OmbudsmanSA

AUDIT REPORT

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

September 2026

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To:

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

I present this report on the 2025-2026 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.



Emily Strickland
SA OMBUDSMAN

30 September 2026

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Ombudsman's Summary

My Office is required to conduct an annual audit to monitor compliance with the provisions of the *Criminal Law (Forensic Procedures) Act 2007* (**CL(FP) Act**). This Act gives South Australian police (**SA Police**) powers to obtain forensic material from a person both with and without their consent. A forensic procedure will necessarily involve, to some extent, interference with the personal bodily integrity of the person concerned. Those engaged in the collection of DNA through criminal law forensic procedures must ensure strict compliance with the provisions of the legislation so that the rights of individuals undergoing forensic procedures are appropriately preserved and balanced against the broader interests of justice in facilitating the investigation of crime.

This report sets out the results of the compliance audit for the period 1 July 2025 to 30 June 2026 (**the audit/this audit**). A broader scope of forensic procedures was considered this year than in the 2024-25 audit. Samples of procedures from the following categories were audited: victims and volunteers procedures, suspects procedures (simple and authorised procedures), offenders procedures, forensic procedures on deceased persons, and blood testing for communicable diseases. Procedures conducted on both protected and non-protected victims, volunteers and suspects (authorised by senior police officers) were audited.

The audit has revealed, once again, high levels of compliance. That said, issues of non-compliance or unclear compliance have been identified in respect of fundamental rights and protections that are recognised in the CL(FP) Act. These matters indicate there is room for improvement so that those subject to procedures are treated fairly and with dignity at all times.

Compliance regarding procedures conducted on victims and volunteers was particularly high. Notably:

- there were zero instances of clear non-compliance
- 100% compliance was noted against 6 of 14 procedures audited, including all provisions specifically related to procedures authorised by senior police officers
- in many cases unclear compliance was due to procedures being recorded on a form that has since been updated following a recommendation from last year's audit
- in some cases unclear compliance was due to forms not being completed adequately; this emphasises the need for fulsome record-keeping.

All offenders procedures, forensic procedures on deceased persons, and blood testing for communicable diseases procedures conducted during the audit period were audited and full compliance was observed.

I have had cause to make 6 recommendations to improve practice in relation to suspects procedures. While the majority of these procedures were compliant with the Act, I consider the implementation of these suggestions will improve compliance with, and ensure records are made to demonstrate compliance with, obligations:

- to ensure protected persons are provided with appropriate representatives at various stages of the process
- regarding the provision of interpreters
- regarding the storage of audio-visual records
- to ensure that unnecessary humiliation is avoided in the conduct of procedures
- that a same-sex practitioner conducts certain intrusive procedures where reasonably practicable
- that care is taken to avoid offending cultural or religious beliefs as far as practicable.

I draw particular attention to the latter two requirements which act as important protections to the dignity of persons subject to forensic procedures. The failure to facilitate a same-sex practitioner

can, in some circumstances, raise compliance issues with both obligations (the obligation to provide a same-sex practitioner where reasonably practicable and the obligation to ensure cultural safety where practicable).

The legislative requirement that certain intrusive procedures must be carried out by a person of the same sex if reasonably practicable applies to all persons undergoing these kinds of forensic procedure. [1] However, each year the audit observes that high numbers of these procedures conducted on male suspects are carried out by female practitioners; it is commonly deemed not reasonably practicable for a male practitioner to undertake these procedures. This appears to be at least in part because there are few male nurses working with the agency contracted by SA Police to carry out forensic procedures.

Further, the 2024-25 audit raised concerns that the cultural safety of some Aboriginal respondents was compromised in the conduct of intrusive forensic procedures where male suspects had made clear that it would not be culturally appropriate for a female nurse to carry out the procedure. I made two recommendations to assist in addressing this issue. However, the results of this year's audit indicate the issue persists.

I consider that more can and should be done to rectify this to protect the dignity of all persons undergoing a procedure who do not request a practitioner of a different sex. I consider the South Australian government should give serious consideration to this in light of the impact this issue has on the cultural safety of certain male Aboriginal suspects.

Accordingly, I have made a recommendation that SA Police work in collaboration with SA Health networks to identify appropriate male practitioners available to undertake intrusive procedures in hospitals, and that the South Australian Government consider amendment to the *Criminal Law (Forensic Procedures) Regulations 2022* (**the CL(FP) Regulations**) to enable appropriately trained police officers to carry out the forensic procedures in question.

A draft of this report was provided to the Commissioner of SA Police. In response SA Police advised that it accepted all recommendations, noting that further discussions will be required in order for amendments to the CL(FP) Regulations to be appropriately considered.

I acknowledge the continued co-operation of SA Police with the audit and the work of the DNA & Evidence Management Unit in coordinating the timely delivery of documents. As in previous years, this has greatly assisted the work of my Office in undertaking the audit.

Emily Strickland
SA Ombudsman

[1] Procedures as defined by section 21(3) of the CL(FP) Act involving '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' These procedures must not be carried out by a person of a different sex to the person undergoing the forensic procedure if reasonably practicable (or unless specifically requested by the person).

Background

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. 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 to ensure that procedures are conducted in a fair, transparent and humane manner and are only conducted where necessary. Compliance with these provisions maintains public confidence in the forensic process and the agencies administering that process. 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 considered compliance with the CL(FP) Act and the Criminal Law (FP) Regulations during the period 1 July 2025 to 30 June 2026 (**the audit period**). The Ombudsman's views as to compliance are set out in this report, including where compliance was unclear on the records available.[2]

[2] References to specific procedures in this report have been redacted to avoid disclosing information contrary to section 50 of the CL(FP) Act.

Audit scope and methodology

5. 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 & Evidence Management Unit of the SA Police Forensic Services Branch.

Procedure types and sample sizes

6. The 2024-25 audit considered a reduced scope of forensic procedures in terms of volume and type[3]. This year the scope of the audit was broadened to review all types of forensic procedures carried out pursuant to the CL(FP) Act. It nevertheless continued to focus on procedures carried out on protected persons, defined under the Act as i) a child; or ii) a person physically or mentally incapable of understanding the nature and consequences of a forensic procedure. This cohort remains a priority for the audit due to their innate vulnerability.

7. 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 on protected persons	78	78	100%
Volunteers and Victims procedures on non-protected persons	511	140	27%
Requests for destruction of forensic material	22	22	100%
Simple identity procedures on protected persons	182	89	49%
Simple identity procedures on non-protected persons	6386	0	0%
Authorised Procedures on protected persons	40	40	100%

[3] Victims and volunteers procedures on protected persons, victims procedures, procedures authorised by senior police officers, and blood testing for communicable diseases.

Authorised procedures on non-protected persons	149	83	56%
Blood testing for communicable diseases	7	7	100%
Procedures on deceased persons	2	2	100%
Offenders Procedures	1	1	100%

Legislative provisions considered

8. The audit assessed forensic procedures against most of the legislative requirements set out in the CL(FP) Act. The statutory provisions considered for each type of procedure are set out in the table at the start of each section of this report. The audit did not consider the application of all provisions across all categories of forensic procedures. For victims and volunteers procedures, the audit elected not to review audio-visual recordings of forensic procedures out of respect for the personal privacy of victims. In other cases, there did not appear to be any relevant procedures to audit. The provisions excluded by the audit are:

Victims and Volunteers procedures

- Relevant person withdrew consent and procedure discontinued (s10(1)) – no procedures identified
- Relevant person withdrew consent but senior police officer authorised continuation of procedure (s10(3))- no procedures identified
- Procedure discontinued where protected person objected to or resisted it (s11(2))- no procedures identified
- Forensics procedure carried out humanely (s21(1))- audio visual not reviewed
- Not carried out in the presence or view of more people than necessary (s21(2)) – audio visual not reviewed
- Duty to observe relevant medical or other professional standards (s23) – not able to be audited against paperwork and audio visual not reviewed

Simple forensic procedures

- Written record provided of any directions given where person not in lawful custody (s29))- no relevant procedures identified

Procedures authorised by senior police officers

- Duty to observe relevant medical or other professional standards (s23) – unable to be assessed against paperwork; considered in the context of procedures to be carried out humanely where audio visual records reviewed

Offenders Procedures

- Where offender not in custody and police officer issued directions about undergoing forensic procedure: Written record of directions given to offender and offender informed that if they fail to comply with directions warrant for arrest might be issued (s29(2))- no relevant procedures

Procedures on deceased persons

- Where required to enter premises to conduct forensic procedure, police officer must make a reasonable attempt to contact the occupier of the premises (s55(3))- no relevant procedures

Blood testing for communicable diseases

- Forensics procedure carried out humanely (s 21 (1))- audio visual not reviewed
- Not carried out in the presence or view of more people than necessary (s 21 (2))- audio visual not reviewed.

Documentation considered

9. 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 [4]
   - forensic procedures must be carried out in the presence or view of no more persons than are necessary [5]
   - any subject of a forensic procedure who is not reasonably fluent in English is entitled to be assisted by an interpreter [6]
   - an authorised representative must be present to witness a forensic procedure carried out on a protected person. [7]

10. This audit assessed the following material against the overarching requirements above, as well as the specific provisions particular to each audited forensic procedure:

    Victims and Volunteers

    - 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.
    - PD426 Application for authorisation for a Volunteers & Victims Forensic Procedure on a Protected Person
      This form is used where a police officer has applied for a forensic procedure to be carried out on a protected person where it is impracticable or inappropriate to obtain consent from a relevant person because of the difficulty in locating or contacting that person, or because the relevant person, or a person associated or related to him or her, is under suspicion in relation to a criminal offence
    - PD427- Senior Police Officer's Authorisation for a Volunteers and Victims Forensic Procedure on a Protected Person
      This form is an authorisation for a procedure specified in a PD426 application
    - 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

[4] Section 21(1).
[5] Section 21(2).
[6] Section 22.
[7] Section 25(2).

This form is used where a child is undergoing an intrusive examination. These are commonly carried out in response to sexual assault allegations. This form is generally used by the Child Safety and Wellbeing Health Service

- Paediatric Forensic Medical Services Consent Form
  This form is used by the Women's and Children's Health Network in the same circumstances as the Child Protection Services form.

Simple Forensic Procedures

- PD429 Record of Simple Forensic Procedure -Suspect or Offender
  This form is used when a simple identity procedure, consisting of a buccal swab, fingerpick, fingerprints, gunshot residue, or procedure prescribed by regulation is carried out on a person suspected of a serious offence

Procedures Authorised by Senior Police Officers

- PD430 – Application for Order Authorising Suspects Forensic Procedure
  This 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 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.
- PD740 Authorisation for Suspect's Forensic Procedure - Application and Order
  This is an electronic form, which consolidates each of the forms detailed above. It was introduced by SA Police during the audit period.
- Audio-visual recordings
  These recordings must be made when an intrusive forensic procedure (a procedure which involves: the exposure of, or contact with, the genital or anal area, the buttocks or the breast region of a female or a transgender person or intersex person who identifies as female; or the taking of a dental impression; or the taking of a sample of blood) has been authorised by a senior police officer.

Blood testing for communicable diseases

- 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.

Procedures on deceased persons

- PD435 Authorisation for a Forensic Procedure on a Deceased Person
  This form is used when a senior police officer authorises the carrying out of a forensic procedure to be carried out on a deceased person to assist in the investigation of a serious offence or in the identification of the deceased person.

Offenders Procedures

- PD429 Record of Simple Forensic Procedure -Suspect or Offender

This is the same form as for ‘Simple identity Procedures’ and is used where a simple identity procedure is authorised to be carried out on an offender who is (a)serving a term of imprisonment, detention or home detention in relation to an offence; or (b) is being detained as a result of being declared liable to supervision under Part 8A of the Criminal Law Consolidation Act 1935 by a court dealing with a charge of an offence; or (c) is convicted of a serious offence by a court; or (d) is declared liable to supervision under Part 8A of the Criminal Law Consolidation Act 1935 by a court dealing with a charge of a serious offence; or (e) is a registrable offender under the Child Sex Offenders Registration Act 2006.

Requests for destruction of material

- There are no specific forms to request or confirm destruction of forensic material. A request for destruction must be made in writing by the relevant person who gave consent for the procedure. If such a request is received, SA Police must ensure that relevant forensic material is destroyed within 21 days of receiving the request for destruction. To assess compliance, the audit reviewed the written requests for destruction from victims and volunteers and the responses from SA Police confirming that the material has been destroyed.

Recommendations

11. The Ombudsman made 3 recommendations in the 2024-2025 audit report which were accepted by the Child Safety and Wellbeing Health Service (CSWHS) and the Commissioner of Police. The CSWHS and Commissioner have since advised of the actions taken in response to the recommendations.

2024 – 2025 AUDIT REPORT RECOMMENDATIONS

	Recommendation	Response and compliance actions
Recommendation 1	That the Child Safety and Wellbeing Health Service (CSWHS) use an adapted version of the current Paediatric Forensic Medical Service consent form when conducting victims and volunteers procedures under the CL(FP) Act.	Complete – As of May 2026, the CSWHS have implemented use of the adapted consent form for victims and volunteers procedures.
Recommendation 2	That the Commissioner of Police, in consultation with the Aboriginal Legal Rights Movement and other relevant First Nations stakeholders, considers how SA Police can ensure the cultural safety of Aboriginal respondents during intrusive forensic procedures.	Partially complete – An all SAPOL email was sent reminding relevant officers of *'the importance of ensuring compliance with section 21 of the CLFPA (All forensic procedures must be carried out humanely and with care), and to make note of efforts they have made to ensure cultural safety.'* A meeting was held between SA Police and ALRM in November 2025 to discuss issues of cultural safety, and Ombudsman SA has subsequently met with representatives from both organisations to further facilitate these discussions. Ombudsman SA continues to engage with SA Police regarding steps to improve compliance in this area. Recommendations 4 and 5 have been made in this audit to assist in achieving this end.
Recommendation 3	That the relevant senior police officer, when determining applications for intrusive forensic procedures in circumstances where cultural safety requires persons of the same sex to	Partially complete – An all SAPOL email was sent reminding members *'that when any forensic procedure is*

	Recommendation	Response and compliance actions
	conduct the procedure, considers whether it is reasonably practicable to provide a same sex practitioner and how this factors into their determination that it is in the public interest to undertake the procedure. Both the application form (PD430) and order (PD 431) should fulsomely record consideration of this issue including attempts made by SA Police to locate a person of the same sex to conduct the procedure.	*conducted, that the victim, volunteer or suspect is given a choice, where practicable, as to the gender identity or sex at birth of the practitioner conducting the procedure. Members are to undertake every endeavour to ensure this occurs and to document all efforts made to have the procedure carried out by a same-sex practitioner.'* Ombudsman SA continues to engage with SA Police regarding how cultural safety factors can be identified and appropriately considered by senior police officers as part of the public interest test when considering whether an order for an intrusive forensic procedure should be ordered. Recommendation 4 in this audit has been made to assist SA Police in identifying where cultural factors may be relevant to the decision to authorise a forensic procedure.

12. Informal recommendations[8] have been made in response to issues identified in the 2024-25 audit as follows.

2025 – 2026 AUDIT REPORT RECOMMENDATIONS

Recommendation 1	That, where an appropriate representative falls under category (b) or (c) of section 25 for simple identity procedures on protected persons, police officers must record on the PD429 form efforts that were made to contact a friend or relative of the protected person. The form should include details of who was contacted and why they were not available to witness the procedure. SA Police may wish to consider converting the PD429 into a digital form with mandatory fields to ensure that the above information is adequately captured.

[8] The CL(FP) Act does not require the Ombudsman to make recommendations.

Recommendation 2	That the PD740 form be updated to include a prompt for relevant officers to confirm whether the suspect requests to have an interpreter present during the procedure
Recommendation 3	That SA Police consider what steps can be taken case to ensure that audio-visual recordings of intrusive forensic procedures are not corrupted when stored.
Recommendation 4	That the PD740 form be amended to include a section where relevant police officers can record the cultural identity of the respondent along with other personal details.
Recommendation 5	That SA Police engage with SA Health to ensure forensic training is provided across all South Australian local health networks to broaden the pool of male public health practitioners able to conduct forensic procedures. The agencies should also consider what steps can be taken to best ensure that male practitioners in the public health system are consistently available and willing to conduct section 21(3) forensic procedures where there are no male agency nurses available to conduct procedures. That the South Australian Government consider amendment to Regulation 8(1)(c) of the Criminal Law Forensic Procedures Regulations 2022 to provide that a person who has satisfactorily completed a course of training approved for the purpose by the Minister is qualified to carry out a forensic procedure which 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; and that SA Police ensure a pool of male police officers is so trained.
Recommendation 6	That SA Police seek advice as to whether the taking of a sample of urine should be classified as an intrusive procedure pursuant to section 21(3) of the CL(FP) Act and consider whether any changes should be made to practice as a result of that advice.

Volunteers and victims procedures

13. Volunteers and victims procedures may be carried out on persons who are not under suspicion of a serious offence [9] 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); [10]
      or
    - a senior police officer authorises the carrying out of the procedure. [11]

14. During the audit period, there were 78 victims and volunteers procedures carried out on protected persons and 511 victims and volunteers procedures carried out on non-protected persons. The audit reviewed relevant forms for 100% of procedures on protected persons and 27% of victims' procedures on non-protected persons (139 procedures).

15. The following table sets out the results of the audit of victims and volunteers procedures. Commentary follows regarding procedures where compliance was unclear.

Provision	Sample size	Number of procedures where it was unclear whether procedure was compliant	Proportion of compliant procedures
Provisions applicable to all procedures	**217**		
Person was not suspected of having committed the offence that was being investigated (s7(2))	217	0	100%
Relevant person consented to procedure (s7(2)) by providing express consent or some other unequivocal indication of consent (s 8)	217 (72 protected persons)	2 (both protected persons)	99% (97% for protected persons)
Relevant person given a written statement explaining their right to request destruction of forensic material (s12(1))	217	8	96%
Person not reasonably fluent in English is to be assisted by an interpreter (s22)	17 [12]	7	59%
Procedure carried out by person qualified to carry out the procedure (s24(1))	217	0	100%

[9] Section 7(2)(a) of the CL(FP) Act.
[10] Section 8(a) and (b) of the CL(FP) Act.
[11] Section 9 of the CL(FP) Act.
[12] 17 persons identified as not fluent in English, or unclear whether fluent in English.

Provision	Sample size	Number of procedures where it was unclear whether procedure was compliant	Proportion of compliant procedures
Forensic material destroyed within 21 days of written request from relevant person (s 39(1))	22 [13]	0	100%
Procedures on protected persons	**78**		
Explained to protected person that procedure would not be carried out if protected person objected to it (s11(1))	69 [14]	5	93%
Where the procedure on protected person, an appropriate person present to witness procedure (s25(2))	78	4	95%
Procedures on protected persons authorised by senior police officers	**6**		
Senior police officer authorised carrying out of procedure (s7(2))	6	0	100%
Senior police officer satisfied that it was impracticable/inappropriate to obtain consent from relevant person and that carrying out of procedure is justified (s9)	6	0	100%
Senior police officer's authorisation was in writing and specified procedure authorised (s9)	6	0	100%
Intrusive forensic procedures	**117**		
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))	117	10	91%
Procedure involves exposure of exposure of, or contact with, the genital or anal area, the buttocks or the breast region of a female person	113	3	97%

[13] 22 written requests for destruction of forensic material made during the audit period
[14] 9 procedures where section 11(1) did not apply because the person on who the procedure was to be carried out was a) under ten years old, or b) not capable of responding.

Provision	Sample size	Number of procedures where it was unclear whether procedure was compliant	Proportion of compliant procedures
or a transgender or intersex person who identifies as female carried out by person of same sex as victim or volunteer if reasonably practicable (s21(3))			
Audio-visual record must be made of an intrusive procedure where requested by victim or volunteer (s26(1)(b))	14 [15]	6	57%

DISCUSSION

Provisions applicable to all procedures

Right to interpreter

16. Section 22 of the CL(FP) Act 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 and, if the person so requests, to have an interpreter present during the carrying out of the forensic procedure.

17. Of the volunteers and victims procedures audited, 200 procedures were recorded as being carried out on a person fluent in English. There were 17 procedures carried out where the victim or volunteer was not fluent in English, or where fluency was not clear. In 10 of these instances the person was recorded as being assisted by an interpreter.

18. It was not apparent from the records as to whether the remaining 7 procedures were compliance with section 22 of the CL(FP) Act. In one instance, the form records that the person undergoing the forensic procedure was not fluent in English, however, there are no interpreter details recorded. [16]

19. In 6 instances the records were completed on consent forms from the former Child Protection Services (CPS) or the current Child Safety and Wellbeing Health Service (CSWHS). For ease of reference these will be referred to as 'CPS forms.' Ombudsman SA made recommendations as part of the 2023-24 [17] and 2024-25 [18] audits that consent forms used by South Australian Child Protection and Health Services when undertaking forensic procures be updated and/or adapted to ensure compliance with the provisions of the CL(FP) Act can be readily audited. In response to these recommendations, a new consent form has been introduced and uniformly implemented across relevant health services since May 2026. This

[15] Procedures where audio visual recording requested, or unclear whether requested
[16] [redacted]
[17] Recommendation 5
[18] Recommendation 1

form identifies all relevant areas of compliance and allows for greater auditability of procedures.

Right to request destruction of material

20. The CL(FP) Act provides that a volunteer or victim subject to a forensic procedure must be provided a written statement, in a form approved by the Attorney-General, explaining the right to request destruction of the material under section 39 of the Act.[19]

21. 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. The audit found no compliance issues in relation to this requirement where a PD425 had been completed.

22. In six instances the relevant paperwork was completed on a CPS consent form which did not provide an no option to confirm that the relevant statement has been provided.[20] Therefore, Ombudsman SA was unable to confirm whether such advice has been provided.

23. In two instances, consent was provided by a relevant person over the telephone, and as such it is unclear whether they received the relevant written statement.[21]

Procedures on protected persons

Consent by a relevant person

24. The CL(FP) Act contains specific requirements for the authorisation of volunteers and victims procedures carried out on 'protected persons'.[22]

25. Before a volunteer or victim 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 Act)[23]
    - 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 procedure [24]
    - 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.[25]

26. There were 72 victims and volunteers procedures conducted on protected persons where consent was required from a relevant person. In 70 procedures records indicate that consent was provided by a relevant person in accordance with section 8 of the CL(FP) Act. In the remaining two instances, it was unclear whether consent had been provided by the relevant person.

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[19] Section 12 of the CL(FP) Act.
[20] [redacted]
[21] [redacted]
[22] 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.
[23] Section 7(2)(b) of the CL(FP) Act.
[24] Section 11(1) of the CL(FP) Act.
[25] Section 11(2) of the CL(FP) Act.

27. The records suggest that in one instance, consent appears to have been provided by the protected person, rather than their parent (next of kin) as the relevant person.[26] However, the relevant person appears to have been present for the procedure, and there is no evidence to indicate that they would not have provided consent.

28. In the second instance, the procedure was carried out on an infant whose mother was also a protected person (a child).[27] Consent appears to have been sought from both the mother and a Department of Child Protection (DCP) practitioner. It is not clear whether either of these persons would meet the definition of relevant person under section 6 of the CL(FP) Act, which states that a 'relevant person' in relation to a victims and volunteers procedure on a protected person who is a child is the closest available next of kin of the child (who is not a protected person). In this case, the mother was a protected person, therefore did not fall into the category of closest available next of kin for the purposes of consent. A guardian of the child can provide consent as the closest available next of kin,[28] however it is not clear that the infant was under the guardianship of DCP, as the relevant PD425 form only states that the mother is 'under the care of DCP.'

Explanation that procedure will not be carried out if protected person objects

29. Section 11(1) of the CL(FP) Act requires that 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 procedure. This section does not apply if the person on whom the procedure is to be carried out is under the age of 10 years old,[29] or does not appear to be capable of responding rationally to information.[30]

30. In 8 of the 78 procedures, the relevant explanation under section 11(1) was not required to be provided as the protected persons were under 10 years of age.[31] In one procedure, the person subject to the procedure was not conscious, and as such was not capable of responding rationally to the information.[32] Therefore, there were 69 procedures where the relevant section 11(1) explanation was required.

31. The audit identified that the relevant explanation was provided in 64 of the 69 procedures. For the five remaining procedures, it was not clear from the records that the section 11(1) explanation was provided to the protected person.

32. In one case the explanation appears to have been provided to the 'relevant person' providing consent rather than the protected person undergoing the procedure.[33] It is not clear whether this was because the protected person was not capable of responding to the information (in which case no explanation would be required) or for some other reason. Therefore, Ombudsman SA is unable to confirm whether this procedure was compliant with the relevant provisions of the CL(FP) Act.

33. In 4 instances[34] the records were completed on old CPS consent forms which did not include a tick-box or prompt to indicate that an explanation under section 11(1) is required.

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26 [redacted]
27 [redacted]
28 Section 3(1)(a)(iii) of the CL(FP) Act.
29 Section 11(3)(c)(i)
30 Section 11(3)(c)(ii)
31 [redacted]
32 [redacted]
33 [redacted]
34 [redacted]

Appropriate representative to witness procedure

34. 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.

35. 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
> (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.

36. 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.[35]

37. 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). The records indicate that an appropriate representative appears to have been selected in accordance with the hierarchy in 74 procedures, being either a parent, family member or advocate.

38. However, in 4 instances out of 78, it was not clear that the appropriate representative was present to witness the carrying out of the forensic procedure(s).[36] For all 4 procedures consent was provided via telephone by a relevant person (a parent or guardian), but that person was not present to witness the procedure.

39. In two of those cases, it did not appear that there was anyone, other than those carrying out the procedures, present to act as a witness[37] as the forms did not record the details of anyone else being present.

40. For the two other procedures, carers of the protected person were present for some, but not all procedures, or waited outside during the procedure.[38] This may have been at the request of the protected person, however this is not clearly recorded in the forms. In these cases, crisis workers acted as the witness to the procedures.

41. It does not appear that the crisis workers who witnessed the procedures were selected in accordance with the relevant hierarchy under section 25(3) of the CL(FP) Act, and it is

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[35] Section 6 of the CL(FP) Act.
[36] [redacted]
[37] [redacted]
[38] [redacted]

doubtful that someone involved in the forensic procedures process can be considered a 'witness.' That said, this appears to have occurred at the request of the protected person.

Authorised procedures

42. There were 6 victims or volunteers procedures carried out on protected persons pursuant to a senior police officer's authorisation under section 9 of the CL(FP) Act.[39] These procedures are authorised in cases where the senior police officer is satisfied that it is impracticable or inappropriate to obtain consent from the relevant person because of the difficulty of locating or contacting that person, or because that person or a person related to or associated with that person, is under suspicion in relation to a criminal offence and the carrying out of the procedure is justified in the circumstances of the case.

43. All 6 procedures were examined by Ombudsman SA. The audit found full compliance with the following relevant provisions of the CL(FP) Act:
    - a senior police officer authorised the carrying out of the specified procedure in writing (sections 7(2)(b)(ii) and 9)
    - the senior police officer was satisfied that it was impracticable/inappropriate to obtain consent from relevant person and that carrying out of procedure was justified in the circumstances (section 9(a)(i) and 9(b)).

Intrusive procedures

Conduct of section 21(3) intrusive procedures

44. 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).[40]

45. The audit considered 113 section 21(3) procedures carried out on victims and volunteers within the audit period. Records of 110 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.

46. Of the remaining three procedures, consent was provided in two instances by either the victim or a relevant person (where the victim was not conscious) for the procedure to be carried out by a person of a different sex.[41]

47. In one instance, there was no tick box or other means to indicate whether the victim consented to the procedure being carried out by a person of a different sex. This was on the outdated CPS form, which is no longer in use.[42]

Medical practitioner of choice

48. 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

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39 [redacted]
40 Section 21(3) of the CL(FP) Act.
41 [redacted]
42 [redacted]

the attendance, at their own expense, of a medical practitioner of their choice to witness the procedure.

49. During the audit period, Ombudsman SA examined 117 records for intrusive forensic procedures for victims and volunteers. Of these, 107 procedures indicated that the person subject to the procedure was provided with an opportunity to arrange for a medical practitioner of their choice to witness the procedure.

50. In four instances, the relevant section of PD427 was not completed, such that the audit is unable to confirm whether this option was provided or not.[43] In the six remaining instances, the previous CPS form did not contain a check box or space to record whether the relevant person had been afforded the opportunity to arrange for a medical practitioner of their choice to witness the procedure.[44]

Audio-visual record of procedure

51. An audio-visual record of an intrusive forensic procedure must be made where requested by a victim or volunteer.[45]

52. During the audit period 8 victims or volunteers requested that an audio-visual record be made and in all cases the records indicate this occurred. In 6 cases the form used did not provide a prompt for recording whether or not a request was made.[46]The adoption of the revised CPS form as recommended in last year's audit is likely to ensure improved clarity as to compliance in the future.

[43] [redacted]
[44] [redacted]
[45] Section 26(1)(b) of the CL(FP) Act.
[46] [redacted]

Suspects procedures

53. Suspects procedures can be carried out on persons who are suspected of a serious offence.[47] A 'serious offence' is defined as an indictable offence, or a summary offence that is punishable by imprisonment.[48]

54. Suspects procedures can only be conducted if they consist of a 'simple forensic procedure' or the procedure is authorised by a senior police officer.[49] Suspects are described as 'respondents' in the suspect procedure records and accordingly, this report uses these terms interchangeably to describe them.

55. The following tables set out the results of the audit of simple suspects and authorised suspects procedures. Commentary follows regarding procedures that were non-compliant or where compliance was unclear.

SIMPLE IDENTITY PROCEDURES

Provision	Sample size	Number of procedures where it was unclear whether procedure was compliant	Number of non-compliant procedures	Proportion of compliant procedures
Simple identity procedures on protected persons	**89**			
Suspected of a serious offence (s14(2))	89	0	0	100%
Person not reasonably fluent in English is to be assisted by an interpreter (s22)	1[50]	0	0	100%
Appropriate representative present to witness authorised procedure on protected person (s25(2))	89	6	0	93%
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)	89	0	0	100%

[47] Section 14(2)(a) of the CL(FP) Act.
[48] Section 3 of the CL(FP) Act.
[49] Section 14(2)(b) of the CL(FP) Act.
[50] One person not reasonably fluent in English

PROCEDURES AUTHORISED BY SENIOR POLICE OFFICERS

Provision	Sample size	Non-compliant procedures	Number where it was unclear whether procedure was compliant	Proportion of sample size that complied
Provisions applicable to all procedures	**123**			
Written application for senior police officer's order made (s15(2))	123	0	0	100%
Did the application state the nature of the suspected offence and the grounds for suspecting the respondent had committed the offence (s15(2)(b))	123	0	0	100%
The suspected offence was a serious offence	123	0	0	100%
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	123	0	0	100%
Copy of application given to respondent (s15(3))	122	0	1 [51]	99.1%
A copy of the application given to the senior police officer in writing by email, fax, by hand or, if not reasonably practicable read over the telephone? (s15(4))	123	0	0	100%
Senior police officer conducted informal hearing (s16)	123	0	0	100%
Senior police officer satisfied that there were reasonable grounds to suspect respondent had committed serious offence (s19(1)(a))	123	0	0	100%
Senior police officer satisfied that there were reasonable grounds to suspect that procedure could produce evidence of value to investigation (s19(1)(b))	123	0	0	100%

[51] Relevant section of form not completed

Senior police officer satisfied that public interest in obtaining evidence outweighed public interest in ensuring individuals are protected from unwanted interference (s19(1)(c))	123	0	0	100%
Respondent or representative given reasonable opportunity to make representations at hearing (s17(4))	123	0	0	100%
Senior police officer made written record of order and reasons for making it (s19(3))	123	0	0	100%
Copy of order given to respondent (s19(4))	123	0	0	100%
If not reasonably fluent in English, was an interpreter afforded to the suspect (s22)	12[52]	1	1	83%
The person who carried out the procedure qualified to carry out that procedure(s 24(1))	123	0	1	99%
Was a warning given to the respondent that reasonable force may be used to carry out the procedure and that if the respondent obstructs or resists a person in connection with the carrying out of the procedure (s 30)	123	0	1[53]	99%
Procedures on protected persons	**40**			
The respondent a protected person and, if so, were they represented by an appropriate representative at the hearing (s17(2))	40	1	0	98%
The appropriate representative a relative or friend chosen by the protected person and, if not, was an appropriate explanation provided? (s 17(2))	40	0	0	100%
Appropriate representative present to witness authorised procedure on protected person (s25(2))	40	1	2	93%
Intrusive procedures	**102**			
If the procedure an intrusive procedure, an audio-visual record made of the same (s26)	102	3[54]	6[55]	91%

[52] Number of suspects identified as not fluent in English.
[53] Relevant police officer did not provide warning and subsequently acknowledged this.
[54] Discs unable to be copied to provide to audit or corrupted
[55] Recordings incomplete

Intrusive forensic procedure and suspect allowed reasonable opportunity to arrange for attendance of medical practitioner to witness same (s25(1))	102	0	0	100%
Section 21(3) intrusive procedures	**60**			
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 where reasonably practicable (s21(3))	60	0	32	47%
Procedures with audio- visual recordings	**93**			
Forensic procedures to be carried out humanely (s21(1))	93	0	16	83%
Not more people present than necessary (s21(2))	93	0	2 [56]	98%

DISCUSSION

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.

57. 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. [57]

58. This year, Ombudsman SA only audited simple identity procedures conducted on protected persons. As noted in the table, all records inspected demonstrate 100% compliance with the following legislative requirements:
    - Suspected of a serious offence (s 14(2))
    - Suspect reasonably fluent in English or assisted by interpreter (s22)
    - 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).

59. Compliance was not clear in relation to all procedures with respect to one provision only (the requirement for an appropriate representative to be present).

[56] The audio visual recording was not facing towards person undergoing the procedure
[57] Section 3(1) of the CL(FP) Act.

Appropriate representative

60. When a simple forensic procedure is carried out on a protected person, an appropriate representative must be present to witness the forensic procedure.[58]

61. The appropriate representative should be selected in accordance with the hierarchy set out at section 25(3) of the CL(FP) Act, which provides:

> 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.

62. In six of the procedures reviewed by the audit, the appropriate representative was listed as a worker from the Department of Child Protection or a Supervisor at Kurlana Tapa Youth Justice Centre.[59] While these witnesses likely fall within the definition at section 25(b), it is not clear from the relevant PD429 forms whether officers attempted to contact a friend or relative of the protected person to witness the procedure in accordance with the hierarchy.

63. This issue was also highlighted in the 2023-24 CL(FP) Audit, which observed it would be best practice if the officer completing the PD429 explained why a friend or family member was not available.[60]

64. As the application of the hierarchy continues to be an issue identified by the CL(FP) Audit, it is therefore recommended:

Recommendation 1

That, where an appropriate representative falls under category (b) or (c) of section 25 for simple identity procedures on protected persons, police officers must record on the PD429 form efforts that were made to contact a friend or relative of the protected person. The form should include details of who was contacted and why they were not available to witness the procedure.

SAPOL may wish to consider converting the PD429 into a digital form with mandatory fields to ensure that the above information is adequately captured.

Procedures carried out pursuant to orders of senior police officers

65. During the audit period, 193 suspects were the subject of forensic procedures that were carried out pursuant to orders made by senior police officers. These are referred to as 'authorised procedures'.

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[58] Section 25(2) of the CL(FP) Act

[59] [redacted]

[60] Ombudsman SA, Audit of compliance with the *Criminal Law (Forensic Procedures) Act 2007* report for 2023-24, p 16.

66. Ombudsman SA examined 123 records relating to authorised procedures. This equates to 64% of the total number of authorised procedures carried out.

67. 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.

68. The above forms have, since 23 September 2025, been converted into a single digital form, the PD740. The audit also reviewed these forms when used.

69. In addition, the audit viewed 93 of the audio-visual records associated with authorised procedures.

70. The audit observed a small number of instances of non-compliance and noted that compliance was unclear in other circumstances. These are discussed below and set out in the table at the start of this section.

Provisions applicable to all authorised suspects procedures

Provision of an interpreter

71. 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. 120 records indicated that the requirement for an interpreter was not relevant as the suspect was reasonably fluent in English.

72. In the case of one procedure, no interpreter was provided for the hearing or procedure. It appears that officers made multiple attempts to locate a suitable interpreter, contacting four separate translating services on several occasions, including one interpreting services interstate. Despite the attempts of the relevant officers there was no one available to interpret or no response was received.[61] This example is to be commended; officers took diligent steps to make sure that the provisions of the CL(FP) were complied with and the suspect was treated fairly. In the absence of an interpreter, the records demonstrate that officers made efforts care to explain the procedures simply and clearly to the suspect.

73. In the two further procedures involving a suspect not fluent in English, it was not clear that the interpreter provided for the hearing was present (whether in person or via telephone) during the procedures.[62] This raised particular concern in one instance, as the suspect said that they did not understand the instructions conveyed by the medical practitioner undertaking the procedure.[63] It is imperative that suspects have a clear understanding of the forensic procedures they are subject to so that they can be carried out humanely in compliance with section 21(1) of the CL(FP) Act.

74. Therefore, it is recommended:

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61 [redacted]
62 [redacted]
63 [redacted]

Recommendation 2

That the PD740 form be updated to include a prompt for relevant officers to confirm whether the suspect requests to have an interpreter present during the procedure.

Authorised procedures on protected persons

75. During the audit period there were 40 authorised suspects procedures carried out on protected persons. The audit reviewed relevant files for all 40 of these procedures.

Appropriate representative – at hearing and at procedure

76. 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.

77. An appropriate representative is defined under section 17(3) as:

> (a) a parent, relative or friend chosen by, or acceptable to, the protected person; or
> (b) if there is no available person in 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 the above categories—a person, who is not a police officer or person involved in the investigation of the suspected offence, chosen by a police officer in charge of a police station or the investigating police officer.

78. An appropriate representative was present at the informal hearing in 39 of the 40 authorised procedures.

79. In one procedure, the appropriate representative was listed as the medical practitioner who was to conduct the forensic procedure.[64] It appears that the practitioner was selected as there was no appropriate representative from section 17(3)(a) or (b) available. It does not appear that the practitioner could be considered an appropriate representative, as their role in collecting forensic samples would appear to make them a 'person involved in the investigation of the suspected offence.' Therefore, this procedure was not compliant with section 17(2) of the CL(FP) Act.

80. As is the case for simple forensic procedures, a protected person undergoing an authorised procedure must have an appropriate person present to witness the carrying out of the procedure.[65] An appropriate person is someone who falls within the definition set out above in section 25(3) of the CL(FP) Act. In 37 cases, an appropriate representative was present to witness the procedure.

81. In one instance, noted above, the doctor carrying out the procedure was listed as the witness. It is not clear how a person involved in the procedure can be a witness to that procedure, therefore the audit considers that this amounts to non-compliance with the requirements of section 25(3).[66]

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64 [redacted]
65 Section 25(2) of the CL(FP) Act.
66 [redacted]

82. In another case it did not appear that the appropriate representative witnessed the forensic procedure as they had become unwell and left the room.[67] In one further case, the appropriate representative is not recorded on the PD740 as having been present to witness the procedures.[68] When this was followed up with the investigating officer, they confirmed that the representative was present for the hearing but did not indicate that they were present for the procedures. The audit is therefore unable to confirm whether this procedure was compliant with the requirements of section 25(3) of the CL(FP) Act.

Intrusive procedures

Audio Visual Record must be made

83. Section 26(1)(a) of the CL(FP) Act requires the officer conducting an intrusive forensic procedure to make an audio visual recording of the procedure. An intrusive forensic procedure is one which involves:
    - 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;
    - the taking of a dental impression; or
    - the taking of a sample of blood

84. During the audit period, there were 102 intrusive forensic procedures carried out. Ombudsman SA was able review 93 audio-visual records of these. In the remaining 8 instances, the recordings were either incomplete[69] or not provided.[70] This is due to the relevant recordings being unable to be copied to supply to the audit or the discs having been corrupted.

85. Where a DVD has become corrupted, the procedure cannot be considered compliant with the requirements of section 26(1). This has been an issue observed by the audit over several years, and was the subject of a recommendation in the 2021-22 audit.[71] In response to that recommendation, the Commissioner of Police advised that a business case had been prepared for a new digital records management system. It does not appear that this new system has come to fruition, yet the need for an updated system appears necessary in order to comply with section 26(1), as well as 26(3), which provides that a copy of the audio-visual recording must, on payment of the fee fixed by regulation, be made available to the person on whom the forensic procedure was carried out.

86. Therefore it is recommended:

Recommendation 3

That SA Police consider what steps can be taken case to ensure that audio-visual recordings of intrusive forensic procedures are not corrupted when stored.

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67 [redacted]
68 [redacted]
69 [redacted]
70 [redacted]
71 Recommendation 3- That the Commissioner of Police give further consideration to how electronic recordings of forensic procedures are made and stored in order to potentially mitigate the loss or corruption of such recordings (including consideration of whether further quality assurance processes are required).

Forensic procedure carried out by person of same sex

87. 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.

88. During the audit period, there were 60 section 21(3) procedures carried out. 16 of these cases were clearly compliant because, according to the records, they were carried out by a person of the same sex as the suspect or the suspect specifically requested that the procedure be undertaken by a person of a different sex. In two cases where the suspect specifically requested that the procedure be conducted by a male practitioner, police conveyed the suspects to a different police station where a male nurse was available to undertake the procedures.[72] It is commendable that SA Police officers took active steps to ensure compliance.

89. In another instance the suspect, an Aboriginal man, identified during the senior police officer's hearing that his cultural beliefs would be offended by the undertaking of the forensic procedure by a person of a different sex. SA Police appeared to proactively address this concern by having already organised a male practitioner to undertake the procedure.[73] This is an example of a senior police officer considering the cultural needs of the suspect as a public interest factor and addressing those needs before ordering the procedure, consistent with Recommendation 3 from the 2024-25 CL(FP) Audit. However, this is the only instance in which the cultural needs of the suspect appeared to have been considered prior to the senior police officer's order being made. This may be because senior police officers are not made aware of the cultural identity of the respondent, and as such do not turn their mind to this public interest factor. Therefore, it is recommended:

Recommendation 4

That the PD740 form be amended to include a section where relevant police officers can record the cultural identity of the respondent along with other personal details.

90. In 12 of the 44 cases where the practitioner was of a different sex to the suspect, the relevant forms demonstrate how efforts were made to locate a practitioner of the same sex, and why this was not reasonably practicable in the circumstances.[74] The records of these procedures exemplify what kind of information is required to demonstrate that section 21(3) has been complied with when a practitioner of a different sex conducts the forensic procedure.

91. In the remaining 32 procedures, the records do not indicate whether any attempts were made to locate a same sex practitioner to undertake the procedure, or why it was not reasonably practicable to locate a same sex practitioner. Further, none of those 32 records provide clear evidence that the suspect requested a practitioner of a different sex:
    - in 16 of these procedures, records indicate that the respondent gave 'consent' for the procedures to be carried out by a person of the opposite sex.

72 [redacted]
73 [redacted]
74 [redacted]3

- in 12 cases, the records state that the respondent did not raise any objections to the procedure being carried out by a person of a different sex.[75] In one of these matters the respondent had requested that the procedure be carried out by a person of the same sex at the hearing, but then did not object when advised that the practitioner on duty for the procedure was not of the same sex.[76].
- in 4 cases, the records were silent as to the suspects' views and no efforts appear to have been made to locate a practitioner of the same-sex.[77]

92. A procedure will not be compliant with section 21(3) where a respondent does not raise any objections or otherwise provides consent in the course of being told that the procedure will be carried out or is likely to be carried by a person of a different sex; this is not the same as a suspect requesting a practitioner of a different sex. However, it appears that SA Police may be proceeding with these types of intrusive procedures where the practitioner is a different sex to the suspect on the basis that a same sex practitioner is not immediately available and the suspect does not actively object to a person of a different sex conducting the procedure.

93. For instance, in one procedure it appears that the suspect (a child without an appropriate representative present to witness the procedure) did not object to the procedure being carried out by a person of a different sex although the audio-visual record indicates that the suspect was clearly anxious during the procedure which involved penile swabs and pubic combing.[78] The relevant PD740 for this procedure states that officers were unable to 'facilitate a male practitioner in a reasonable timeframe to carry out procedure.' The form does not record whether any enquiries were made to find a practitioner of the same sex or how officers came to form this view.

94. It is unsatisfactory if practical considerations are prioritised over the requirements of protective provisions in the CL(FP) Act without reasonable efforts being made, especially when it comes to vulnerable suspects undergoing invasive procedures. A new form, adopted in May 2026, prompts SA Police to consider whether the respondent has requested a practitioner of a different sex and whether it is reasonably practicable to have a person of the same sex to conduct the procedure. It may be helpful for SAPOL to remind staff that both of these questions should be addressed by officers in some detail on the form including that:
    - a clear record should be made as to whether a suspect has *requested* a practitioner of a different sex (as opposed to consenting or not objecting to that scenario where the alternative is not immediately available)
    - where the suspect has not requested a practitioner of a different sex, the onus is on SA Police to demonstrate why compliance with the requirement to have a same sex practitioner is not reasonably practicable. In that regard:
        - efforts should be made to facilitate a same sex practitioner (such as transfer of the suspect to a different police station or hospital attendance)
        - a clear record should be made of the actions taken to secure a practitioner of the same sex and the reasons why that has not been practicable
        - a record of the view of the suspect as to the procedure proceeding in these circumstances may also be made.

95. The recommendation made below, to address unclear compliance in respect of the requirement to consider cultural beliefs in undertaking procedures, also seeks to address these concerns.

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75 [redacted]
76 [redacted]
77 [redacted]
78 [redacted]

Failure to provide same-sex practitioners contrary to cultural beliefs

96. Last year's audit highlighted concerns that invasive procedures[79] may not be taking place in a culturally safe manner when carried out on male Aboriginal suspects because the practitioner is female. Despite recommendations being made to address this, this year's audit noted three instances where Aboriginal male suspects specifically requested that the procedures be carried out by a same sex practitioner, and this was not or could not be accommodated.[80] These cases raise issues of compliance with section 21(3) as well section 21(1) of the CL(FP) Act which provides that forensic procedures 'must be carried out… with care to avoid, as far as reasonably practicable, offending genuinely held cultural values or religious beliefs'.

97. In two of these cases, the respondent submitted during the senior police officer's hearing that having the procedures carried out by a female practitioner would not be appropriate due to their cultural beliefs.[81]

98. In one case, there is nothing in the records to demonstrate that efforts were made to locate a same sex practitioner to carry out the procedure.[82] In a second case, the audit trail notes that a decision was made to proceed with a female nurse due to the fact that no males were working for the rest of the day in any of the metropolitan custodial facilities, and to wait until the following day would be unreasonable in the circumstances due to loss of evidence and potential hardship the delay might cause to the respondent (a protected person).[83]

99. For the third forensic procedure, the respondent identified as a traditional Aboriginal male requiring a male practitioner to avoid offending cultural beliefs. The forms record that extensive attempts were made to locate a same sex practitioner but there were no male practitioners available at any metro hospital who were trained to conduct forensic procedures, and there were no male nurses available at the agency used by SA Police from the 'Pop-up' service to conduct the procedure.[84]

100. The lack of male nurses available to conduct forensic procedures has been raised in previous audits.[85] Difficulties in locating a suitable practitioner under current arrangements appears to hindering SA Police's ability to protect the rights of persons undergoing intrusive procedures; the fact that this practical obstacle is having the effect of offending the cultural/religious beliefs of Aboriginal men is unacceptable. It appears this problem may be alleviated by increasing the pool of male persons who are able to conduct the procedures; specifically if:
    - SA Police officers could transfer suspects to public hospitals or other facilities where male nurses trained to conduct forensic procedures are more readily available; and / or
    - SA Police officers could be authorised and trained to conduct procedures.

101. In regard to the latter suggestion, under section 50 of the New South Wales *Crimes (Forensic Procedures) Act 2000*, an appropriately qualified police officer or other person may carry out the kinds of procedures that would fall within the definition of section 21(3) of the CL(FP) Act. It is suggested that the adoption of the NSW model could be achieved by amendment to the CL(FP) Regulations.

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[79] That is, section 2193) procedures.
[80] [redacted]
[81]
[82]
[83]
[84]
[85] See statistical data from previous audit reports in the Ombudsman's Summary

102. Therefore, it is recommended:

Recommendation 5

That SA Police engage with SA Health to ensure forensic training is provided across all South Australian local health networks to broaden the pool of male public health practitioners able to conduct forensic procedures. The agencies should also consider what steps can be taken to best ensure that male practitioners in the public health system are consistently available and willing to conduct section 21(3) forensic procedures where there are no male agency nurses available to conduct procedures.

That the South Australian Government consider amendment to Regulation 8(1)(c) of the *Criminal Law Forensic Procedures Regulations 2022* to provide that a person who has satisfactorily completed a course of training approved for the purpose by the Minister is qualified to carry out a forensic procedure which 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; and that SA Police ensure a pool of male police officers is so trained.

Humane treatment

103. Section 21(1) of the CL(FP) Act provides 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'

104. The audit considered this requirement against the 93 audio-visual records it was able to review. In 77 cases records indicated that procedures were generally carried out respectfully and humanely. In 16 cases, the conduct of the procedures raised concerns as to whether sufficient action was taken to ensure the procedure was conduct humanely as required by section 21(1) of the CL(FP) Act. Three of those instances have been referred to above involving Aboriginal suspects who were not provided with a same-sex practitioner.

105. In 9 instances, it appears that more could have been done to minimise the distress of suspects undergoing procedures:
    - in one instance, the suspect was handcuffed during the procedure.[86] The relevant records for the procedure do not indicate why the suspect was handcuffed during the procedures, and it is not clear why this was necessary because the investigating police officer offers to remove the handcuffs for the doctor when taking a sample of blood
    - in one instance, it appears that no interpreter was present during the procedure and the suspect is struggling to understand the practitioner's instructions about a genital swab procedure [87]
    - in one procedure, the suspect's hands were in paper bags in order to preserve evidence for a hand swab procedure. However, the suspect is required to undergo a penile swab procedure first. The suspect appears distressed while trying to remove his clothes for the penile swab while his hands remain bagged, and also increasingly frustrated at his lack of mobility while also having his penis exposed. It is not clear

86 [redacted]
87

why the hands could not have been swabbed first in order to allow the suspect to comfortably comply with the penile swab process[88]

- in 3 procedures, a practitioner of a different sex to the suspect touches the suspect's genitals for the purposes of a penile swab[89]. Generally, and in accordance with training provided to Registered Nurses who undertake forensic procedures, the suspect is requested to hold and move their own penis as instructed for the purposes of this procedure. It is unclear why this seemingly unnecessary contact was required
- in two instances, the suspects appeared visibly distressed in the recordings. In one case the intrusive forensic procedures were not recorded, so it is not clear whether the suspect's distress has arisen as a result of the procedure or for some other reason.[90] In the second instance, the suspect is distressed because a male CSI Officer is carrying out a forensic procedure taking photographs of the suspect.[91] As the procedure was not a section 21(3) procedure, it is not required that a person of the same sex must carry out the procedure where reasonably practicable. Nevertheless, it appears that the sex of the officer undertaking the procedure was causing the suspect significant concern and it would have been open to officers to attempt to locate a CSI Officer of the same sex in these circumstances.

106. Audio-visual recordings of one forensic procedure demonstrate the use of significant force against a suspect who has refused to comply with instructions required for the carrying out of the procedure.[92] The suspect refuses to remove his shirt for the purposes of a visual examination and photograph procedure. The prisoner is warned that four officers are waiting outside to force his compliance, but the suspect continues to refuse on cultural grounds.

107. The suspect appears to have been confused by the words of the senior police officer at the informal hearing, when they advised that a forensic procedure must avoid, as far as reasonably practicable, offending genuinely held cultural values. It appears that the suspect takes this to mean that he can refuse to engage in a forensic procedure that is contrary to his cultural values. It is possible that, had the investigating officers clearly explained to the suspect that cultural values cannot override the requirements of a senior police officer's order for an authorised procedure, and that the senior police officer was referring to the conduct of the procedure rather than the procedure itself, it may be that the use of force would not have been necessary to achieve compliance from the suspect.

108. There were three instances where a suspect had difficulty in providing a sample of urine for the purposes of a forensic procedure.[93] In these cases it appears that the suspect was unable to provide a sample due to anxiety as a result of being watched by multiple persons and/or being filmed as they were attempting to urinate.

109. It is unclear whether a forensic procedure which requires the collection of a sample of urine is a section 21(3) procedure for the purposes of the CL(FP). It appears that SA Police treat the collection of a urine sample as a section 21(3) procedure which therefore requires that the procedure is filmed and occurs in the presence of an appropriately qualified person (usually a registered nurse of the opposite sex). AV recordings of these procedures demonstrate that when a sample of urine is required, suspects are generally taken to an open cubicle to urinate. This procedure does not necessarily require exposure of a suspect's genitals, and therefore it is not clear why it must be filmed and observed in this way. This may cause suspects to be subject to unnecessary filming and exposure to a person that is not required under the CL(FP) Act.

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88 [redacted]
89 [redacted]
90 [redacted]
91 [redacted]
92 [redacted]
93 [redacted]

110. SA Police have advised that urine sample collection is treated as a procedure involving exposure of the genitals because this means that people undergoing these procedures are entitled to the protective provisions in the CL(FP) Act that accompany intrusive forensic procedures. While this view is well-intentioned, it appears to have the opposite effect on some suspects by adding a further layer of invasiveness to the procedure.

111. Therefore it is recommended:

Recommendation 6

That SA Police seek advice as to whether the taking of a sample of urine should be classified as an intrusive procedure pursuant to section 21(3) of the CL(FP) Act and consider whether any changes should be made to practice as a result of that advice.

Offenders procedures

112. 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.*

113. These are known as 'offenders procedures'. 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.

114. One offender procedure[94] was conducted during the audit period with the record indicating that all relevant provisions of the CL(FP) Act were complied with, as outlined in the table below.

Provision	Sample size	Proportion of sample size that complied
Simple identity procedure carried out (s20(1))	1	100%
The person met one of the criteria of being an offender set out in s20(2) (eg person is convicted of a serious offence)	1	100%
Police officer informed offender that reasonable force could be used to carry out procedure and if offender obstructed/resisted procedure, evidence of that fact may be admissible in proceedings against them (s30)	1	100%
The person who carried out the procedure was a medical practitioner or a person who was qualified as required by the regulations to carry out the procedure (s24)	1	100%

94 [redacted]

Forensic procedures on deceased persons

115. 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'.

116. Written authorisations were given under this provision on 2 occasions during the audit period and the audit team inspected both records.[95] The audit found that both procedures were compliant with all relevant requirements of the CL(FP) Act as outlined in the table below.

Provision	Sample size	Proportion of sample size that complied
Did a senior police officer authorise the carrying out of the forensic procedure in writing? (s 55(1))	2	100%
Senior police officer satisfied that evidence obtained from procedure likely to assist with investigation of serious offence or identification of deceased (s55(1))	2	100%
Procedure carried out by medical practitioner or person qualified as required by the regulations to carry out the procedure (s55(5))	2	100%

95 [redacted]

Blood testing for communicable diseases

117. 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.[96]

118. Four 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.[97]

119. The relevant document for inspection, PD430A, sufficiently demonstrated that in all instances, the relevant provisions of the CL(FP) Act were complied with, as set out in the below table.

120. Pursuant to the CL(FP) Regulations, 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).[98] Reasonable steps must also be taken to notify each affected employee of the results of the testing.[99] The audit observed that both regulations were complied with in all four instances, as noted in the table below.

Provision	Sample size	Proportion of sample size that complied
Senior police officer satisfied that person suspected of a prescribed serious offence (s20B(1)(a))	4	100%
Senior police officer was 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))	4	100%
Procedure carried out by medical practitioner or person qualified as required by the regulations to carry out the procedure (s55(5))	4	100%
Senior police officer made written record of grounds on which they determined that sample of blood should be taken (s20B(2))	4	100%

[96] Section 20B(1)(a) and (b) of the CL(FP) Act.
[97] [redacted]
[98] Regulation 6
[99] Regulation 7

Provision	Sample size	Proportion of sample size that complied
Copy of written record given to suspected person (s20B(2))	4	100%
Before procedure was carried out, the senior police officer gave suspected person written notice that a sample of their blood was to be taken and tested for communicable diseases (reg. 5(1)(a))	4	100%
Before procedure carried out, senior police officer invited suspected person to nominate a medical practitioner to receive copy of test results (reg. 5(1)(c))	4	100%
The person who conducted the procedure was qualified to carry out the procedure (s 24 (1))	4	100%
Suspect allowed reasonable opportunity to arrange for attendance of medical practitioner to witness procedure (s 25 (1))	4	100%
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)	4	100%
Commissioner of Police took reasonable steps to notify the person from whom the sample was taken of the results of the testing? (reg 6(1))	4	100%
Commissioner of Police took reasonable steps to notify each affected person of the results of the testing (reg 7(1))	4	100%

End of report