

Crimes (Fingerprinting) Bill

EXPLANATORY MEMORANDUM

PART 1—PRELIMINARY

Clause 1 sets out the purpose of the Act.

Clause 2 states that the Act comes into operation upon proclamation.

Clause 3 provides that the *Crimes Act 1958* is referred to as the Principal Act.

PART 2—AMENDMENT OF THE *CRIMES ACT 1958*

Clause 4 inserts new sections 464K to 464R in the Crimes Act. The new sections govern police fingerprinting of suspects.

New section 464K provides that a member of the police force may take the fingerprints of a suspect either with the informed consent of the suspect or by order of a Magistrates' Court. ("Suspect" will be defined in section 464 of the Act to mean a person 17 years or over who is suspected of or charged with an offence).

New section 464L defines what is meant by informed consent to fingerprinting. A suspect must be told why his or her fingerprints are required, what he or she is suspected of, that he or she has a right to refuse and that any fingerprints provided may be used in evidence. The notification of these rights must be recorded in writing or by tape-recording, although if the suspect is in custody for an indictable offence the notification and any responses by the suspect must be tape-recorded.

New section 464M allows a member of the police force to apply to a Magistrates' Court for an order directing a suspect in custody for, or charged with, an offence to provide his or her fingerprints. The Court may make an order on either of two grounds. The first ground is that there are reasonable grounds to believe that the person has committed the offence, that fingerprints have been found at the scene of the offence, on a victim or on an object used in connection with the offence and that the taking of his or her fingerprints would tend to confirm or disprove his or her involvement in the commission of the offence. The second ground is that the suspect is reasonably believed to have committed the indictable offence for which he or she is in custody or with which he or she is charged, that there is reasonable doubt about his or her identity and that fingerprinting would dispel that doubt.

New section 464N sets out the circumstances in which the police may take the fingerprints of a child or young person suspected of an offence. A child under the age of 10 years may not be fingerprinted. A child aged between 10 and 16 years (inclusive) may only be subjected to fingerprinting by order of a Children's Court. An order can be made if the young person is in custody or has been charged with an indictable offence if either of two grounds is met. The grounds are similar to those applicable to adults under new section 464M. Before making an order, the court must also be satisfied that in all the circumstances (including the seriousness of the offence, the age of the child and alleged degree of his or her participation) fingerprinting is justified. Notice of an application for an order to fingerprint a child must be given to his or her parent or guardian.

New section 464O sets out the manner in which a court order for fingerprinting may be executed. A person acting in accordance with a court order may take all reasonable steps necessary to take the fingerprints, but the taking of the fingerprints must be video-recorded or witnessed by an independent person. If the person against whom the order is made is being held in a prison, police gaol or youth training centre, the fingerprints are to be taken by or caused to be taken by the officer in charge. If the person against

whom the order is made is not in custody, the court which made the order may issue a warrant for his or her arrest to allow his or her fingerprints to be taken.

New section 464P provides that evidence of fingerprints taken or retained in contravention of the new provisions is not admissible as part of the prosecution case in evidence against the person from whom they were taken unless there are exceptional circumstances or the accused person consents.

New section 464Q deals with fingerprinting following a finding of guilt or after conviction. If a person has been found guilty of an offence the court may, before imposing sentence, order the person to give his or her fingerprints to determine his or her identity. In addition, if a person is convicted of an indictable or prescribed summary offence a member of the police force may take the person's fingerprints without a court order. If necessary, a member of the police force may, within 14 days of the conviction, apply for a warrant for the arrest of the accused person to take his or her fingerprints.

New section 464R provides for the destruction of fingerprints if proceedings in respect of which they were taken do not lead to a conviction. If the person from whom the fingerprints were taken has not been charged with an offence within 6 months, the fingerprints must be destroyed immediately afterwards. If the person is charged within 6 months, but the proceedings do not result in a conviction for a relevant offence, the fingerprints must be destroyed within one month of the conclusion of the proceedings. These periods may be extended by a court. After the destruction of fingerprints, the person from whom they were taken must be notified within 14 days. The use of fingerprints required to be destroyed is to be an offence.

Clause 5 inserts relevant definitions in the Crimes Act. The term "fingerprints" is defined to include finger, palm, toe and sole prints.

Clause 6 inserts similar definitions in the *Crimes (Custody and Investigation) Act 1988*. (*Clause 5* assumes that the *Crimes (Custody and Investigation) Act 1988* is in force before the commencement of the Crimes (Fingerprinting) Act. *Clause 6* provides for the contingency that the Crimes (Custody and Investigation) Act is not in force before this Act).

PART 3—AMENDMENT OF *CORRECTIONS ACT 1986*

Clause 7 amends the Corrections Act to ensure that a person received into a prison or police gaol to serve a prison sentence is fingerprinted. A copy of the fingerprints must be provided to the Chief Commissioner of Police.

Clause 8 amends the *Community Welfare Services Act 1970* to require that a person received into a Youth Training Centre to serve a sentence of detention is fingerprinted. A copy of the fingerprints must be provided to the Chief Commissioner of Police.

PART 5—TRANSITIONAL PROVISIONS

Clause 9 states that the Act applies only to fingerprints taken after the commencement of the section.

Clause 10 inserts temporary definitions in the Crimes Act until section 5 of the Crimes (Custody and Investigation) Act comes into operation.