

# Forensic procedures

Anyone can talk to a lawyer for free at Tasmania Legal Aid.

To get free legal information call 1300 366 611, drop into our Hobart or Launceston office (no appointment necessary) or use the Legal Talk chat function on our website. We are open Monday to Friday, 9am to 5pm.

A lawyer can listen to your story and help identify the next steps you can take.

A forensic procedure is a procedure which police do to get materials such as DNA, fingerprints or photographs, to help them understand a potential crime.

## What is a forensic procedure?

A forensic procedure can either be non-intimate or intimate.

A non-intimate forensic procedure may involve taking a sample of blood, saliva or hair (not pubic hair) or an external examination of a body part, other than an intimate body part. The most common sample currently taken is the buccal swab (on the inside of the cheek).

An intimate forensic procedure may involve an external examination of genitals, anus, buttock, breasts, an internal body cavity other than the mouth and the taking of samples of pubic hair.

The law does not allow forensic procedures to be carried out on children under 10 years of age or to victims of an offence.

Photos or video recordings obtained in the course of a Police surveillance operation are not forensic procedures.

## When can a forensic procedure be done?

Forensic procedures can be carried out on certain people such as suspects or people charged with a serious offence to assist Police in solving crime. The Police will need to give someone details of the procedure and ask their permission for the procedure to be done before they perform it.

## What if I don't agree to have a forensic procedure?

If you don't agree to have a forensic procedure the Police must either

- Get an order from a Magistrate (see below), if the Police are wanting to perform an intimate forensic
- Get an Order of Police if it is a non-intimate forensic procedure.

For anyone under 15 years of age, a forensic procedure may only be carried out if they and a parent/guardian have given their informed consent. If this consent is not given the Police must get an order from a Magistrate to perform the procedure.

Consent to a forensic procedure can be withdrawn before or during the carrying out of the procedure either by saying so or by behaving in such a way to demonstrate that their consent has been withdrawn.

## How are forensic procedures done?

A forensic procedure must be carried out in circumstances affording reasonable privacy to the person undergoing the procedure and is to be carried out in accordance with appropriate medical standards.

A forensic procedure may only be carried out by an authorised person such as a medical practitioner, nurse, dentist, and in some circumstances, Police officers.

If practical, an intimate forensic procedure (other than the taking of a dental impression or an x-ray) is to be carried out by a person of the same sex as the person undergoing the procedure. A non-intimate forensic procedure for which the person must remove clothing covering intimate parts of the body is also to be carried out by a person of the same sex.

All forensic procedures on suspects or charged persons under 15 years of age must be carried out in the presence of a parent. If neither parent is available, the forensic procedure may be carried out in the presence of an independent witness over 18 years of age who is not a Police officer.

Police officers may be present during the carrying out of forensic procedures for the purposes of safety, security, continuity of evidence, investigation and to make sure it is carried out as the law says it should be.

## Can the Police force me to have a forensic procedure?

If the carrying out of a forensic procedure is authorised, authorised persons and Police may use reasonable force to enable the forensic procedure to be carried out and to prevent loss, destruction or contamination of any sample.

A Police officer may, while waiting for an application for a forensic order to be decided by a magistrate, also use reasonable force to prevent the suspect or charged person, if in custody, destroying or contaminating evidence that might be obtained by carrying out that forensic procedure. This does not, however, authorise the carrying out of the forensic procedure.

## Can the Court order me to have a forensic procedure?

A Police officer may apply to a magistrate for an order authorising the carrying out of an intimate forensic procedure on a suspect or charged person of any age or a non-intimate forensic procedure on a suspect or charged person who is under 15 years of age. A Magistrate will only issue an order if satisfied the order is justified in all the circumstances.

## What happens if I refuse or obstruct a forensic procedure?

If a Police officer or a magistrate makes an order authorising the carrying out of a forensic procedure on a suspect or a charged person and that person refuses or obstructs the forensic procedure, details of this will be included in court proceedings. Evidence that the suspect or charged person did any of the following will be included:

- refused to follow any reasonable direction for the carrying out of a forensic procedure, or
- obstructed a person in connection with the carrying out of a forensic procedure, or
- resisted a person in connection with the carrying out of a forensic procedure, or
- hindered a person in connection with the carrying out of a forensic procedure, or
- used violence against a person in connection with the carrying out of a forensic procedure, or
- threatened a person in connection with the carrying out of a forensic procedure, or
- intimidated a person in connection with the carrying out of a forensic procedure.

If convicted of refusing or obstructing a forensic procedure, a court can sentence an offender a fine up to 50 [penalty units](#) and 12 months prison.

**This is written for people who live in or who are affected by the laws of Tasmania, Australia. The law changes all the time – this information is not legal advice. If you have a legal problem, you should talk to a lawyer before making a decision about what to do.**