood was to be taken and tested for communicable diseases (reg.4A)	3	66.6%	0%	3.33%	In one case, it was unclear whether this occurred as the form was not completed.
Before procedure carried out, senior police officer invited suspected person to nominate a medical practitioner to receive copy of test results (reg. 4A)	3	66.6%	0%	33.3%	In one instance the relevant part of the form was not completed
Police officer provided warning that reasonable force could be used to carry out procedure and if person obstructed/resisted procedure, evidence of that fact may be admissible in proceedings against them (s 30)	3	66.6%	0%	33.3%	In one instance the relevant part of the form was not completed
Forensics procedure carried out humanely (s 21 (1))	0	N/A	N/A	N/A	Unable to consider requirement as audio-visual record not reviewed.
Not carried out in the presence or view of more people than necessary (s 21 (2))	0	N/A	N/A	N/A	Unable to consider requirement as audio-visual record not reviewed.

OFFICIAL

Provision	Sample size	Proportion of sample size that complied	Non-compliant procedures	Proportion of sample size where it was unclear whether procedure was compliant	Comment
Person qualified to carry out the procedure (s 24 (1))	3	66.6%	0%	33.3%	In one instance the relevant part of the form was not completed
Suspect allowed reasonable opportunity to arrange for attendance of medical practitioner to witness procedure (s 25 (1))	3	66.6%	0%	33.3%	In one instance the relevant part of the form was not completed
Where the procedure on protected person, an appropriate person present to witness procedure (s25(2))	1	100%	0%	0%	One procedure carried out on protected person. Records indicate appropriate person (sibling) present for procedure.
Reasonable steps taken by SAPOL to notify suspected person/nominated medical practitioner of results of testing (reg.4B)	3	66.6%	0%	33.3%	In one instance, no notification provided.
Reasonable steps taken by SAPOL to notify affected person/nominated medical practitioner of results of testing (reg.4C)	1	100%	0%	0%	
Blood samples taken under section 20B must not be used for any purpose other than testing	0	N/A	N/A	N/A	This requirement was not audited this year; non-compliance not likely given the requirement under s39A that this material is destroyed as soon as is reasonably practicable after it is tested for communicable diseases.

OFFICIAL

Provision	Sample size	Proportion of sample size that complied	Non-compliant procedures	Proportion of sample size where it was unclear whether procedure was compliant	Comment
for communicable diseases (s 34A)					
Forensic material destroyed as soon as reasonably practicable after the material has been tested for communicable diseases (s 39A)	0	N/A	N/A	N/A	This requirement not audited this year. Refer to SAPOL's General Order that material obtained as a result of this procedure must be destroyed as soon as reasonably practicable.

Appendix 2: Relevant definitions

Appropriate representative may be -

- (d) a relative or friend, chosen by, or acceptable to the protected person; or
- (e) if there is no available person within category (a) - an advocate for the protected person nominated by an agency with responsibilities for the care of protected persons of the relevant class; or
- (f) if there is no available person within either category (a) or (b) - a person, who is not a police officer or person involved in the investigation, chosen by a police officer in charge of a police station or the investigating police officer.¹⁰⁴

Intrusive forensic procedure means -

- (a) a forensic procedure that involves exposure of, or contact with, the genital or anal area, the buttocks or the breast region of a female person or a transgender or intersex person who identifies as female; or
- (b) the taking of a dental impression; or
- (c) the taking of a sample of blood.¹⁰⁵

Investigating police officer means a police officer in charge of the investigation of a suspected offence.¹⁰⁶

Protected person means -

- (a) a child under the age of 16 years; or
- (b) a person physically or mentally incapable of understanding the nature and consequences of a forensic procedure.¹⁰⁷

Qualified person means -

- (a) a medical practitioner¹⁰⁸; or
- (b) a registered nurse (for any procedure other than a dental impression)¹⁰⁹; or
- (c) a police officer authorised by the Commissioner of Police to take prints of the hands, fingers, feet or toes¹¹⁰; or
- (d) a police officer authorised by the Commissioner of Police to non-intrusively examine a part of a person's body¹¹¹; or

¹⁰⁴ Section 25(3).

¹⁰⁵ Section 3(1).

¹⁰⁶ Section 3(1).

¹⁰⁷ Section 6.

¹⁰⁸ Section 24(1)(a).

¹⁰⁹ Regulation 8(1)(a).

¹¹⁰ Regulation 8(1)(b)(i).

¹¹¹ Regulation 8(1)(b)(ii).

- (e) a person who has satisfactorily completed a course of training approved by the Attorney-General is qualified to carry out the following forensic procedures (provided they are non-intrusive):
- (i) taking samples of hair from a person's body¹¹²
 - (ii) taking samples of fingernails toenails, or material from under a fingernail or toenail¹¹³
 - (iii) taking samples of biological or other material from an external part of the body¹¹⁴
 - (iv) buccal swabs¹¹⁵
 - (v) taking samples of blood by finger prick¹¹⁶
 - (vi) taking impressions of casts or wounds.¹¹⁷

Relevant person means -

- (a) if the person on who the forensic procedure is to be carried out is not a protected person - that person
- (b) if the person in question is a child - the closest available next of kin¹¹⁸
- (c) if the person is not a child but is a protected person by reason of their incapacity - their guardian¹¹⁹, or if they don't have a guardian, the closest available next of kin.^{120 121}

Respondent means the person on whom it is proposed to carry out a forensic procedure (other than a simple forensic procedure).¹²²

Senior police officer means a police officer of or above the rank of inspector.¹²³

Serious offence means an indictable offence or a summary offence that is punishable by imprisonment¹²⁴

Simple forensic procedure means a forensic procedure consisting of one or more of:

¹¹² Regulation 8(1)(c)(i).

¹¹³ Regulation 8(1)(c)(ii).

¹¹⁴ Regulation 8(1)(c)(iii).

¹¹⁵ Regulation 8(1)(c)(iv).

¹¹⁶ Regulation 8(1)(c)(v).

¹¹⁷ Regulation 8(1)(c)(vi).

¹¹⁸ Section 3(1) prescribes an order of priority for a child's closest available next of kin: (i) the child's parent; (ii) the child's brother or sister; (iii) the child's guardian. Note also that the next of kin cannot be a protected person themselves.

¹¹⁹ Section 3(1) defines 'guardian' to mean a person acting or appointed under any Act or law as the guardian of another.

¹²⁰ Section 3(1) prescribes an order of priority for a person who lacks capacity's closest available next of kin: (i) the person's spouse or partner; (ii) the person's son or daughter; (iii) the person's parent; (iv) the person's brother or sister. The next of kind cannot be a protected person themselves.

¹²¹ Section 6.

¹²² Section 13.

¹²³ Section 3(1) of the CL(FP) Act.

¹²⁴ Section 3(1).

- (a) a simple identity procedure;
- (b) a gunshot residue procedure.¹²⁵

Simple identity procedure means a forensic procedure consisting of one or more of:

- (a) taking of prints of hands or fingers;
- (b) taking of forensic material from a person by buccal swab or finger-prick for the purpose of obtaining a DNA profile of that person.¹²⁶

Glossary of Relevant Forms

Victims and volunteers procedures use the following forms:

- PD425 Volunteers and Victims Consent Form
This is the most common form, containing the recording of consent, the forensic procedure, usually a buccal swab, and other relevant details. This form is usually filled out where the procedure is performed by the Police.
- PD184A Medical Record for Sexual Assault Examination
This form is typically filled out by a medical practitioner at a hospital, most commonly the Royal Adelaide Hospital or Yarrow Place.
- Child Protection Services - Forensic Medical Assessment
This form is used where a child is undergoing an intrusive examination. These are commonly carried out in response to sexual assault allegations.
- Forensic Evidence Collection Kit - Victim Examination
This is a brief form recording a buccal swab, where a PD425 should have been completed. This form is meant for internal Police processes rather than to record a procedure for purposes of the CL(FP) Act.
- Authority to Release Medical Reports and Associated Material from a Forensic Medical Examination to Police
Where consent is obtained to provide forensic material from a victim after a forensic procedure has been undertaken by a hospital or specialised unit such as Yarrow Place, this form is completed to record that consent.

Procedures authorised on suspects, other than simple identity procedures, require all of the following forms to be completed:

- PD430 - Application for Order Authorising Suspects Forensic Procedure
The form is filled out by the applicant, usually the investigating police officer, and provided to the senior police officer and suspect in advance of the hearing. It sets out the application for the forensic procedure, the basis for the application, and other relevant

¹²⁵ Section 3(1).

¹²⁶ Section 3(1).

details.

- PD431 - Order Authorising Suspects Forensic Procedure
This form records the particulars of the order by the senior police officer and the final page records the procedure performed on the suspect.
- PD436 - Senior Police Officer Record of Application for Order or Authorisation
This form provides a record of the reasons for the decision. It contains little formal structure, allowing more substantive records to be made by the senior police officer.
- Aide Memoire - Senior Police Officer's Hearing
This form contains prompts to ensure that the senior police officer turns their mind to the relevant requirements and considerations in conducting the hearing for an order or authorisation. In some cases, this can contain information for understanding reasons for the senior police officer's order, when read with PD436.

Simple identity procedures performed on suspects and offenders require the use of a single form:

- PD429 - Record of Simple Forensic Procedure Suspect or Offender
This form is filled out to record a simple identity procedure, usually a buccal swab for obtaining the DNA of a suspect or offender.

SA Police records an authorisation for a forensic procedure on a deceased person on:

- PD435 - Authorisation for a Forensic Procedure on a Deceased Person
This form contains both the senior police order for the forensic procedure and the record of the order carried out. This form is also used by Police to analyse material already collected and therefore exceeds the purposes of the CL(FP) Act.

SA Police records blood testing on persons for identifying whether that person has a communicable disease on:

- PD430A - Application and Order for Authorising Blood Testing of Certain Persons for Communicable Diseases
This form contains the application, the senior police officer's order, and a record of the procedure.