



AUDIT REPORT

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

September 2021

Ombudsman SA
Level 8, 95 Grenfell Street
Adelaide SA 5000

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

Email: ombudsman@ombudsman.sa.gov.au
Web: www.ombudsman.sa.gov.au



To:

**The Honourable Vickie Chapman MP
Deputy Premier
Attorney-General (South Australia)**

I present this report on the 2020-2021 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 that provision to cause copies of this report to be laid before each House of Parliament within 12 sitting days of receiving it.

**Steven Strelan
Acting Deputy Ombudsman
Ombudsman SA**

30 September 2021



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Executive summary

This report concerns 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 2020 to 30 June 2021 (the audit/this audit).

As was the case for the 2019-2020 audit period, the audit indicated compliance to be the norm; that is, most statutory requirements were fully complied with and where this was not the case, compliance against the relevant provisions was more common than not. The audit identified the following legislative requirements in respect of which further improvement might be achieved (in terms of actual compliance or recording compliance):

- if reasonably practicable a person of the same sex as the suspect or victim or volunteer conduct an intimate procedure
- where an intrusive procedure is to be carried out on a suspect or a victim or volunteer, that 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 forensic procedure
- where an intrusive procedure is to be carried out on a victim or volunteer, that person may request the making of an audio-visual record of the same and pursuant to that request, such a record must be made
- where a senior police officer must authorise a procedure, they must be satisfied that 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.

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 consider amending the form PD184A, used for recording volunteers and victims procedures, to include a prompt to record whether the person has been notified that they may, at their own expense, be allowed a reasonable opportunity to arrange for the attendance of a medical practitioner of their choice to witness the forensic procedure.

Recommendation 2 That the Commissioner of Police consider amending the form PD184A, used for recording volunteers and victims procedures, to include a prompt to record whether the person wishes to request the making of an audio-visual record.

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).

Recommendation 4 That the Commissioner of Police reiterate to senior police officers the requirement to properly consider and record

reasons for concluding the public interest was in favour of carrying out an authorised procedure.

Recommendation 5

That the Commissioner of Police investigate ways police officers might make appropriate electronic recordings of their notes (such as, for example, by making these notes initially in an electronic form or transcription of notes afterwards).

Recommendation 6

That the Commissioner of Police consider amending the form PD431 and the senior police officer's aide memoire to include a prompt for the senior police officer to ask after an order has been made whether the suspect requests that a medical practitioner of their choice and at their own expense witness the procedure.

Recommendation 7

That the Commissioner of Police consider what procedural or other steps might be implemented to improve compliance with section 21(3) of the CL(FP) Act.

The former Deputy Ombudsman provided a draft of this report to the Commissioner of Police and the Chief Executive of the Attorney-General's Department for comment. I acknowledge the significant role of the former Deputy Ombudsman in overseeing the audit and note that her views as expressed in the draft report have generally been adopted by me.

The Commissioner of Police has advised that he accepts Recommendations 4 and 6, has noted Recommendations 1, 2, and 7 for further consultation, and has noted Recommendation 5 for further consideration. The Commissioner of Police indicated that he does not accept Recommendation 3 on the basis that current general orders are sufficient. While I note that response, and have considered the terms of the general orders, I remain concerned that two of a sample of 30 audio-visual records were unable to be viewed by the audit. In light of that, I consider it appropriate to include Recommendation 3 in this report, albeit in amended form.

The Chief Executive of the Attorney-General's Department responded to the draft report and noted that none of my proposed recommendations required any further action from Forensic Science SA (FSSA), and that she had no additional comments or observations about the draft report.

As noted in last year's report, compliance with the Act has greatly improved since the first audit conducted by Ombudsman SA in 2018. I commend SA Police for this and for implementing recommendations made in previous audits.

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, it 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 extensive 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, that the integrity of the process is maintained, 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. In addition, non-compliance may in some circumstances adversely affect the admissibility of the evidence in court; 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 2007* (**the CL(FP) Regulations**) during the period 1 July 2020 to 30 June 2021 (**the audit period**). It is the fourth audit undertaken by Ombudsman SA.
5. Pursuant to section 9(1) of the *Ombudsman Act 1972*, the Ombudsman delegated his powers under the CL(FP) Act to the former Deputy Ombudsman and to me as Acting

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 vast majority of forensic procedures carried out in South Australia are conducted by police officers and records relating to those procedures are vetted and held by the DNA Management Unit (DNAMU) of the SA Police Forensic Services Branch.
7. Written records relating to the following types of forensic procedures conducted under the CL(FP) Act were inspected during the audit: volunteers and victims procedures, suspects procedures requiring authorisation by senior police officers (**authorised procedures**), forensic procedures on deceased persons, offenders procedures and blood testing for communicable diseases. There were no retention or assimilation orders made during the audit period.
8. In the former Deputy Ombudsman's 2019-2020 report, she observed that there was a high level of compliance with the requirements of the CL(FP) Act in relation to simple identity procedures carried out on suspects and that her recommendation of 2019 relating to those procedures had been implemented. In light of that improvement, I have chosen not to audit simple identity procedures carried out on suspects this year.
9. 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	709	84	11.84%
Authorised Procedures	141	65	46%
Offenders procedures	3	3	100%
Forensic procedures on deceased persons	3	3	100%
Blood testing for communicable diseases	8	8	100%

10. During the course of the audit Ombudsman SA officers also:
 - viewed 28 audio-visual records of intrusive procedures carried out on suspects and eight procedures involving the taking of blood from persons for the purpose of testing for communicable diseases
 - enquired of SA Police whether any requests for destruction of materials were received in the 2020-21 auditable year

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.

- considered a response provided by the Chief Executive of the Attorney-General's Department regarding the systems and procedures in place to protect the integrity of the DNA database system²
 - consulted with staff from the SA Police Medical Section about how forensic procedures are conducted under the CL(FP) Act and reviewed training material for the conduct of such procedures
 - considered additional information provided by SA Police
 - considered the current SA Police General Order 'Forensic procedures'
 - considered current SA Police policies and procedures regarding the making and storage of audio-visual records.
11. As was observed in previous audit reports, it is not possible to confirm that all audited procedures complied with all relevant provisions of the CL(FP) Act. In some cases, the record of the procedure does not adequately indicate whether compliance has been achieved. Indeed, in some cases the nature of the requirement is such that a determination as to compliance can only be achieved by viewing an audio-visual record of the procedure (for example; a written record is of limited value in determining whether compliance with section 21(1) of the CL(FP) Act has occurred).³ The CL(FP) Act only requires the making of audio-visual records of intrusive forensic procedures carried out on suspects (and intrusive forensic procedures carried out on victims or volunteers if such a recording is requested by the victim or volunteer).⁴
12. This report sets out my views in relation to compliance with the Act including where it was unclear whether compliance had been achieved or not.⁵ Appendix 1 provides a summary in table format of findings against relevant provisions of the Act.
13. As was the case in previous years, I have taken the liberty of making informal recommendations⁶ where I consider changes to procedures may improve practice. I emphasise that the audit indicated very few instances of non-compliance and accordingly my seven recommendations are simply suggestions for improvements to practice.

2019 - 2020 Audit Report Recommendations

14. The former Deputy Ombudsman's 2019-2020 report included seven recommendations. Six of those recommendations have been implemented by the Commissioner of Police; in the case of Recommendation 5, alternative action was undertaken to reflect the recommendation. The table below sets out the 2020 recommendations and the implementation action taken by SA Police.

Recommendation 1	That the Commissioner of Police consider amending the form used for recording volunteer and victims procedures to include a prompt to record whether the	The PD425 has been amended
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² The DNA database system holds information relating to forensic material collected under the CL(FP) Act. Section 41 of the Act permits the Commissioner of Police to maintain a database on which DNA profiles obtained from forensic material are stored. The Commissioner has delegated the administration of this database to the Director of Forensic Science SA.

³ Section 21(1) of the CL(FP) Act provides that forensic procedures are carried out humanely and with care (a) to avoid, as far as reasonably practicable, offending genuinely held cultural values or religious beliefs; and (b) to avoid inflicting unnecessary physical harm, humiliation or embarrassment.

⁴ Section 26 of the CL(FP) Act.

⁵ I have redacted any references to specific procedures in this report to avoid disclosing information contrary to the section 50 of the CL(FP) Act.

⁶ The CL(FP) Act does not require the Ombudsman to make recommendations.

	person is reasonably fluent in English and, if not, the details of the interpreter.	
Recommendation 2	That relevant documentation be amended to advise volunteers and victims that requests for destruction are to be made in writing to the attention of the Officer in Charge, DNAMU and that an email address be included.	The PD425 has been amended
Recommendation 3	That consideration be given to amending relevant forms to prompt officers to consider and record consideration of the hierarchy for determining an 'appropriate representative' under sections 17(3) and 25(3) of the CL(FP) Act.	The PD429 has been amended
Recommendation 4	That the Commissioner of Police consider amending General Order 'Forensic procedures' so as to require police officers making audio-visual records of intrusive procedures on suspects to: <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. 	The PD431 has been amended General Order Forensic Procedures has been amended
Recommendation 5	That the Commissioner of Police consider the development of an information sheet to be provided to appropriate representatives so that they are informed of the nature and importance of their role.	SA Police has advised: 'No information was available to determine Parliament's intention as to the role and function of the appropriate representative. As such it was not considered appropriate to create an information sheet in these circumstances. However, information concerning the Ombudsman SA view in relation to the importance of the appropriate representative is being placed on an intranet information page currently being created by DNA Management Unit. This information page is intended to capture all relevant information relating to recent recommendations and observations contained within OSA audit reports, including the provision of information to investigating officers and Senior Police Officers to ensure that appropriate representatives are engaged in the process.'
Recommendation 6	That the Commissioner of Police consider amending the form used to make assimilation orders (PD434) to ensure that	The PD434 has been amended.

	it includes the terms of an assimilation order.	
Recommendation 7	That the Commissioner of Police consider amending the form authorising the taking of a blood sample to test for communicable diseases under Regulation 4A to include an invitation for the suspect to nominate a medical practitioner to receive the results of the testing.	The PD430A has been amended.

Staff undertaking forensic procedures

15. During the period of this audit SA Police contracted with an external provider for the provision of medical services at certain SA Police locations, including for the medical care of suspects in SA Police custody.

As a part of that contract, the registered nurses employed by the external provider undertake forensic procedures under the CL(FP) Act. I note that the external provider began providing medical services to SA Police in April 2020, and began conducting forensic procedures for SA Police on 5 October 2020.

16. I note section 24(2) of the CL(FP) Act determines who may conduct a forensic procedure (I note that section 55(5) identifies similar requirements for who may carry out forensic procedures on deceased persons):

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.

The CL(FP) Regulations identify, at regulation 5(1)(a) 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’. Registered nurses employed by the external provider are therefore authorised to undertake most forensic procedures.

17. Training for the staff of the external provider in how to undertake forensic procedures was provided by staff from the SA Police Medical Section. I have been provided with a copy of the training materials provided to the external provider and an outline of the day’s training, which included the requirements of the CL(FP) Act and hands-on exercises for the conduct of forensic procedures. I commend the SA Police staff responsible for the production of those comprehensive materials.
18. Having reviewed those materials, I find that they appropriately address the requirements of the CL(FP) Act. The materials underscore that staff conducting a forensic procedure ‘remain impartial and ... treat suspects with respect and dignity’.⁷
19. The training materials address the processes by which forensic material is to be taken by the registered nurse and then appropriately collected in the Forensic Examination

⁷ SA Police, ‘Forensics Procedures - Final Video—HI Res Version’.

Kit envelope. The materials appear to appropriately detail measures to effectively collect forensic material and ensure it is preserved.

20. The training material notes how the requirements of the CL(FP) Act are to be integrated into the forensic procedure. For example, the materials highlight that '[o]nce the camera is turned on the Detective will read the Section 30 warning and Section 25 of the Criminal Law Forensic Procedures Act (CL(FP)A) to the suspect - **if the** Detective informs you that this has already been done make a note of it on your notes page of the red book' (emphasis in original).⁸ The training materials identify that videoing procedures is a legislative requirement, and that staff undertaking the forensic procedure would 'usually' be asked to introduce themselves.⁹
21. The materials underscore that procedures are not to be carried out unless 'specifically ordered and authorised on the PD 431'.¹⁰
22. Measures to ensure the dignity of a person on whom a forensic procedure is being conducted are addressed, such as ensuring a suspect being photographed is 'kept covered as much as possible'. Additional measures to ensure procedures are conducted 'humanely and with care'¹¹ include that nurses have three attempts to obtain a blood sample, that the 'health of the suspect is paramount and treatment for illness that requires medical attention takes precedence over a forensic procedure',¹² and that 'you cannot safely take blood while handcuffs are in situ'.¹³
23. In addition to the training day and the materials provided, I have been advised that SA Police Nurses were available during a transition period of 4-6 weeks to attend and assist in forensic procedures conducted by the external provider.
24. I have not noted any particular concerns about the conduct of forensic procedures undertaken by the staff of the external provider. I have been advised by SA Police that there have not been any complaints made concerning the forensic procedures conducted by the nurses provided by the external provider.
25. I note that, in discussions with Ombudsman SA, SA Police Nurses raised that, due to the frequency with which they conducted forensic procedures, that they provided an additional check for compliance with the CL(FP) Act, and that this may be lost due to the nurses employed by the external provider being less familiar with the legislative framework. I agree that nurses who are familiar with the legislative framework may be able to provide an important additional check that procedures are compliant, in addition to those provided by SA Police officers. As such, I consider that it is appropriate that training continue to be provided to the staff of the external provider, to ensure new employees are familiar with the CL(FP) Act, and ongoing staff be reminded of their obligations.
26. I note that there are 39 registered nurses employed by the external provider to provide these services to SA Police in the Adelaide Metropolitan area. None of those registered nurses are male. I return to the potential issues raised by this for my audit below.

⁸ SA Police, 'Forensic Procedures Flowchart for External Providers'.

⁹ SA Police, 'Forensics Procedures - Final Video—HI Res Version'.

¹⁰ SA Police, 'Forensic Procedures Flowchart for External Providers'.

¹¹ Section 21 of the CL(FP) Act 2007.

¹² SA Police, 'Forensics Procedures - Final Video—HI Res Version'.

¹³ SA Police, 'Forensic Procedures Flowchart for External Providers'.

Volunteers and victims procedures

27. Volunteers and victims procedures may be carried out on persons who are not under suspicion of a serious offence¹⁴ 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);¹⁵ or
 - a senior police officer authorises the carrying out of the procedure.¹⁶
28. 709 volunteers and victims procedures were carried out by or on behalf of SA Police during the audit period and 84 records in connection with those forensic procedures were inspected by Ombudsman SA Officers.
29. The audit observed that:
- all of the records inspected indicated that the relevant person had consented to the procedure; and
 - in the vast majority of cases, the procedures that were carried out reflected a high level of compliance with the relevant legislative requirements concerning victims and volunteers procedures as discussed further below.

Protected persons

30. The CL(FP) Act contains special provisions for volunteers and victims procedures carried out on 'protected persons'.¹⁷
31. Before a volunteers or victims procedure is carried out on a protected person:
- 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 procedure¹⁸
 - 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.¹⁹
32. Nine records inspected by the audit concerned procedures carried out on protected persons. With reference to the completed PD425 form relating to six of the procedures, I am satisfied that the requisite explanation was provided. The remaining three procedures were carried out on persons by Child Protection Services (the CPS records).²⁰ One of those procedures²¹ was carried out on a person under the age of 10 and in those circumstances, the above requirements do not apply.²² In the other two instances,²³ given it appears that the Forensics Brochure was likely provided to the parent or guardian present, I consider it likely that these requirements were met.

¹⁴ Section 7(2)(a) of the CL(FP) Act.

¹⁵ Section 8(a) and (b) of the CL(FP) Act.

¹⁶ Section 9 of the CL(FP) Act.

¹⁷ 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.

¹⁸ Section 11(1) of the CL(FP) Act.

¹⁹ Section 11(2) of the CL(FP) Act.

²⁰ [REDACTED]

²¹ [REDACTED]

²² Section 11(3)(c) of the CL(FP) Act.

²³ [REDACTED]

33. The CL(FP) Act provides that an appropriate representative must be present to witness the forensic procedure carried out on a protected person.²⁴ The audit did not identify any issues of non-compliance with this requirement.

Intimate procedures

34. 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 victim or volunteer.²⁵
35. The audit considered 19 intimate procedures that fell within the audit period. Ordinarily, those procedures occur in the context of a sexual assault examination. In accordance with section 21(3) of the CL(FP) Act, records of all 19 intimate procedures indicated that those procedures were carried out on a volunteer or victim by a person of the same sex.
36. Similar to the former Deputy Ombudsman's observations from the previous audit, I consider that there has been a high level of compliance with this legislative requirement in the context of intimate procedures carried out on volunteers and victims.
37. However, this level of compliance differs in the context of suspects procedures and I consider this issue further in that section.

Intrusive procedures

38. If an intrusive forensic procedure is to be carried out on a volunteer or victim,
- that 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 forensic procedure²⁶
 - that person may also request the making of an audio-visual record of the same and pursuant to that request, such a record must be made.²⁷
39. Consistent with observations in the former Deputy Ombudsman's previous audit report, records of intrusive volunteers and victims procedures provide limited information to enable auditing of compliance with the above requirements. The reason for this is that the PD184A form used for documenting sexual assault examinations fails to include any particular references to the person's right to request a medical practitioner of their choice to witness the procedure or request that an audio-visual record of the procedure be made.
40. That said, I understand that in circumstances where a sexual assault examination is to be carried out, the volunteer or victim is generally provided with an information brochure prepared by the Commissioner for Victims' Rights, which includes an explanation of these rights.

²⁴ Section 25(2) of the CL(FP) Act.

²⁵ Section 21(3) of the CL(FP) Act.

²⁶ Section 25(1) of the CL(FP) Act.

²⁷ Section 26(1)(b) of the CL(FP) Act.

41. While I also understand that professional judgement may be exercised in providing oral advice to volunteers or victims of their rights under the CL(FP) Act and that generally the focus may be on consenting to the procedure, and the right to withdraw that consent, I consider that such a person should be afforded a full awareness of their rights and an opportunity to exercise them. This is particularly the case given the nature of the procedure being not only a forensic procedure, but also a therapeutic one. Therefore, I RECOMMEND:

Recommendation 1

That the Commissioner of Police consider amending the form PD184A, used for recording volunteers and victims procedures, to include a prompt to record whether the person has been notified that they may, at their own expense, be allowed a reasonable opportunity to arrange for the attendance of a medical practitioner of their choice to witness the forensic procedure.

Recommendation 2

That the Commissioner of Police consider amending the form PD184A, used for recording volunteers and victims procedures, to include a prompt to record whether the person wishes to request the making of an audio-visual record.

42. In my view, 17 of the 19 records comprising sexual assault examinations are likely to satisfy the requirements of section 21(2) of the CL(FP) Act given the 'behind the screen/curtain' check box has been marked on each record.²⁸ In the absence of audio-visual records for the two sexual assault examinations carried out by Child Protection Services,²⁹ it is unclear from the documentation provided whether this requirement has been met.
43. I note one particular intrusive procedure³⁰ whereby a female young person was subject to a forensic procedure which involved 'taking of photographs of breasts'. In this instance, the documentation does not clearly record this as an intrusive procedure and PD425 form (Part D) does not indicate whether the person was allowed a reasonable opportunity to request a medical practitioner, at their expense, to witness the procedure.³¹ That said, having regard to further information provided by SA Police, I consider this procedure was compliant with the CL(FP) Act as I am satisfied that the female young person was afforded the right to request a medical practitioner but declined.

Right to interpreter

44. Of the 84 volunteers and victims procedures audited, only one procedure was carried out on a person not fluent in English. In that instance,³² the procedure was a sexual assault examination and the victim was afforded an interpreter over the telephone. On that basis, the audit did not find any issues of non-compliance in this area.

²⁸ A forensic procedure must not be carried out in the presence or view of more persons than are necessary.

²⁹ [REDACTED].

³⁰ [REDACTED].

³¹ Section 25(1) of the CL(FP) Act.

³² [REDACTED].

45. The former Deputy Ombudsman's 2019-2020 audit recommended that 'The Commissioner of Police consider amending the form used for recording volunteers and victim procedures (PD425) to include a prompt to record whether the person is reasonably fluent in English and, if not, the details of the interpreter'. I am pleased to note that this audit observed that this has been implemented and Part A of the PD425 form has been amended accordingly to give effect to this recommendation. The amendment has greatly assisted the auditing process this year and clearly demonstrates that SA Police are turning their mind to this important legislative requirement.

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

46. 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.³³
47. In light of Recommendation 2 from the former Deputy Ombudsman's 2019-2020 audit report, Part G of PD425 now 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, DNAMU, with the inclusion of an email address. 99% of records inspected indicated compliance with this requirement. While there was one instance³⁴ of non-compliance, handwritten notes on the PD425 indicate that the 'victim left the station' prior to Part G being provided. The SA Police Officer attempted to telephone the victim to follow this issue up but received no response. I consider that the three CPS records were compliant with this requirement given it appears that the Forensics Brochure was likely provided to the parent or guardian present which includes the destruction advice.
48. I note that the PD184A record routinely used for sexual assault examinations differs from the PD425 form insofar as it does not include a Part G. However, the Forensics Brochure provided to persons undergoing a sexual assault examination contains the necessary information, and appears to be worded similarly to Part G of PD425, for requesting the destruction of forensic material under section 39 of the CL(FP) Act. On that basis, I have considered those sexual assault examination procedures to be compliant with the requirements of section 12(1) of the CL(FP) Act.
49. 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.³⁵
50. The audit was advised that a total of four requests for destruction of forensic material were received during the audit period. In each instance, the forensic material was destroyed within the required 21 day period.

³³ Section 12(1) of the CL(FP) Act.

³⁴ [REDACTED]

³⁵ Section 39(1) of the CL(FP) Act.

Suspects procedures

51. Suspects procedures can be carried out on persons who are suspected of a serious offence.³⁶ All records of suspects procedures audited indicated that the person was suspected of a serious offence.
52. Suspects procedures can only be conducted if they consist of a 'simple forensic procedure' or the procedure is authorised by a senior police officer.³⁷

Simple forensic procedures

53. No simple identity procedures were audited this year (see paragraph 8).

Procedures carried out pursuant to orders of senior police officers

54. During the audit period, 141 suspects were the subject of forensic procedures that were carried out pursuant to orders made by senior police officers. Ombudsman SA Officers examined records relating to 65 or 46% of such orders. I refer to these as 'authorised procedures'.
55. Documentation inspected relating to these procedures 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; these were also provided to the audit. In addition, 30 of the audio-visual records associated with authorised intrusive procedures were requested; 28 of those records were viewed as two of the records had been corrupted and could not be viewed. It is not clear what led to the corruption of the files, or whether this may have been avoided. As such I make the following RECOMMENDATION:

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).

56. I note with particular concern that two out of a sample 30 audio-visual records were unable to be viewed by the audit due to corruption. While, having regard to SA Police's relevant general orders, I accept that there are quality assurance processes in place, in my view, further consideration of this issue by SA Police is necessary. I will continue monitor this issue in future audits.
57. For suspects procedures that are not simple identity procedures, an application must be made to a senior police officer.³⁸ The application must be made in writing by a police officer, state the nature of the suspected offence and the grounds for suspecting the respondent committed the offence, state the nature of the procedure/s for which the order is sought and the grounds for suspecting the procedure/s could produce

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

³⁷ Section 14(2)(b) of the CL(FP) Act.

³⁸ Section 15(1) of the CL(FP) Act.

evidence of value to the investigation of the suspected offence.³⁹ All records inspected in the audit period indicated compliance with these requirements.

58. A copy of the application must be given to the respondent unless the application is of 'special urgency'. In four of the audited procedures (7%) it was unclear whether this had occurred.⁴⁰
59. 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

60. 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
 - (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.
61. In weighing where the public interest lies, 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 respondent'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 respondent committed the offence
 - any other relevant factors.
62. Records relating to fifteen authorised suspects procedures were unclear as to whether the senior police officer had had regard to the factors set out in the preceding paragraph and had properly weighed the public interest factors as required by section 19(1)(c) of the CL(FP) Act.⁴¹ This represents 23% of the written records audited. Often in these cases the senior police officer had only listed the public interest factors set out in section 19(2) and included limited additional information other than a notation of the suspected offence and the maximum penalty such an offence attracted.
63. In a small number of these cases, the senior police officer only noted that the public interest favoured the procedure occurring, with no explanation.⁴²
64. The former Deputy Ombudsman had similar concerns in the 2019-2020 audit. In response to those concerns, the Commissioner of Police said that he would ensure

³⁹ Section 15(2) of the CL(FP) Act.

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⁴² e.g.

that appropriate advice was provided to senior police officers about the requirement to properly consider and record reasons for concluding the public interest was in favour of carrying out the procedure.

65. In certain cases, records with a lack of explanation of the senior police officer's consideration about the public interest were accompanied by a lack of reasons about the senior police officer's conclusions in relation to other considerations.
66. An adequate consideration of the public interest does not merely list public interest factors from section 19(1)(c), but explains how the procedure will advance those factors. To properly weigh the public interest, a senior police officer must consider how the procedure will impact the public interest factors provided in section 19(2) and the right of a private individual against interference. It is consideration of the *impact* of the procedure on the public interest and private rights that I consider necessary to demonstrate compliance with the requirement to give reasons regarding the public interest. I accept that some repetition in reasons is acceptable since the relevant factors often appear to be repeatedly relevant from procedure to procedure.
67. Given the procedures inspected during this audit period continue to raise concerns, I RECOMMEND:

Recommendation 4

That the Commissioner of Police reiterate to senior police officers the requirement to properly consider and record reasons for concluding the public interest was in favour of carrying out an authorised procedure.

68. There was a marked difference in the quality of some records, and in some cases the disparity between thorough⁴³ records and poor notes⁴⁴ was significant. Notably, the better examples were often typed on a computer, whereas the poor reasons tended to be handwritten.⁴⁵ As a consequence, I RECOMMEND:

Recommendation 5

That the Commissioner of Police investigate ways police officers might make appropriate electronic recordings of their notes (such as, for example, by making these notes initially in an electronic form or transcription of notes afterwards).

69. Records audited indicated full compliance with the other requirements associated with conducting the hearing (specifically, that the respondent or their representative must be given a reasonable opportunity to make representations at the hearing;⁴⁶ that the senior police officer must make a written record of their order and their reasons for making it;⁴⁷ and that a copy of the record must be given to the respondent⁴⁸).

Appropriate representative for protected person

70. Section 17(2) of the CL(FP) Act states that if a respondent at an informal hearing is a protected person, they must be represented by an 'appropriate representative' who

⁴³ e.g. see PD436 in relation to [REDACTED]

⁴⁴ See above note 41.

⁴⁵ e.g. [REDACTED].

⁴⁶ Section 17(4) of the CL(FP) Act.

⁴⁷ Section 19(3) of the CL(FP) Act.

⁴⁸ Section 19(4) of the CL(FP) Act.

may make submissions at the hearing. Section 25(2) provides that if, in accordance with an authorisation, a forensic procedure is to be carried out on a protected person, an appropriate representative must be present to witness the procedure. Appropriate representative is defined 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, chosen by a police officer in charge of a police station or the investigating police officer.⁴⁹

71. I consider that all records inspected in the audit period indicated compliance with these requirements.

Conduct of the procedure

72. In the 2019-2020 audit, the former Deputy Ombudsman reported that the audit team had encountered some difficulty assessing sections 25(2) and 21(2) of the CL(FP) Act, as persons present in procedures and often out of view of the camera were not identified by the investigating officer.
73. 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 on suspects 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.
74. The Commissioner of Police amended the General Order 'Forensic procedures' accordingly.
75. It was observed that some audio-visual records of procedures were compliant with this General Order, however many other records did not comply. In one instance, a protected person's appropriate representative was not fully visible in the audio-visual record.⁵⁰ However, the change to the General Order and the increase in introductions at the beginning of audio-visual records represents an encouraging improvement. I anticipate further compliance with the General Order going forward as officers become aware of the amendment to the General Order. This will assist the audit team in assessing compliance with the CL(FP) Act.
76. 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.
77. The forms leave ambiguity as to when the offer of a medical practitioner as a witness is to be made. Last year, the former Deputy Ombudsman observed that in some cases the offer was being made when the procedure was about to commence. I observed some instances of this occurring in this audit period.⁵¹

⁴⁹ Section 25(3).

⁵⁰ [REDACTED]

⁵¹ e.g. [REDACTED] (Communicable diseases procedure), [REDACTED] (Communicable diseases procedure).

78. I do not consider that offering a person who is in custody to have a medical practitioner of their choice witness the procedure when the procedure is about to be conducted is providing that person with a reasonable opportunity. I consider that this opportunity should be offered to the respondent immediately after the hearing with the SPO and should be recorded on the order.
79. I therefore RECOMMEND:

Recommendation 6

That the Commissioner of Police consider amending the form PD431 and the senior police officer's aide memoire to include a prompt for the senior police officer to ask after an order has been made whether the suspect requests that a medical practitioner of their choice and at their own expense witness the procedure.

80. 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 those procedures were carried out respectfully and humanely.
81. 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 breasts 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. Of the procedures inspected by the audit team, 41 involved the exposure of, or contact with, a suspect's genitals.
82. In 15 cases, I consider that procedures were performed that appear to be non-compliant with section 21(3) of the CL(FP) Act.⁵² The records either do not indicate the reason, or do not provide a reason that I consider demonstrates compliance, as to why it was not reasonably practicable to have a practitioner of the same sex perform the procedure. Those records also do not indicate if the suspect requested a practitioner of the opposite sex.
83. In two instances, for example, younger male suspects were subject to intrusive procedures carried out by female nurses that involved penile swabbing, pubic combings, and photographing genitals.⁵³ While the nurses were professional and caring, I am not satisfied that explanations of the PD431 provided by police demonstrate compliance. In particular, simply noting the absence of a male nurse on shift or that the forensic procedure occurred early on a Sunday morning does not provide enough information to satisfy me that it was not reasonably practicable to meet this requirement. I consider that ordinarily some effort must be made to find a practitioner of the same sex. In some cases involving opposite-sex practitioners, police noted their attempts to telephone local health networks to identify if a practitioner of the same sex was available. I consider that this latter approach was compliant.

⁵² I note that the General Order Forensic Procedures states that '[n]otes should be made on the relevant forms as to the reasons why a person of the same sex could not be used to conduct the procedure (where relevant)'. These records were:

⁵³ [REDACTED]

84. It was unclear whether section 21(3) of the CL(FP) Act was complied with in 15 cases. In most cases, this was because it was not clear whether a urine test involved exposure of the male suspect's genitals to the female nurse carrying out the procedure. In one matter⁵⁴ a blood test and a urine test were performed on a female suspect. The video recording only captured blood being taken by a male doctor. Before the video concluded, the doctor provided the suspect with a receptacle for the urine test. As the urine test was not captured, and no additional notes were taken by the police officer, it is not clear if the procedure was supervised by the male practitioner.
85. In light of the above, I RECOMMEND:

Recommendation 7

That the Commissioner of Police consider what procedural or other steps might be implemented to improve compliance with section 21(3) of the CL(FP) Act.

86. 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. In five instances interpreters assisted a person at the hearing for the procedure.⁵⁵ In one of those cases at least, the interpreter was provided to assist with the obtaining of legal advice.⁵⁶
87. I note that the requirement of section 22(b) is that, if requested, the interpreter be 'present' at the carrying out of the procedure. I consider that, for purposes of section 22(b), telephone attendance by the interpreter complies with this requirement.
88. Fifty-five records indicated that the requirement for an interpreter was not relevant.
89. In accordance with section 23 of the CL(FP) Act, in all audio-visual records inspected a high level of professionalism was displayed by all doctors, nurses, and police officers.
90. In all records, warnings under section 30 of the CL(FP) Act were read to the suspects.

Setting forensic material aside for analysis by suspect

91. Section 33(1) of the Act requires the Commissioner of Police to ensure that, if forensic material is removed from a suspect, part of that material, sufficient for analysis, is set aside for the suspect. Reasonable care must be taken to ensure that the material set aside is protected from degradation and, if the suspect expresses a desire to have the material analysed, reasonable assistance is given to them so that they can prevent the material from degrading.
92. The Commissioner of Police has delegated to the Director of FSSA the responsibility for complying with section 33 of the CL(FP) Act. FSSA uses FTA68 cards to obtain DNA profiles from material gathered via buccal swabs. Obtaining a DNA profile from a card does not destroy the card; it is capable of being sampled again. Once DNA has been extracted from an FTA card, the card is stored. FTA cards are stable at room temperature and can therefore be easily stored. The cards are kept indefinitely.

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93. Some material obtained from forensic procedures is destroyed by the testing process. Examples of such material include samples of fingernails and semen. I understand that this is because DNA is not densely located in such samples so the entire sample needs to be processed in an effort to obtain a profile from it. In such cases it is not practicable for a part of the sample to be set aside for independent analysis.
94. Samples that are not consumed during analysis are retained as extracts in freezers.

Retention orders

95. 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'.
96. 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.
97. I am advised that no applications for retention orders were made during the audit period.

Assimilation orders

98. 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.⁵⁷ 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.⁵⁸
99. A senior police officer can make an assimilation order if satisfied: there are reasonable grounds to suspect that the volunteer or victim in question has committed a serious offence, 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, and the forensic material consists of material taken from the volunteer or victim for the purpose of obtaining a DNA profile from them.⁵⁹
100. I am advised that no assimilation orders were made by SA Police in the relevant period.

⁵⁷ CL(FP) Act, section 37.

⁵⁸ CL(FP) Act, section 37 and 39.

⁵⁹ CL(FP) Act, section 37.

Offenders procedures

101. 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*.

102. 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. The latter process was not conducted during the audit period.

103. The records of the three offender procedures⁶⁰ conducted during the audit period indicated that the conditions of section 20 were met; that is, the procedures were simple identity procedures, and two were conducted on persons who had been convicted of serious criminal offences and one was conducted on a person who was a registrable offender under the *Child Sex Offenders Registration Act 2006*.

104. Further, the records inspected indicated compliance with the requirements of the CL(FP) Act in that:

- the procedures were conducted by a person qualified as required by the CL(FP) Regulations⁶¹
- in each case the person was warned that reasonable force could be used to carry out the procedure and that, if the offender obstructed or resisted the procedure, evidence of that fact might be admissible in proceedings against them⁶².

105. Other legislative requirements relating to offenders procedures did not arise in the procedures audited this year; in particular:

- the persons on whom the procedures were carried out were reasonably fluent in English and therefore did not require an interpreter⁶³
- I am advised that none of the procedures required a written direction to be issued under section 29 of the CL(FP) Act.⁶⁴

⁶⁰ [REDACTED]

⁶¹ Section 24 of the CL(FP) Act.

⁶² Section 30 of the CL(FP) Act.

⁶³ Section 22 of the CL(FP) Act.

⁶⁴ Section 29 provides that in cases where the offender is not in custody, a police officer may issue directions about (a) the time, place and manner in which the forensic procedure is to be carried out, (b) the custody of the person while the procedure is being carried out and (c) any incidental manner. A written record of those directions must be given to the offender and the offender must be informed that, if they fail to comply with the directions, a warrant may be issued for their arrest.

Forensic procedures on deceased persons

106. 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 (a) in the investigation of a serious offence, or (b) in the identification of the deceased.
107. Written authorisations were given under this provision on 14 occasions during the audit period and the audit team inspected all of these records. Only three of these constituted forensic procedures.
108. 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.
109. The CL(FP) Act therefore limits itself to those forensic procedures that directly interfere with a person's bodily autonomy. It does not, for example, relate to the broader sense of forensic procedures to include further analysis of biological samples.
110. In eleven cases the required forensic material had already been collected in the course of the post-mortem examination of the body.⁶⁵ I understand that in those cases the authorisation form was completed for the purpose of recording that the relevant material was provided to the Commissioner of Police; that is, to enable the material to be further scrutinised by FSSA (e.g. by comparing with other DNA samples) but that further forensic procedures were not required. In those cases, I do not consider an authorisation under section 55(1) (which allows the 'carrying out of a forensic procedure') was required. For this reason, I consider the sample size audited for compliance against section 55 of the CL(FP) Act was in fact three.
111. While SAPOL has queried whether one of those three procedures was in fact a forensic procedure under the CL(FP) Act, having considered:
- the contemporaneous record of stated grounds for the forensic procedure
 - the nature of forensic procedure authorised
 - further information provided by SAPOL in response to the draft report,
- on balance, I consider it likely that the relevant procedure was a forensic procedure and that it was compliant.⁶⁶
112. The records inspected did not reveal any instances of non-compliance with the Act. In particular:

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- all three of the written authorisations audited specified the nature of the forensic procedure to be authorised⁶⁷
- two of the records indicated that the forensic procedures were carried out by a medical practitioner or a person qualified to carry out forensic procedures of the relevant type.⁶⁸ In one case such details were not recorded and accordingly I could not determine whether section 55(5) had been complied with
- none of the procedures required the exercise of the power in section 55(2) of the CL(FP) Act to enter and search premises in which a police officer 'reasonably believes the body of the deceased is located'. Accordingly, the requirement that reasonable attempts to contact the occupier of the premises and advise them of their intention to exercise the powers⁶⁹ did not arise in the context of this audit.

⁶⁷ As required by section 55(1) of the CL(FP) Act.

⁶⁸ Section 55(5) of the CL(FP) Act.

⁶⁹ Section 55(3) of the CL(FP) Act.

Blood testing for communicable diseases

113. Eight forensic procedures consisting of the taking of a sample of blood to test for communicable diseases were carried out during the audit period. The records for each of those procedures were inspected by Ombudsman SA Officers.
114. The taking of a sample of blood is an intrusive procedure and as the eight procedures were carried out on suspects, audio-visual records must be made.⁷⁰ Seven audio-visual records were made available for inspection by my audit team. However, in one instance of non-compliance,⁷¹ no audio-visual record was made of the procedure.
115. 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.⁷²
116. 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.
117. To comply with section 20B(2) of the CL(FP) Act, the authorising officer must:
- make a written record of the grounds on which he or she 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.⁷³
118. I am pleased that all of the PD430A forms audited contained a detailed written record of the grounds on which the procedure was authorised. However, in two instances it was unclear whether or not a copy of the written record outlining those grounds had been provided to the person. In one instance,⁷⁴ and while the procedure was carried out on 12 June 2021, the PD430A form appears to omit the check box '*Copy provided to suspect prior to procedure being conducted*'. With reference to a supplementary document provided to my audit⁷⁵ and noting that the PD430A form was amended during the previous audit period, I understand that an outdated PD430A form was used in this particular instance. As for the other record,⁷⁶ the relevant check box is unmarked without any further explanation as to why this was the case.
119. Regulation 4A(1)(a)(i) and (ii) 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.⁷⁷

⁷⁰ Section 26(1)(a) of the CL(FP) Act.

⁷¹ [REDACTED]

⁷² Section 20B(1)(a) and (b) of the CL(FP) Act.

⁷³ Section 20B(2) of the CL(FP) Act.

⁷⁴ [REDACTED]

⁷⁵ Brief compliance notes on each procedure provided by SA Police.

⁷⁶ [REDACTED]

⁷⁷ Regulation 4A(1)(a)(i) and (ii).

120. Contained within the PD430A form is a section titled '*Notice to Suspect*' that includes written notice of the requirements under regulation 4A(1)(a), in addition to the aforementioned check box. I have relied on this section within the records to assess whether each of the eight procedures were compliant with this particular regulation as well as the section 20B(2) legislative requirement that 'a copy of the record must be given to the person'. The reason being, this section within the PD430A form appears to meet both requirements. Therefore, in light of my earlier comments, records of two of the eight procedures remain unclear in this context.⁷⁸
121. In accordance with regulation 4A(b), six of the eight procedures audited indicate that the authorising officer invited the person to nominate a medical practitioner to receive a copy of the results of the testing. Following the former Deputy Ombudsman's recommendation from the previous audit, the PD430A now includes within the '*Application Approved*' section, a bold and underlined statement that the 'Authorising officer must invite the suspect to nominate a medical practitioner'. For the purposes of auditing regulation 4A(b), there now appears to be a significant improvement in respect of compliance.
122. 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).⁷⁹ I am informed that the suspect, or their nominated medical practitioner, is informed of the outcome by letter or text message once the results are received. In circumstances where a suspect's blood tests positive for a communicable disease, and they cannot be contacted and have not nominated a medical practitioner, SA Police notify SA Health's Viral Hepatitis Nurses, who follow up in accordance with their local processes. The supplementary document provided to the audit in respect of the eight procedures indicates that each person was duly notified of the results of the test by letter.
123. Reasonable steps must also be taken to notify each affected employee of the results of the testing.⁸⁰ I am satisfied that this was complied with in relation to the eight procedures that were conducted.
124. Further to the above considerations, given that the taking of a sample of blood is an intrusive procedure for the purposes of the CL(FP) Act, the audit also considered whether in each instance, persons were allowed a reasonable opportunity to arrange for the attendance of a medical practitioner of their choice to witness the procedure⁸¹ and whether a police officer:
- informed those persons that reasonable force may be used to carry out the procedure; and
 - if those persons obstruct or resist the carrying out of the procedure, evidence of that fact may be admissible in proceedings against them.⁸²
125. The PD430A form in relation to each procedure evidenced that these requirements were complied with.
126. In the audio-visual record of one particular procedure,⁸³ the approximately two minute audio-visual record appears to show an unconscious man in the Intensive Care Unit (ICU) at the Royal Adelaide Hospital having a sample of blood taken from his foot. The PD430A form indicates compliance with all of the above considerations. I consider that

⁷⁸ [REDACTED].

⁷⁹ Regulation 4B(1) and (2).

⁸⁰ Regulation 4C.

⁸¹ Section 25(1)(a) of the CL(FP) Act.

⁸² Section 30(a) and (b) of the CL(FP) Act.

⁸³ [REDACTED].

it would have been best practice if the ICU social worker, who was nominated on the PD430A form as the appropriate representative, was identified in the audio-visual record. On the basis of the audio-visual record alone, the draft audit report raised concerns about whether this procedure could be said to have been carried out humanely given the person's comatose state at the time the sample of blood was taken. In light of those concerns, SA Police provided further information as to how the relevant legislative requirements were met in this instance. On balance, having regard to SA Police's response, I do not consider it necessary to make any further comment on this procedure.

127. Lastly, and while the audit did not specifically consider compliance with sections 34A and 39A of the CL(FP) Act, I note that in relation to blood testing of persons with communicable diseases, SA Police's General Order Forensic Procedures expressly states that:

- forensic material obtained as a result of this procedure must be destroyed as soon as is reasonably practicable after the material has been tested for communicable diseases
- forensic material obtained under this provision must not be used for any other purpose than testing for communicable diseases.

The DNA database system

128. Part 5 of the CL(FP) Act sets out the requirements for the storage of information about forensic procedures on the DNA database system.
129. 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*.
130. By virtue of section 42(2)(a) of the current Act, the Attorney-General is permitted to enter into arrangements with her counterparts in other Australian jurisdictions for the exchange of information recorded in the South Australian DNA database system and databases kept under corresponding laws.
131. Further, section 42(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,⁸⁴ 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.
132. Section 42 of the CL(FP) Act makes it an offence for any person to access information stored on the South Australian database except in accordance with that section. Provided a person is authorised by the Commissioner of Police to do so, they may access the South Australian database for the purpose of, inter alia, comparing a DNA profile stored on the South Australian database with any other profiles stored on that database,⁸⁵ or for the purpose of an arrangement entered into by the Attorney-General with another Australian jurisdiction.⁸⁶
133. I understand that the Attorney (or her predecessor) has entered into ministerial arrangements with other Australian jurisdictions, known as the Ministerial Arrangement for the Sharing of DNA Profiles and Related Information.
134. Since September 2017, FSSA has used the Laboratory Information Management System (LIMS) to store DNA profiles and their identifying information. However, LIMS is not used to search for and match DNA profiles. Rather, FSSA uploads samples

⁸⁴ Now known as the Australian Criminal Intelligence Commission (**the ACIC**).

⁸⁵ Section 45(2)(a) of the CL(FP) Act. Note that the authorisation to compare DNA profiles stored on the South Australian database with each other does not extend to profiles stored on the volunteers (limited purposes) index if the victim or volunteer whose profile is so stored has imposed a condition on their consent to storage that prohibits such a comparison. See section 45(3)(a).

⁸⁶ Section 45(2)(g) of the CL(FP) Act.

obtained in South Australia onto the national database, known as the National Criminal Intelligence DNA Database (NCIDD).⁸⁷

135. The NCIDD has been operated by the ACIC (or its predecessor, Crimtrac) since 2001 and contains profiles from samples collected from crime scenes, convicted offenders, suspects, volunteers, items belonging to missing persons and unknown deceased persons. Once FSSA has obtained a DNA profile from material collected by or on behalf of SA Police, it is uploaded onto the NCIDD. Searches can then be conducted against indices in the NCIDD in accordance with the CL(FP) Act and other state legislation to detect matches to that profile.
136. The CL(FP) Act creates a number of offences in relation to the storage of information including:
- it is an offence to store DNA profiles derived from forensic procedures carried out under the CL(FP) Act on any database other than the DNA database system.⁸⁸
 - it is an offence to cause the supply of biological material for the purpose of storing a DNA profile on the DNA database system or to store a DNA profile on the DNA database system in circumstances in which such storage is not authorised by the CL(FP) Act or a corresponding law.⁸⁹
 - it is an offence to access information stored on the DNA database system⁹⁰ unless the person so doing has been authorised by the Commissioner of Police and only for one or more of the following purposes⁹¹:
 - to compare a DNA profile stored on the database with other DNA profiles so stored
 - for the purpose of proceedings for a serious offence or proceedings under the *Criminal Assets Confiscation Act 2005*
 - to determine whether it is necessary to carry out a forensic procedure under the CL(FP) Act or a corresponding law
 - for the purpose of a coronial inquest or inquiry
 - to make the information available to the person to whom it relates
 - to administer the database
 - for the purpose of an arrangement entered into by the South Australian Attorney-General and Ministers responsible for the administration of corresponding laws
 - for the purpose of the *Mutual Assistance in Criminal Matters Act 1987 (Cth)* or the *Extradition Act 1988 (Cth)*
 - for an Ombudsman's investigation
 - for an investigation under the *Police Complaints and Discipline Act 2016*
 - for this audit.
 - It is an offence to retain information on the database where a former missing person has requested their DNA profiles to be removed.⁹²
137. In the course of the former Deputy Ombudsman's 2019-20 audit, FSSA provided details of systems in place to prevent the unauthorised storage of DNA profiles on LIMS. In 2020, the Assistant Director, Operations, updated this advice to reflect changes made since the 2019 audit. It is as follows:

⁸⁷ Provision for the NCIDD is found in Division 8A of Volume 2 of the *Crimes Act 1914* (Cth).

⁸⁸ CL(FP) Act, section 42(1). There are four exceptions to this general provision (including where information is stored on databases kept under corresponding laws or kept by the Commonwealth pursuant to an arrangement entered into by the South Australian Attorney-General and Ministers responsible for the administration of corresponding laws or with the Australian Crime Commission).

⁸⁹ CL(FP) Act, section 42(2).

⁹⁰ CL(FP) Act, section 45(1).

⁹¹ CL(FP) Act, section 45(2).

⁹² CL(FP) Act, section 46.

- before samples are received by FSSA, SA Police have determined which index of the database they are to be assigned to. This is not changed by FSSA
- the software in LIMS only permits FSSA analysts to upload DNA profiles that have been assigned to one of the indices set out in section 40 of the CL(FP) Act, namely, a crime scene index, a missing persons index, an unknown deceased persons index, a suspects/offenders index, a volunteers (unlimited purposes) index and a volunteers (limited purposes) index
- to ensure the correct assignment of a profile, LIMS is configured to require independent double entries of the index. While there remains a possibility of human error at the point of both entries, FSSA takes the view that this would rarely occur
- once a profile has been uploaded onto LIMS and assigned to the correct index, there are few individuals with a sufficient level of access and understanding to enable them to either inadvertently or deliberately change the index on which the profile has been stored. These individuals comprise five FSSA Biology Editors and 39 IT staff members, working within both FSSA and the wider Attorney-General's Department
- each of these FSSA staff members have successfully completed internal training modules
- all FSSA staff are required to obtain a National Police Clearance certificate every second year
- FSSA views a scenario where a DNA profile obtained otherwise than under the CL(FP) Act or a fabricated DNA sample is uploaded onto LIMS as being rare. This is because it would require the involvement of multiple complicit individuals to falsify entries into LIMS. In addition, because DNAMU monitor all uploads onto LIMS, it is likely that they would identify any unexpected upload.

I have been advised by the Chief Executive of the Attorney-General's Department that there have been no further changes made during the period of the 2020-2021 audit.

138. FSSA was also asked to advise how many persons were authorised to access information stored on LIMS during the audit period. The response to this was received from the Chief Executive of the Attorney-General's Department, who advised that there are several different access levels for FSSA staff, as follows:

- six LIMS System Administrators and four Biology Editors have access to all LIMS functions
- nine Database Scientists have access to LIMS for the purpose of assessing profiles in LIMS and to upload to and remove profiles from the NCIDD
- 18 Reporting Scientists and 18 Technical Officers can assess and flag profiles in LIMS as suitable for upload but cannot themselves upload profiles onto the NCIDD
- six administrative staff members can enter administrative data into LIMS and can delete profile information
- although a total of 51 IT staff members (from both within FSSA and the wider Attorney-General's Department) have access to FSSA servers and could access LIMS, they lack the technical knowledge necessary to understand any information they might view on LIMS.

139. In responding to a question from this Office during the last audit period about the systems in place to prevent unauthorised access to LIMS, FSSA referred to the systems in place to prevent unauthorised storage of DNA profiles on the system. In

addition, FSAA advised that FSSA's Laboratory Operations Manager undertakes six monthly audits of access to LIMS, and access to the system requires staff to log in to their individual computers. A log-in is also required to access the NCIDD. I note the Chief Executive of the Attorney-General's Department has not reported any change to this during the audit period.

140. The Chief Executive of the Attorney-General's Department provided the following overview of the six-monthly access audit process:
 - an Applications and Maintenance Support (AMS) staff member is responsible for preparing a current status list of staff access to the LIMS for the previous 6 months
 - the AMS staff member forwards the list to the Biology Manager for review
 - the Biology Manager reviews the authorised list and documents any changes required
 - the Systems Administrator (an assigned AMS staff member) confirms the current status and logs the nominated changes into FSSA's IT Change Management System (JIRA)
 - changes are requested by logging a Service Request with FSSA's ICT service provider, if necessary
 - the reviewed documents are marked with the JIRA request numbers, and forwarded to the Laboratory Operations Manager for final sign off
 - the completed review documentation is filed in FSSA RecFind folders by the nominated AMS delegate.
141. The Chief Executive advised that an audit of access to the LIMS was completed on 16 July 2020. After that audit, a new automated review process was created and implemented. I have been advised that the implementation of this new process, along with resourcing being impacted by COVID-19, delayed the subsequent audit until 4 August 2021. I note that a second, six-monthly audit of LIMS usage was therefore not undertaken during the period of my audit. However, on 12 March 2021, a review of staff access to their individual computers and Active Directory Group permissions was finalised.
142. I have reviewed the material provided to me in relation to the above audits and reviews. I note that the audits identify staff members with access to LIMS and the nature of their access.
143. During the 2020 Audit FSSA was asked to detail any systems in place to prevent unauthorised disclosure of information stored on LIMS. The Assistant Director, Science and Support, advised that FSSA is unable to prevent a wilful act by an employee with access to LIMS to release profile information. However risk mitigation strategies in place include:
 - limiting access to the database to staff who are operationally required to perform certain functions
 - those staff members have completed internal training
 - staff members are required to obtain a National Police Clearance certificate every two years
 - staff are regularly reminded of their obligations under the Code of Ethics for the South Australian Public Sector.⁹³

⁹³ The Code relevantly states: 'Public sector employees will not disclose official information acquired through their employment other than is required by law or where appropriately authorised in the agency concerned'. See

I note the Chief Executive of the Attorney-General's Department did not inform this Office of any changes in this regard during the audit period.

144. 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.⁹⁴ Further, such DNA profiles cannot be compared to other profiles stored on the database if the person has imposed a condition to that effect.⁹⁵

<https://publicsector.sa.gov.au/wp-content/uploads/20180411-Code-of-Ethics-for-the-South-Australian-Public-Sector.pdf> (last accessed on 23 August 2019).

⁹⁴ CL(FP) Act, section 43(1).

⁹⁵ CL(FP) Act, section 45(3)(a).

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	Proportion of sample size where requirement not relevant or where requirement not audited	Comment
Person was not suspected of having committed the offence that was being investigated (s7(2))	84	N/A	N/A	N/A	84	Not audited
Relevant person consented to procedure (s7(2)) by providing express consent or some other unequivocal indication of consent (s 8)	84	100%	0%	0%	N/A	
Relevant person withdrew consent and procedure discontinued (s10(1))	84	N/A	N/A	N/A	84	This requirement did not apply to any of the procedures audited.
Relevant person withdrew consent but senior police officer authorised continuation of procedure (s10(3))	84	N/A	N/A	N/A	84	This requirement did not apply to any of the procedures audited.
Senior police officer authorised carrying out of procedure (s7(2))	84	N/A	N/A	N/A	84	This requirement did not apply to any of the procedures audited as none of the procedures audited resulted from a senior police officer authorisation.

Provision	Sample size	Proportion of sample size that complied	Non-compliant procedures	Proportion of sample size where it was unclear whether procedure was compliant	Proportion of sample size where requirement not relevant or where requirement not audited	Comment
Senior police officer satisfied that it was impracticable/inappropriate to obtain consent from relevant person and that carrying out of procedure is justified (s9)	84	N/A	N/A	N/A	84	This requirement did not apply to any of the procedures audited.
Senior police officer's authorisation was in writing and specified procedure authorised (s9)	84	N/A	N/A	N/A	84	This requirement did not apply to any of the procedures audited.
Explained to protected person that procedure would not be carried out if protected person objected to it (s11(1))	9	100%	0%	0%	75	
Procedure discontinued where protected person objected to or resisted it (s11(2))	9	N/A	N/A	N/A	75	No record of objections made by protected persons.
Forensics procedure carried out humanely? (s21(1))	0	N/A	N/A	N/A	0	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	19	100%	0%	0%	65	

Provision	Sample size	Proportion of sample size that complied	Non-compliant procedures	Proportion of sample size where it was unclear whether procedure was compliant	Proportion of sample size where requirement not relevant or where requirement not audited	Comment
reasonably practicable (s21(3))						
Not carried out in the presence or view of more people than necessary (s21(2))	19	89%	0%	11%	65	This requirement was only audited in the context of sexual assault examinations on victims and volunteers.
Duty to observe relevant medical or other professional standards (s23)	0	N/A	N/A	N/A	0	Not audited given the absence of audio-visual records.
Person qualified to carry out the procedure (s24(1))	84	100%	N/A	N/A	0	
Person not reasonably fluent in English is to be assisted by an interpreter (s22)	1	100%	N/A	0%	83	
Where the procedure on protected person, an appropriate person present to witness procedure (s25(2))	9	100%	0%	0%	75	
Where an intrusive procedure, the victim or volunteer must be allowed reasonable opportunity to arrange for attendance of medical practitioner of their	19	5%	0%	95%	65	It is unclear whether, in the circumstances of each case, the provision of the brochure meant the person was allowed a reasonable opportunity for

Provision	Sample size	Proportion of sample size that complied	Non-compliant procedures	Proportion of sample size where it was unclear whether procedure was compliant	Proportion of sample size where requirement not relevant or where requirement not audited	Comment
choice to witness procedure (s25(1))						the attendance of the medical practitioner.
Audio-visual record must be made of an intrusive procedure where requested by victim or volunteer (s26(1)(b))	19	0%	0%	100%	65	Insufficient information to audit this requirement. However, the absence of an indication to the contrary, suggests that no requests were made for an audio-visual record.
Relevant person given a written statement explaining their right to request destruction of forensic material (s12(1))	84	99%	1%	0%	0	
Forensic material destroyed within 21 days of receipt of request (s39(5))	4	100%	0%	0%	N/A	

Retention Orders

Provision	Sample size	Proportion of sample size that complied	Non-compliant procedures	Proportion of sample size where it was unclear whether procedure was compliant	Proportion of sample size where requirement not relevant or where requirement not audited	Comment
Forensic material was obtained by carrying out a volunteers and victims procedures (s36(1))	0	0%	0%	0%	N/A	No retention orders were made during the audit period.
The relevant person who gave consent has requested destruction of the forensic material (s36(1))	0	0%	0%	0%	N/A	
Does the order specify the period for the forensic material to be retained (s36(1))	0	0%	0%	0%	N/A	
The officer was satisfied that the person who gave consent, or a person associated with him or her, is suspected of a serious offence (s36(2))	0	0%	0%	0%	N/A	
The officer was satisfied that there are reasonable grounds to suspect that the forensic material to which the application relates could be of probative value in relation	0	0%	0%	0%	N/A	

Provision	Sample size	Proportion of sample size that complied	Non-compliant procedures	Proportion of sample size where it was unclear whether procedure was compliant	Proportion of sample size where requirement not relevant or where requirement not audited	Comment
to the investigation of the suspected offence (s36(2))						
The senior police officer was satisfied that the order was justified in all the circumstances (s36(2))	0	0%	0%	0%	N/A	
Application made in writing by a police officer stating the grounds on which the order is sought (s38(1))	0	0%	0%	0%	N/A	
A copy of the application given to the respondent, if able to be located s38(2)	0	0%	0%	0%	N/A	
Was a hearing carried conducted by the senior police officer (s38(4))	0	0%	0%	0%	N/A	
If the hearing has occurred and the determination made in the absence of the respondent, the senior police officer was satisfied that the respondent could not be located to be served or had been served	0	0%	0%	0%	N/A	

Provision	Sample size	Proportion of sample size that complied	Non-compliant procedures	Proportion of sample size where it was unclear whether procedure was compliant	Proportion of sample size where requirement not relevant or where requirement not audited	Comment
but has failed to attend the hearing (s38(6))						
If an order was made, the senior police officer made a written record of the order and reasons (s38(9))	0	0%	0%	0%	N/A	

Assimilation Orders

Provision	Sample size	Proportion of sample size that complied	Non-compliant procedures	Proportion of sample size where it was unclear whether procedure was compliant	Proportion of sample size where requirement not relevant or where requirement not audited	Comment
The senior police officer was satisfied that there were reasonable grounds to suspect that the person on whom the procedure was carried out has committed a serious offence (s37)	0	0%	0%	0%	N/A	No assimilation orders were made in the audit period.
The senior police officer was satisfied that there were reasonable grounds to suspect that the forensic material may be of value to the investigation of the suspected offence or that the forensic material consists of forensic material taken from the person's body for the purpose of obtaining a DNA profile of the person (s37)	0	0%	0%	0%	N/A	
Application made in writing by a police officer stating the grounds on	0	0%	0%	0%	N/A	

Provision	Sample size	Proportion of sample size that complied	Non-compliant procedures	Proportion of sample size where it was unclear whether procedure was compliant	Proportion of sample size where requirement not relevant or where requirement not audited	Comment
which the order is sought (s38(1))						
A copy of the application given to the respondent, if able to be located s38(2)	0	0%	0%	0%	N/A	
Was a hearing carried conducted by the senior police officer (s38(4))	0	0%	0%	0%	N/A	
If the hearing has occurred and the determination made in the absence of the respondent, the senior police officer was satisfied that the respondent could not be located to be served or had been served but has failed to attend the hearing (s38(6))	0	0%	0%	0%	N/A	
If the respondent attends the hearing, they are entitled to be represented by a legal practitioner (section 38(5))	0	0%	0%	0%	N/A	
The respondent or their representative must be given a reasonable opportunity to make	0	0%	0%	0%	N/A	

Provision	Sample size	Proportion of sample size that complied	Non-compliant procedures	Proportion of sample size where it was unclear whether procedure was compliant	Proportion of sample size where requirement not relevant or where requirement not audited	Comment
representations at the hearing (section 38(7))						
If an order was made, the senior police officer made a written record of the order and reasons (s38(9))	0	0%	0%	0%	N/A	
If the respondent can be located, a copy of that order must be given to them (section 38(10))	0	0%	0%	0%	N/A	

Suspects 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	Proportion or amount of sample size where requirement not relevant or where requirement not audited	Comment
Written application for senior police officer's order made (s15(2))	65	100%	0%	0%	N/A	
Did the application state the nature of the suspected offence and the grounds for suspecting the respondent had committed the offence (s15(2)(b))	65	100%	0%	0%	N/A	
The suspected offence was a serious offence	65	100%	0%	0%	N/A	
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	65	100%	0%	0%	N/A	
Copy of application given to respondent (s15(3))	65	92%	0%	8%	N/A	In 5 cases, it was unclear whether this had occurred.
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))	65	98%	0%	2%	N/A	In one instance it was unclear if this requirement had been met.

Provision	Sample size	Proportion of sample size that complied	Non-compliant procedures	Proportion of sample size where it was unclear whether procedure was compliant	Proportion or amount of sample size where requirement not relevant or where requirement not audited	Comment
Senior police officer conducted informal hearing (s16)	65	100%	0%	0%	N/A	
The respondent a protected person and, if so, were they represented by an appropriate representative at the hearing (s17(2))	10	100%	0%	0%	55	
The appropriate representative a relative or friend chosen by the protected person and, if not, was an appropriate explanation provided? (s 17(2))	10	90%	0%	10%	55	
Senior police officer satisfied that there were reasonable grounds to suspect respondent had committed serious offence (s19(1)(a))	65	100%	0%	0%	N/A	
Senior police officer satisfied that there were reasonable grounds to suspect that procedure could produce evidence of value to investigation (s19(1)(b))	65	100%	0%	0%	N/A	

Provision	Sample size	Proportion of sample size that complied	Non-compliant procedures	Proportion of sample size where it was unclear whether procedure was compliant	Proportion or amount of sample size where requirement not relevant or where requirement not audited	Comment
Senior police officer satisfied that public interest in obtaining evidence outweighed public interest in ensuring individuals are protected from unwanted interference (s19(1)(c))	65	77%	0%	23%	N/A	In 15 instances, senior police officers concluded that the public interest in obtaining evidence outweighed the public interest in ensuring individuals are protected from unwanted interference, however they failed to make adequate records of how they arrived at that conclusion.
Protected person respondent represented by appropriate representative at hearing (s17(2))	10	100%	0%	0%	N/A	
Respondent or representative given reasonable opportunity to make representations at hearing (s17(4))	65	100%	0%	0%	N/A	

Provision	Sample size	Proportion of sample size that complied	Non-compliant procedures	Proportion of sample size where it was unclear whether procedure was compliant	Proportion or amount of sample size where requirement not relevant or where requirement not audited	Comment
If an application for special urgency, respondent unable to be located or would the probative value of the evidence be destroyed if delayed	0	NA	NA	NA	65	There were no special urgency applications in the sample.
Senior police officer made written record of order and reasons for making it (s19(4))	65	83%	3%	14%	N/A	While all Senior Police Officers made a written record of their orders, in some cases, their reasons were inadequately recorded.
Copy of order given to respondent (s19(4))	65	100%	0%	0%	N/A	
Suspect informed by a police officer that reasonable force might be used to carry out the procedure (s30)	65	100%	0%	0%	N/A	
Suspect informed by a police officer that if suspect obstructs/resists procedure, evidence of that fact may be	65	100%	0%	0%	N/A	

Provision	Sample size	Proportion of sample size that complied	Non-compliant procedures	Proportion of sample size where it was unclear whether procedure was compliant	Proportion or amount of sample size where requirement not relevant or where requirement not audited	Comment
admissible in proceedings against them (s30))						
Forensic procedures to be carried out humanely (s21(1))	28	100%	0%	0%	35	30 audio-visual records were viewed to monitor compliance with this provision. This requirement was not audited in relation to records for which only paper records were audited.
Duty to observe relevant medical or other professional standards (s23)	28	100%	0%	0%	35	This was audited on the audio-visual records only.
If not reasonably fluent in English, was an interpreter afforded to the suspect (s22)	5	100%	0%	0%	56	In five cases, an interpreter was provided to assist the suspect. In two cases, it was unclear if the suspect requested the person to attend the procedure.

Provision	Sample size	Proportion of sample size that complied	Non-compliant procedures	Proportion of sample size where it was unclear whether procedure was compliant	Proportion or amount of sample size where requirement not relevant or where requirement not audited	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	27%	37%	36%	24	In many cases, it is unclear whether a urine sample involved exposure of the suspects genitals to the person carrying out the procedure.
Intrusive forensic procedure and suspect allowed reasonable opportunity to arrange for attendance of medical practitioner to witness same (s25(1))	53	96%	0%	4%	12	In two instances it was not apparent on the records whether this had been complied with.
If the procedure an intrusive procedure, an audio-visual record made of the same	51	88%	0%	12%	13	
Appropriate representative present to witness authorised procedure on protected person (s25(2))	10	70%	0%	30%	55	
Not more people present than necessary (s21(2))	28	100%	0%	0%	37	
If respondent was a protected person with an appropriate representative in attendance at the	10	70%	0%	30%	N/A	

Provision	Sample size	Proportion of sample size that complied	Non-compliant procedures	Proportion of sample size where it was unclear whether procedure was compliant	Proportion or amount of sample size where requirement not relevant or where requirement not audited	Comment
procedure, that representative selected in accordance with the hierarchy? (s25(2))						
The person who carried out the procedure qualified to carry out that procedure(s 24(1))	60	100%	0%	0%	N/A	
Suspect not in custody and police officer issued directions to undergo procedure (s14(3))	0	N/A	N/A	N/A	65	Not audited.
Written record of directions given to suspect (s29(2))	0	N/A	N/A	N/A	65	Not audited.
Suspect informed that, if they fail to comply with directions, warrant for arrest may be issued (s29(2))	0	N/A	N/A	N/A	65	Not audited.

Offenders 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	Proportion of sample size where requirement not relevant or where requirement not audited	Comment
Simple identity procedure carried out (s20(1))	3	100%	0%	0%	N/A	
The person met one of the criteria of being an offender set out in s20(2) (e.g., person is convicted of a serious offence)	3	100%	0%	0%	N/A	
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)	3	100%	0%	0%	N/A	
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)	3	100%	0%	0%	N/A	
Offender assisted by interpreter because not reasonably fluent in English (s22)	3	0%	0%	0%	100%	All offenders were fluent in English.
Where offender not in custody and police officer issued	3	0%	0%	0%	100%	No such directions were issued during audit period.

Provision	Sample size	Proportion of sample size that complied	Non-compliant procedures	Proportion of sample size where it was unclear whether procedure was compliant	Proportion of sample size where requirement not relevant or where requirement not audited	Comment
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))						

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	Proportion of sample size where requirement not relevant or where requirement not audited	Comment
Did a senior police officer authorise the carrying out of the forensic procedure?	3	100%	0%	0%	N/A	
Senior police officer satisfied that evidence obtained from procedure likely to assist with investigation of serious offence or identification of deceased (s55(1))	3	100%	0%	0%	N/A	
Authorisation in writing and specified procedure to be carried out (s55(1))	3	100%	0%	0%	N/A	
Procedure carried out by medical practitioner or person qualified as required by the regulations to carry out the procedure (s55(5))	3	67%	0%	33%	N/A	In one case, it was unclear from the records whether the procedure had been carried out by a medical practitioner or a qualified person because those details had not been recorded.
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))	3	N/A	N/A	N/A	100%	None of the authorised procedures required police officers to exercise the power to enter premises to carry out the procedure.

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	Proportion of sample size where requirement not relevant or where requirement not audited	Comment
Senior police officer satisfied that person suspected of a prescribed serious offence (s20B(1)(a))	8	100%	0%	0%	N/A	
Audio-visual record of procedure made (s 26(1))	8	88%	12%	0%	N/A	One instance of an audio-visual record not made.
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))	8	100%	0%	0%	N/A	
Senior police officer made written record of grounds on which they determined that sample of blood should be taken (s20B(2))	8	100%	0%	0%	N/A	
Copy of written record given to suspected person (s20B(2))	8	75%	0%	25%	N/A	In two cases, it was unclear whether this occurred.
Person not reasonably fluent in English is to be assisted by an interpreter (s22)	8	0%	0%	0%	8	All persons fluent in English based on records audited.

Provision	Sample size	Proportion of sample size that complied	Non-compliant procedures	Proportion of sample size where it was unclear whether procedure was compliant	Proportion of sample size where requirement not relevant or where requirement not audited	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)	8	75%	0%	25%	N/A	In two cases, it was unclear whether this occurred.
Before procedure carried out, senior police officer invited suspected person to nominate a medical practitioner to receive copy of test results (reg. 4A)	8	75%	0%	25%	N/A	In two cases, it was unclear whether this occurred.
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)	8	100%	0%	0%	N/A	
Forensics procedure carried out humanely (s 21 (1))	8	75%	0%	25%	N/A	Unable to consider requirement in one instance as no audio-visual record. In other instance, refer to paragraph 126.
Not carried out in the presence or view of more people than necessary (s 21 (2))	8	88%	0%	12%	N/A	Unable to consider requirement in one instance as no audio-visual record.

Provision	Sample size	Proportion of sample size that complied	Non-compliant procedures	Proportion of sample size where it was unclear whether procedure was compliant	Proportion of sample size where requirement not relevant or where requirement not audited	Comment
Person qualified to carry out the procedure (s 24 (1))	8	100%	0%	0%	N/A	
Suspect allowed reasonable opportunity to arrange for attendance of medical practitioner to witness procedure (s 25 (1))	8	100%	0%	0%	N/A	
Where the procedure on protected person, an appropriate person present to witness procedure (s25(2))	1	100%	0%	0%	7	One procedure carried out on protected person. Records indicate appropriate person (ICU Social Worker) present for procedure.
Reasonable steps taken by SAPOL to notify suspected person/nominated medical practitioner of results of testing (reg.4B)	8	100%	0%	0%	N/A	
Reasonable steps taken by SAPOL to notify affected person/nominated medical practitioner of results of testing (reg.4C)	8	100%	0%	0%	N/A	
Blood samples taken under section 20B must not be used for any purpose other than testing for communicable diseases (s 34A)	0	N/A	N/A	N/A	100%	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

Provision	Sample size	Proportion of sample size that complied	Non-compliant procedures	Proportion of sample size where it was unclear whether procedure was compliant	Proportion of sample size where requirement not relevant or where requirement not audited	Comment
						reasonably practicable after it is tested for communicable diseases.
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	100%	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.⁹⁶

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.⁹⁷

Investigating police officer means a police officer in charge of the investigation of a suspected offence.⁹⁸

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.⁹⁹

Qualified person means -

- (a) a medical practitioner¹⁰⁰; or
- (b) a registered nurse (for any procedure other than a dental impression)¹⁰¹; or
- (c) a police officer authorised by the Commissioner of Police to take prints of the hands, fingers, feet or toes¹⁰²; or
- (d) a police officer authorised by the Commissioner of Police to non-intrusively examine a part of a person's body¹⁰³; or
- (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 body¹⁰⁴

⁹⁶ Section 25(3).

⁹⁷ Section 3(1).

⁹⁸ Section 3(1).

⁹⁹ Section 6.

¹⁰⁰ Section 24(1)(a).

¹⁰¹ Regulation 5(1)(a).

¹⁰² Regulation 5(1)(b)(i).

¹⁰³ Regulation 5(1)(b)(ii).

¹⁰⁴ Regulation 5(1)(c)(i).

- (ii) taking samples of fingernails toenails, or material from under a fingernail or toenail¹⁰⁵
- (iii) taking samples of biological or other material from an external part of the body¹⁰⁶
- (iv) buccal swabs¹⁰⁷
- (v) taking samples of blood by finger prick¹⁰⁸
- (vi) taking impressions of casts or wounds.¹⁰⁹

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 kin¹¹⁰
- (c) if the person is not a child but is a protected person by reason of their incapacity - their guardian¹¹¹, or if they don't have a guardian, the closest available next of kin.^{112 113}

Respondent means the person on whom it is proposed to carry out a forensic procedure (other than a simple forensic procedure).¹¹⁴

Senior police officer means a police officer of or above the rank of inspector.¹¹⁵

Serious offence means an indictable offence or a summary offence that is punishable by imprisonment¹¹⁶

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

- (a) a simple identity procedure;
- (b) a gunshot residue procedure.¹¹⁷

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.¹¹⁸

¹⁰⁵ Regulation 5(1)(c)(ii).

¹⁰⁶ Regulation 5(1)(c)(iii).

¹⁰⁷ Regulation 5(1)(c)(iv).

¹⁰⁸ Regulation 5(1)(c)(v).

¹⁰⁹ Regulation 5(1)(c)(vi).

¹¹⁰ 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.

¹¹¹ Section 3(1) defines 'guardian' to mean a person acting or appointed under any Act or law as the guardian of another.

¹¹² 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.

¹¹³ Section 6.

¹¹⁴ Section 13.

¹¹⁵ Section 3(1) of the CL(FP) Act.

¹¹⁶ Section 3(1).

¹¹⁷ Section 3(1).

¹¹⁸ Section 3(1).

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 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.