

Standing Committee on Social Policy and Legal Affairs

The Committee asked the below questions following the hearing on 10 February 2012:

- 1. Was the reclassification of forensic procedures from intimate to non-intimate in response to existing problems with access to judges or Magistrates to order these procedures?**

No. The AFP sought the amendments on the basis that these forensic procedures are simple, relatively non-invasive DNA sampling techniques.

The reclassification of buccal swabs as a non-intimate forensic procedure will align Commonwealth legislation with the approach taken under most State and Territory legislation and with international jurisdictions such as the United Kingdom.

- 2. The proposed legislation inserts constables in table 9A and 9B of section 23XM (p. 14 of the EM), stating that the table expands the classes of persons currently able to undertake the collection of these DNA forensic samples to include constables. Could the AFP clarify what powers constables have currently in respect to taking forensic samples and what changes the legislation will make?**

1. Currently a constable can carry out forensic procedures which involve:
 - (i) the taking of a sample of hair (other than pubic hair)
 - (ii) the taking of a sample from a nail or under a nail
 - (iii) the taking of a sample of blood by finger prick
 - (iv) the taking of a sample of saliva, or a sample by buccal swab
 - (v) the taking of a photograph of an external part of the body other than the genital or anal area, the buttocks or, in the case of a female, the breasts
 - (vi) an external examination of a part of the body other than the genital or anal area, the buttocks or, in the case of a female, the breasts, that requires touching of the body or removal of clothing.
2. The Bill does not change the types of forensic procedures which can be carried out by a constable. The Bill simply changes the source of the constable's authority to carry out some of those forensic procedures.
3. Section 23XM of the *Crimes Act 1914* sets out who may carry out a forensic procedure.
 - In relation to the forensic procedures specified in items (i) and (ii) above, section 23XM provides that, among other persons, a constable may carry out the procedures.

- In relation to the forensic procedures specified in items (iii) to (vi) above, section 23XM provides that, among other persons, an “appropriately qualified person” may carry out the forensic procedures.
 - Regulation 6B of the *Crimes Regulations 1990* (the Regulations) provides that, in relation to items (iii) to (vi) above, a constable is an “appropriately qualified person” to carry out those forensic procedures.
- 4. The Bill will amend section 23XM to provide that a constable may carry out the forensic procedures specified in items (iii) and (iv) above (even though constables can already carry out such procedures under the Regulations).
- 5. The following table indicates the current source of a constable’s authority to undertake forensic procedures, and changes to the source of that authority made by the Bill.

Forensic procedures that can be carried out by a constable		Current source of authority	Source of authority if Bill is passed
(i)	the taking of a sample of hair (other than pubic hair)	section 23XM	unchanged
(ii)	the taking of a sample from a nail or under a nail	section 23XM	unchanged
(iii)	the taking of a sample of blood by finger prick	regulation 6B	section 23XM or regulation 6B
(iv)	the taking of a sample of saliva, or a sample by buccal swab	regulation 6B	section 23XM or regulation 6B
(v)	photograph of an external part of the body	regulation 6B	unchanged
(vi)	an external examination of a part of the body	regulation 6B	unchanged