

Crimes (Fingerprinting) Bill

No.

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LEGISLATIVE ASSEMBLY

Read 1° 13 April 1988

(Brought in by Mr McCutcheon and Mr Fordham)

A BILL

to amend the *Crimes Act* 1958 to allow police to fingerprint suspected persons in certain circumstances and for other purposes.

Crimes (Fingerprinting) Act 1988

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

Purpose.

- 5 1. The purpose of this Act is to enable members of the police force to fingerprint certain persons either by consent or by order of a court.

Commencement.

2. This Act comes into operation on a day or days to be proclaimed.

Principal Act.

3. In this Act, the *Crimes Act* 1958 is called the Principal Act.

No. 6231
Reprinted to No.
19/1987 and
amended by Nos.
70/1987 and
78/1987.

PART 2—AMENDMENT OF THE CRIMES ACT 1958

New sections 464K to 464R inserted.

4. In Division 1 of Part III of the Principal Act immediately before the heading to Subdivision (31) insert—

Member of police force may take fingerprints. 5

“464K. A member of the police force may take the fingerprints of a suspect if—

- (a) the suspect gives his or her informed consent; or
- (b) a Magistrates’ Court makes an order under section 464M (3).” 10

Informed consent.

“464L. (1) A suspect may give informed consent to a request for his or her fingerprints if a member of the police force informs the suspect in language likely to be understood by the suspect—

- (a) of the purpose for which the fingerprints are required; and 15
- (b) of the offence of which the suspect is suspected; and
- (c) that the fingerprints may be used in evidence in court; and
- (d) that the suspect may refuse to give his or her fingerprints.

(2) Subject to sub-section (3), the member of the police force who informs a suspect of the matters in sub-section (1) must— 20

- (a) tape-record; or
- (b) record in writing signed by the suspect—

the giving of that information and the suspect’s responses, if any.

(3) If a suspect is in custody within the meaning of this Subdivision in relation to an indictable offence, the giving of information under sub-section (1) and the suspect’s responses, if any, must be tape-recorded. 25

(4) If information and a suspect’s responses are tape-recorded in accordance with this section, the member of the police force giving the information must give or send by post to the suspect or his or her legal practitioner without charge— 30

- (a) the tape-recording or a copy of it within 7 days; and
- (b) if a transcript of the tape-recording is prepared, a copy of the transcript.

(5) If information and a suspect’s responses are recorded in writing in accordance with this section, the member of the police force requesting the suspect’s fingerprints must give or cause to be given to the suspect a copy of the signed record.” 35

Court may order fingerprinting.

5 “464M. (1) If a suspect refuses to give his or her fingerprints after being requested to do so, a member of the police force may apply without notice to any other person to a Magistrates’ Court for an order directing the suspect to give his or her fingerprints.

(2) An application under sub-section (1) must—

(a) be in writing supported by evidence on oath or by affidavit; and

10 (b) if the suspect is held in a prison, police gaol or youth training centre, state that fact.

(3) The Court may make an order directing a suspect to give his or her fingerprints if the suspect—

(a) is in custody within the meaning of this Subdivision; or

(b) has been charged with an offence; or

15 (c) has been summonsed to answer to an information—

and the Court is satisfied as required by sub-section (4) or (5).

(4) The Court may make an order under sub-section (3) if satisfied that—

20 (a) there are reasonable grounds to believe that the suspect in respect of whom the order is sought has committed the offence, whether indictable or summary, for which he or she is in custody, has been charged or has been summonsed; and

25 (b) a fingerprint has been found at the scene of the offence, on a victim of the offence or on an object used in or in connection with the commission of the offence; and

30 (c) there are reasonable grounds to believe that the taking of the suspect’s fingerprints would tend to confirm or disprove the involvement of the suspect in the commission of the offence.

(5) The Court may make an order under sub-section (3) if satisfied that—

35 (a) there are reasonable grounds to believe that the suspect in respect of whom the order is sought has committed the offence for which he or she is in custody, has been charged or has been summonsed; and

(b) the offence is an indictable offence; and

40 (c) there is reasonable doubt concerning the identity of the suspect and the taking of the suspect’s fingerprints would dispel that doubt.

Fingerprinting of children.

“464N. (1) A member of the police force must not take the fingerprints of a young person except in accordance with an order made under sub-section (3).

- (2) A child under the age of 10 years must not— 5
 (a) be requested to give his or her fingerprints; or
 (b) have his or her fingerprints taken.

(3) A children’s court may make an order directing a young person to give his or her fingerprints if the young person—

- (a) is in custody within the meaning of this Subdivision in respect of an indictable offence; or 10
 (b) has been charged with an indictable offence; or
 (c) has been summonsed to answer to an information for an indictable offence—

and the court is satisfied as required by sub-section (4) or (5). 15

(4) A children’s court may make an order under sub-section (3) if satisfied that—

- (a) there are reasonable grounds to believe that the young person in respect of whom the order is sought has committed the indictable offence for which he or she is in custody, has been charged or has been summonsed; and 20
 (b) a fingerprint has been found at the scene of the indictable offence, on a victim of the offence or on an object used in or in connection with the commission of the offence; and
 (c) there are reasonable grounds to believe that the taking of the young person’s fingerprints would tend to confirm or disprove the involvement of the young person in the commission of the indictable offence; and 25
 (d) in all the circumstances the making of the order is justified.

(5) A children’s court may make an order under sub-section (3) if satisfied that— 30

- (a) there are reasonable grounds to believe that the young person in respect of whom the order is sought has committed the indictable offence for which he or she is in custody, has been charged or has been summonsed; and 35
 (b) there is reasonable doubt concerning the identity of the young person and the taking of the young person’s fingerprints would dispel that doubt; and
 (c) in all the circumstances the making of the order is justified.

(6) In considering whether the making of the order is justified, the court must take into account amongst other things— 40

- (a) the seriousness of the circumstances surrounding the commission of the indictable offence; and

- (b) the alleged degree of participation by the young person in the commission of the indictable offence; and
- (c) the age of the young person.

5 (7) A member of the police force may apply to a children's court for an order under sub-section (3).

(8) An application under sub-section (7) must—

- (a) be in writing supported by evidence on oath or by affidavit; and
- 10 (b) if the young person is held in a prison, police gaol or youth training centre, state that fact.

(9) Notice of an application under sub-section (7) must be served on—

- (a) a parent or guardian of the young person in respect of whom an order is sought; and
- 15 (b) if the young person is not in custody within the meaning of this Subdivision, the young person.

(10) The court may dispense with the requirement of sub-section (9) (a) if satisfied that it is impracticable for the applicant to comply.

20 (11) With the leave of the court, a young person may be represented on an application under this section by a parent or guardian of the young person.”

Execution of court order.

25 “464O. (1) A person acting in accordance with an order made under section 464M (3) or 464N (3) may take all reasonable steps necessary to take the fingerprints.

(2) The taking of the fingerprints must be—

- (a) witnessed by an independent person; or
- (b) video-recorded.

(3) If practicable—

- 30 (a) a person of the same sex as the person to be fingerprinted must take the fingerprints; and
- (b) a member of the police force involved in investigating the offence for which the fingerprints are required must not take the fingerprints.

35 (4) After an order under section 464M (3) or 464N (3) is executed—

- (a) the independent person, if any, who witnessed the taking of the fingerprints must endorse on the order his or her name and sign the endorsement; and
- 40 (b) the person who took the fingerprints must endorse on the order the name of the person, if any, who video-recorded the taking of the fingerprints; and

(c) the person who took the fingerprints must give a copy of the order so endorsed to the person fingerprinted.

(5) If a court makes an order under section 464N (3), a parent or guardian of the young person or, if a parent or guardian is not available, an independent person must be present during the taking of the young person's fingerprints. 5

(6) If a Magistrates' Court makes an order under section 464M (3) or a children's court makes an order under section 464N (3), it may issue a warrant authorising the person to whom it is directed—

(a) to break, enter and search, if necessary, any place where the person named or described in the warrant is suspected to be; and 10

(b) to arrest the person named or described in the warrant; and

(c) to take the person arrested without delay to the nearest accessible police station for fingerprinting. 15

(7) If a court makes an order under section 464M (3) or 464N (3) or issues a warrant under sub-section (6), it must—

(a) give reasons for its decision; and

(b) cause a note of the reasons to be entered in the records of the court. 20

(8) The failure of a court to comply with sub-section (7) does not invalidate any order made by it.

(9) If a person is apprehended under a warrant issued under sub-section (6), the warrant ceases to have effect immediately after the person's fingerprints have been taken. 25

(10) If—

(a) a Magistrates' Court makes an order under section 464M (3) in respect of a suspect who is held in a prison, police gaol or youth training centre; or

(b) a children's court makes an order under section 464N (3) in respect of a young person who is held in a prison, police gaol or youth training centre— 30

the court must also order that the officer in charge of the place at which the person is held must—

(c) take the fingerprints of the person or cause them to be taken; and 35

(d) deliver the fingerprints to the applicant within a period of time specified in the order."

Evidence of fingerprints.

"464p. (1) Evidence in respect of fingerprints taken from a person is inadmissible as part of the prosecution case in proceedings against that person for an offence— 40

(a) unless the requirements of sections 464K to 464O (as the case requires) have been met; and

(b) if the fingerprints or any record, copy or photograph of them have not been destroyed as required by section 464R.

5 (2) A court may admit evidence in respect of fingerprints otherwise inadmissible by reason of sub-section (1) (a) if—

(a) the prosecution satisfies the court on the balance of probabilities that the circumstances are exceptional and justify the reception of the evidence; or

10 (b) the accused consents to the reception of the evidence.

(3) For the purposes of sub-section (2) (a), the fact that fingerprints may match one or more fingerprints found at the scene of the offence, on a victim of the offence or on an object used in or in connection with the commission of the offence is not to be regarded as an exceptional
15 circumstance.”

Fingerprinting following finding guilt or conviction.

“464Q. (1) If a person is found guilty of any offence, the court hearing the proceeding may, prior to sentencing, order the person to
20 give his or her fingerprints in order to determine the identity of the person.

(2) If a person is convicted of—

(a) an indictable offence; or

(b) a prescribed summary offence—

a member of the police force may take the person's fingerprints.

25 (3) Sub-sections (1), (2), (3), (4) and (5) of section 464O apply, with any necessary modifications, to the taking of fingerprints under this section.

(4) Within 14 days after a person is convicted of an indictable
30 offence or a prescribed summary offence, a member of the police force may apply to a Magistrates' Court or a children's court (as the case requires) for a warrant under sub-section (5).

(5) On an application under sub-section (4), a Magistrates' Court or a children's court (as the case requires) may issue a warrant authorising the person to whom it is directed—

35 (a) to break, enter and search, if necessary, any place where the person named or described in the warrant is suspected to be; and

(b) to arrest the person named or described in the warrant; and

40 (c) to take the person arrested without delay to the nearest accessible police station for fingerprinting.

(6) A warrant issued under sub-section (5) ceases to have effect immediately after the person named or described in the warrant is fingerprinted.”

Destruction of records.

‘464R. (1) In this section— 5

“Relevant offence” means—

(a) the offence in respect of which the fingerprints were taken; or

(b) any other offence arising out of the same circumstances; or 10

(c) any other offence in respect of which the fingerprints have probative value.

(2) If a person has given fingerprints in accordance with sections 464K to 464O (as the case requires) either by consent or under an order of a court and— 15

(a) at the end of the period of 6 months after the taking of the fingerprints the person has not been charged with a relevant offence; or

(b) before the end of the period of 6 months after the taking of the fingerprints, the person has been charged with a relevant offence but subsequently is not convicted of the offence or any other relevant offence, whether on appeal or otherwise— 20

the Chief Commissioner of Police must, subject to sub-section (3), destroy or cause to be destroyed the fingerprints and any record, copy or photograph of them— 25

(c) in the case of paragraph (a), immediately after that period of 6 months or any extension under sub-section (3); or

(d) in the case of paragraph (b), within 1 month after the conclusion of the proceedings or the expiry of any appeal period or any extension under sub-section (3), whichever is the latest. 30

(3) A member of the police force may, within the period referred to in sub-section (2) (c) or (d), apply without notice to any other person to a Magistrates’ Court or a children’s court (as the case requires) for an order extending the period within which the fingerprints and any record, copy or photograph of them must be destroyed. 35

(4) If a court makes an order under sub-section (3), it must cause a copy of the order to be served on the person from whom the fingerprints were taken.

(5) If fingerprints or any record, copy or photograph of them are destroyed in accordance with this section, the Chief Commissioner of Police must give notice within 14 days of the destruction to the person from whom the fingerprints were taken. 40

(6) A person must not—

(a) use or make; or

(b) cause or permit to be used or made—

5 any record, copy or photograph of fingerprints required by this section to be destroyed.

Penalty applying to this sub-section: 5 penalty units.’

Insertion of definitions.

5. In section 464 (2) of the Principal Act—

(a) before the definition of “Investigating official” insert—

10 ‘ “Fingerprints” includes finger, palm, toe and sole prints.

“Held in a prison, police gaol or youth training centre” means—

15 (a) deemed by section 4 of the *Corrections Act* 1986 to be in the custody of the Director-General within the meaning of that Act; or

(b) deemed by section 11 (7) of the *Corrections Act* 1986 to be in the custody of the Chief Commissioner of Police; or

20 (c) detained in a youth training centre in the custody of the Director-General within the meaning of the *Community Welfare Services Act* 1970.’; and

(b) after the definition of “Prison” insert—

25 ‘ “Suspect” means a person of or above the age of 17 years who—

(a) is suspected of having committed an offence; or

(b) has been charged with an offence; or

(c) has been summonsed to answer to an information.’; and

(c) after the definition of “Tape-recording” insert—

30 ‘ “Young person” means a child aged 10 years or more but under 17 years.’

Alternative insertion of definitions.

6. In section 5 of the *Crimes (Custody and Investigation) Act* 1988, in the proposed section 464 (2) of the *Crimes Act* 1958—

35 (a) before the definition of “Investigating official” insert—

‘ “Fingerprints” includes finger, palm, toe and sole prints.

“Held in a prison, police gaol or youth training centre” means—

- (a) deemed by section 4 of the *Corrections Act* 1986 to be in the custody of the Director-General within the meaning of that Act; or
- (b) deemed by section 11 (7) of the *Corrections Act* 1986 to be in the custody of the Chief Commissioner of Police; or 5
- (c) detained in a youth training centre in the custody of the Director-General within the meaning of the *Community Welfare Services Act* 1970.; and
- (b) after the definition of "Prison" insert— 10
 - '"Suspect" means a person of or above the age of 17 years who—
 - (a) is suspected of having committed an offence; or
 - (b) has been charged with an offence; or
 - (c) has been summonsed to answer to an information.;' 15
- (c) after the definition of "Tape-recording" insert—
 - ' "Young person" means a child aged 10 years or more but under 17 years.'

PART 3—AMENDMENT OF *CORRECTIONS ACT* 1986 20

Corrections Act 1986.

7. (1) The *Corrections Act* 1986 is amended as follows:
- (a) In section 11, after sub-section (7) insert—
 - "(7A) As soon as possible after a person is received into a police gaol to serve the whole or a part of a prison sentence a member of the police force must take the person's fingerprints."; 25
 - (b) In section 28—
 - (i) in sub-section (1), before "may" insert ", subject to sub-section (1A)."; and 30
 - (ii) after sub-section (1) insert—
 - "(1A) As soon as possible after a person is received into a prison to serve the whole or a part of a prison sentence an officer must take the person's fingerprints."; and 35
 - (iii) after sub-section (3) insert—
 - "(4) The Governor of a prison must provide as soon as practicable to the Chief Commissioner of Police a copy of fingerprints taken under sub-section (1A)."

PART 4—AMENDMENT OF *COMMUNITY WELFARE SERVICES ACT 1970*

Community Welfare Services Act 1970.

8. In section 95 of the *Community Welfare Services Act 1970*—

- (a) after “95.” insert “(1)”; and
- (b) after “so detained.” insert—

“(2) As soon as possible after a person is received into a youth training centre to serve the whole or a part of a sentence of detention an officer must take the person’s fingerprints.

(3) The Superintendent of a youth training centre must provide as soon as practicable to the Chief Commissioner of Police a copy of fingerprints taken under sub-section (2).”.

No. 8089.
Reprinted to No. 10152 and amended by Nos. 10257, 10260, 10262, 5/1986, 16/1986, 37/1986, 41/1986, 47/1986, 117/1986 and 16/1987.

PART 5—TRANSITIONAL PROVISIONS

Fingerprints to which this Act applies.

9. This Act applies only with respect to fingerprints taken after the commencement of this section.

Temporary insertion of definitions.

10. Until section 5 of the *Crimes (Custody and Investigation) Act 1988* comes into operation, the Principal Act has effect as if after section 463B there were inserted—

“(30A) Fingerprinting Powers”

Definitions.

25 “464. (1) For the purposes of this Subdivision a person is in custody if he or she is—

- (a) under lawful arrest by warrant; or
- (b) under lawful arrest under section 458 or 459 or a provision of any other Act; or
- 30 (c) in the company of an investigating official and is—
 - (i) being questioned; or
 - (ii) to be questioned; or

(iii) otherwise being investigated—

to determine his or her involvement (if any) in the commission of an offence if there is sufficient information in the possession of the investigating official to justify the arrest of that person in respect of that offence.

5

(2) In this Subdivision—

“**Fingerprints**” includes finger, palm, toe and sole prints.

“**Held in a prison, police gaol or youth training centre**” means—

(a) deemed by section 4 of the *Corrections Act* 1986 to be in the custody of the Director-General within the meaning of that Act; or 10

(b) deemed by section 11 (7) of the *Corrections Act* 1986 to be in the custody of the Chief Commissioner of Police; or

(c) detained in a youth training centre in the custody of the Director-General within the meaning of the *Community Welfare Services Act* 1970.; and 15

“**Investigating official**” means a member of the police force or a person appointed by or under an Act (other than a member or person who is engaged in covert investigations under the orders of a superior) whose functions or duties include functions or duties in respect of the prevention or investigation of offences. 20

“**Legal practitioner**” means a person who is enrolled as a barrister and solicitor of the Supreme Court. 25

“**Police gaol**” has the same meaning as in the *Corrections Act* 1986.

“**Prison**” has the same meaning as in the *Corrections Act* 1986 but includes a youth training centre established under section 92 of the *Community Welfare Services Act* 1970. 30

“**Suspect**” means a person of or above the age of 17 years who—

(a) is suspected of having committed an offence; or

(b) has been charged with an offence; or

(c) has been summonsed to answer to an information.

“**Tape-recording**” includes audio recording and video recording. 35

“**Young person**” means a child aged 10 years or more but under 17 years.’