VICTIMS PROTOCOL

Conducting a forensic procedure in relation to a victim of a personal violence offence

1 This Protocol applies to the carrying out of forensic procedures upon the following excluded volunteers:

(a) a person who volunteers to a police officer to undergo a forensic procedure in relation to an offence under Part 3, or Subdivision 2 of Division 1 of Part 4, of the Crimes Act 1900 of which the person is a victim, or

(b) a child or incapable person whose parent or guardian volunteered to a police officer that the child or incapable person undergo a forensic procedure in relation to an offence under Part 3, or Subdivision 2 of Division 1 of Part 4, of the Crimes Act 1900 of which the child or incapable person is a victim.

This Protocol does not apply to:

(a) excluded volunteers as defined in s76A (c) or (d) of the Crimes (Forensic Procedures) Act 2000, or

(b) the taking of photographs of an excluded volunteer which constitute a non-intimate forensic procedure (that is, the taking of a photograph of a part of a person’s body, other than the person’s private parts).

2 A victim of any personal violence offence must be treated with courtesy, compassion and respect for their rights and dignity (Charter of Victim’s Rights; section 6, Victims Rights Act 1996).

3 A forensic procedure may only be carried out with the consent of the victim, in the case of an adult, or in accordance with paragraphs 6, 7 and 8 in respect of children, young persons and incapable persons. A police officer should only ask a victim of a personal violence offence, or a person legally responsible for the victim (where applicable), to consent to a forensic procedure if the forensic procedure is likely to be useful for the investigation of the offence against the victim.

4 A victim or a person legally responsible for him/her (where applicable) may withdraw consent. In the case of a child aged between 10 and 14, the forensic procedure must not be carried out if either the child or the person legally responsible withdraws consent. In addition, a forensic procedure must not be carried out if the victim objects to or resists the carrying out of the procedure.

1 The terms “forensic procedure”, “intimate forensic procedure”, “non-intimate forensic procedure” and “incapable person” have the same meaning as defined in section 3 of the Crimes (Forensic Procedures) Act 2000 (the Act). A copy of these definitions is annexed (Annexure A).

2 For the purposes of the Protocol, a victim of a personal violence offence means an “excluded volunteer”, as defined in s76A (a) and (b) of the Crimes (Forensic Procedures) Act 2000. A copy of this definition is annexed (Annexure A).
5. When a police officer asks a victim to consent to a forensic procedure, the victim should be informed of:
   - The type of forensic procedure to be carried out;
   - The way in which the forensic procedure will be carried out;
   - Why the police officer believes the forensic procedure is required;
   - Their right to refuse to undergo the procedure;
   - If they consent, their right to withdraw consent at any time;
   - Their right to consult a legal practitioner;
   - That the procedure will only be carried out with their written consent as per Annexure B; and
   - If a sample is to be taken from the victim for the purpose of obtaining a DNA profile, the information in Annexure C should be explained to the victim and their written consent then obtained.

6. If the victim is a **child or young person**, the information in paragraph 5 and Annexures B and/or C must be given to, and consent obtained from:
   - Where the child is less than 10 years old: a person legally responsible for the victim, that is, a person with parental responsibility or guardianship ('the appropriate adult'). Where appropriate, the victim should be provided with information about the procedure to be carried out.
   - Where the child is between 10 and 14 years old: the appropriate adult and the child;
   - Where the child/young person is aged 14 and over: the child/young person.

7. If the victim is an **incapable person**, the information in paragraph 5 and Annexures B and/or C must be given to, and consent obtained from, a person legally responsible for the victim, that is, a person with parental responsibility or guardianship ('the appropriate adult'). Where appropriate, the victim should be provided with information about the procedure to be carried out.

8. If the victim is a child, young person or incapable person, and the appropriate adult is the alleged offender, consent must be obtained from another person with legal responsibility for the victim.

9. A victim is entitled to have a support person of their choice present at the time they are asked to consent to the procedure and when the procedure is carried out **UNLESS**:
   - that person is the alleged offender; or
   - it is not reasonably practicable for that person to attend,
   in which case another support person chosen by the victim may be present.

Where the victim is a child aged under 14 or is an incapable person, the appropriate adult must be present, unless that person is the alleged offender. Where reasonably practicable, the victim may also have another support person of their choice present.
10. Where the victim is capable of giving consent, but needs assistance to understand the information in paragraph 5 and Annexures B and/or C, every reasonable effort must be made to assist the person to understand the process and procedure and make an informed decision. This should include, as appropriate:

- If a victim cannot communicate orally in English with reasonable fluency, the use of an interpreter;
- If a victim is hearing-impaired, the use of an interpreter or appropriate communication aid;
- If a victim cannot read, the information must be read to them.

11. Every reasonable effort must be made to ensure that the forensic procedure is carried out in privacy, as quickly as possible and with minimum discomfort and inconvenience to the victim.

12. Carrying out forensic procedures must not involve the removal of more of the victim's clothing or more inspection or examination of the victim than is necessary.

13. Subject to paragraphs 14 and 15, forensic procedures may only be carried out on a victim by the persons nominated in Annexure D.

14. If the victim is a victim of any form of sexual assault and the forensic procedure to be conducted is any of the following forensic procedures:

- an external or internal examination of a person's private parts,
- the taking from a person of a sample of the person's pubic hair,
- the taking from a person of a sample of any matter, by swab or washing, from the person's private parts,
- the taking from a person of a sample of any matter, by vacuum suction, scraping or lifting by tape, from the person's private parts,
- the taking from a person of an impression or cast of a wound from the person's private parts.

then only a medical practitioner or nurse employed or contracted by NSW Health Services and appropriately qualified to undertake sexual assault forensic examinations may conduct the procedure on the victim, consistent with NSW Health policies and procedures for sexual assault services.

15. If the victim is a victim of a sexual assault and the forensic procedure to be conducted is the taking of a photograph of the person's private parts, then the primary responsibility for this is taken by the NSW Police Force, using appropriately qualified police officers.

A medical practitioner, nurse or other appropriately qualified person employed or contracted by NSW Health Services may also conduct the procedure.

Where such photographs are to be taken, suitable premises and clothing or draping should be provided by the Area Health Service. In circumstances where the victim prefers, the photographs may be taken by Sexual Assault Service staff, using the equipment provided by and under the guidance of NSW Police Force crime scene officers.
16. If the victim is not a victim of a sexual assault and the forensic procedure to be carried out is an intimate forensic procedure (see Annexure A), the victim should be given the option of having a medical practitioner or nurse conduct the procedure or be present during the procedure.

17. Intimate forensic procedures (other than the collection of blood, saliva or the taking of a dental impression) must not be carried out:
   - In the presence or view of a person who is of the opposite sex to the victim or the opposite gender to a transgender person’s identified gender, unless there is no other option and the victim consents. Police should always try to offer the victim the choice of having the procedure conducted by an officer of the same gender; or
   - In the presence or view of a person who is not needed for the conduct of the procedure.

18. Property of the victim taken as possible forensic evidence should be returned as soon as it is no longer needed in connection with the investigation of the offence and any court proceedings and any inconvenience to the victim should be minimised. However, the victim’s safety should be borne in mind at all times and items that are no longer safe to handle (eg bloody clothing stored for a long time) may not be returned. In such a case the victim should be informed of the reasons why it is not possible to return the item.

19. In applying this Protocol, police officers should also have regard to the requirements of the NSW Police Force Victims Support Policies and Procedures.

signed... (John Hatzistergos)
Attorney General

... date 22/8/07

signed... (David Campbell)
Minister for Police

... date 13/11/07
ANNEXURE A

FORENSIC PROCEDURE means:

(a) an intimate forensic procedure, or
(b) a non-intimate forensic procedure.

BUT DOES NOT INCLUDE:

(c) any intrusion into a person's body cavities except the mouth, or
(d) the taking of any sample for the sole purpose of establishing the identity of the person from whom the sample is taken.

Note: Nothing in this Protocol prohibits a medical practitioner from asking a person to consent to, or from conducting, a sexual assault forensic examination that involves the intrusion into a person's body cavities.

INTIMATE FORENSIC PROCEDURE means any of the following:

- an external examination of a person's private parts,
- the carrying out on a person of an other-administered buccal swab,
(c) the taking from a person of a sample of the person's blood,
(d) the taking from a person of a sample of the person's pubic hair,
(e) the taking from a person of a sample of any matter, by swab or washing, from the person's private parts,
(f) the taking from a person of a sample of any matter, by vacuum suction, scraping or lifting by tape, from the person's private parts,
(g) the taking from a person of a dental impression,
(h) the taking of a photograph of the person's private parts,
(i) the taking from a person of an impression or cast of a wound from the person's private parts.

NON-INTIMATE FORENSIC PROCEDURE means any of the following:

(a) an external examination of a part of a person's body, other than the person's private parts, that requires touching of the body or removal of clothing,
(b) the carrying out on a person of a self-administered buccal swab,
(c) the taking from a person of a sample of the person's hair, other than pubic hair,
(d) the taking from a person of a sample (such as a nail clipping) of the person's nails or of matter from under the person's nails,
(e) the taking from a person of a sample of any matter, by swab or washing, from any external part of the person's body, other than the person's private parts,
(f) the taking from a person of a sample of any matter, by vacuum suction, scraping or lifting by tape, from any external part of the person's body, other than the person's private parts,
(g) the taking from a person of the person’s hand print, finger print, foot print or toe print,
(h) the taking of a photograph of a part of a person’s body, other than the person’s private parts,
(i) the taking from a person of an impression or cast of a wound from a part of the person’s body, other than the person’s private parts,
(j) the taking of a person’s physical measurements (whether or not involving marking) for biomechanical analysis of an external part of the person’s body, other than the person’s private parts.

INCAPABLE PERSON means an adult who:
(a) is incapable of understanding the general nature and effect of a forensic procedure, or
(b) is incapable of indicating whether he or she consents or does not consent to a forensic procedure being carried out.

NURSE means a registered nurse or an enrolled nurse, within the meaning of the Nurses Act 1991.

DENTIST means a person registered, or taken to be registered, as a dentist under the Dentists Act 1989.

For the purposes of the Protocol, EXCLUDED VOLUNTEER means:

a person who volunteers to a police officer to undergo a forensic procedure in relation to an offence under Part 3, or Subdivision 2 of Division 1 of Part 4, of the Crimes Act 1900 of which the person is a victim, or

a child or incapable person whose parent or guardian volunteered to a police officer that the child or incapable person undergo a forensic procedure in relation to an offence under Part 3, or Subdivision 2 of Division 1 of Part 4, of the Crimes Act 1900 of which the child or incapable person is a victim.

Note: This Protocol does not apply to an excluded volunteer as defined in s76A (c) or (d) of the Crimes (Forensic Procedures) Act 2000.
ANNEXURE B

Forensic Procedure Consent Form
Victims of Personal Violence Offences

Adult or Child / Young Person 14 Years of Age or Older

I, ________________________, who was born on ________________________, consent to the following forensic procedure/s being carried out on me:

[Blank space for listing forensic procedures]

I understand that the forensic procedure/s are necessary for the proper investigation of the offence committed against me and that evidence obtained from carrying out the forensic procedure/s may be used in evidence in Court (COPS Event No. ________________).

I have:

* been given an Information Sheet that I have read and understood OR
* had an Information Sheet read to me, the contents of which I understood (* delete whichever is not applicable)

DNA Sample
(Delete if not applicable)

I consent to the DNA sample that I have been requested to provide being conveyed to a forensic laboratory for the purpose of obtaining a DNA profile. I understand that the DNA profile will be stored securely and will only be used for the purpose of investigating the offence committed against me.

signed …………. …date… signed …………………….. date
(Victim) (Witness)

signed………………………date.
(Interpreter – if applicable)

* if reasonably practicable, the witness should be someone other than a police officer or a person involved in the investigation of the offence to which the procedure relates.
Forensic Procedure Consent Form
Victims of Personal Violence Offences

Child 10 Years of Age or Older But Less Than 14 Years of Age

[Signature]

[Date]

[Interpreter - if applicable]

[Signature]

[Date]

* a forensic procedure cannot be performed on a child over 10 years of age but less than 14 years of age unless consent is obtained from the child and the person legally responsible for the victim.

* if reasonably practicable, the witness should be someone other than a police officer or a person involved in the investigation of the offence to which the procedure relates.
Forensic Procedure Consent Form
Victims of Personal Violence Offences

Adult or Child / Young Person 14 Years of Age or Over

________________________________________, born on ____________ consent
to the Sexual Assault Kit that was obtained from me on ________________
being forwarded to the Division of Analytical Laboratories for analysis and DNA
profiling. I understand that the analysis and profiling of the samples are
necessary for the proper investigation of the offence committed against me and
that evidence obtained from this analysis and profiling may be used as
evidence in Court. The offence being investigated is

__________________________________________________________________________

__________________________________________________________________________

__________________________________________________________________________

__________________________________________________________________________

(COPS Event No. ________________)

signed.............. date  signed...................... date...
(Victim) (Witness) *

signed........................ date.
(Interpreter – if applicable)

* This Consent Form should be used when a Sexual Assault Kit has been obtained from the victim, by a doctor or
nurse, prior to the offence being reported to the police.
* If reasonably practicable, the witness should be someone other than a police officer or a person involved in the
investigation of the offence to which the procedure relates.
<table>
<thead>
<tr>
<th>Forensic Procedure Consent Form</th>
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<tr>
<td>Victims of Personal Violence Offences</td>
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**Child Under 10 Years of Age or Incapable Person**

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<td>, who was born on</td>
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<td></td>
<td>consent to the following forensic procedure/s being carried out</td>
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<td></td>
<td>on him/her:</td>
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</table>

I understand that the forensic procedure/s are necessary for the proper investigation of the offence committed against him/her and that evidence obtained from carrying out the forensic procedure/s may be used in evidence in Court (COPS Event No. ____________).

have:

* been given an Information Sheet that I have read and understood, or
* had an Information Sheet read to me, the contents of which I understood (* delete whichever is not applicable)

**DNA Sample**

(Delete if not applicable)

I consent to the DNA sample that ________________ has been requested to provide being conveyed to a forensic laboratory for the purpose of obtaining a DNA profile. I understand that the DNA profile will be stored securely and will only be used for the purpose of investigating the committed offence against him/her.

signed........................date........................ signed ............... date
(Person legally responsible for the victim)*

(Witness) *

signed........................date.
(Interpreter – if applicable)

* a forensic procedure cannot be performed on a child over 10 years of age but less than 14 years of age unless consent is obtained from the child and the person legally responsible for the victim.
* if reasonably practicable, the witness should be someone other than a police officer or a person involved in the investigation of the offence to which the procedure relates.
Forensic Procedure Consent Form
Victims of Personal Violence Offences

Child 10 Years of Age or Older But Less Than 14 Years of Age

(Consent Form to be read to, and signed by, the victim and the person legally responsible for the victim)

_________________________ (the victim), born_________________________ and ___________________________, being a person legally responsible for the victim, consent to the Sexual Assault Kit that was obtained from me / the victim on ______________________ being forwarded to the Division of Analytical Laboratories for analysis and DNA profiling. We understand that the analysis and profiling of the samples are necessary for the proper investigation of the offence committed against me / the victim and that evidence obtained from this analysis and profiling may be used as evidence in Court. The offence being investigated is ____________________________

_________________________ (COPS Event No. ____________)

signed ___________ ... date... signed_________________________...date....
(Victim) (Person legally responsible for the victim)

signed ______________... date... signed_________________________...date...
(Witness) (Interpreter – if applicable)

* This Consent Form should be used when a Sexual Assault Kit has been obtained from the victim, by a doctor or nurse, prior to the offence being reported to the police.
* A forensic procedure cannot be performed on a child over 10 years of age but less than 14 years of age unless consent is obtained from the child and the person legally responsible for the victim.
* If reasonably practicable, the witness should be someone other than a police officer or a person involved in the investigation of the offence to which the procedure relates.
Forensic Procedure Consent Form
Victims of Personal Violence Offences

Child 10 Years of Age or Older But Less Than 14 Years of Age

(Consent Form to be read to, and signed by, the victim and the person legally responsible for the victim)

__________________________ (the victim), born ____________________, and ____________________________, being a person legally responsible for the victim, consent to the Sexual Assault Kit that was obtained from me / the victim on __________________________ being forwarded to the Division of Analytical Laboratories for analysis and DNA profiling. We understand that the analysis and profiling of the samples are necessary for the proper investigation of the offence committed against me / the victim and that evidence obtained from this analysis and profiling may be used as evidence in Court. The offence being investigated is

__________________________________________________________________________

__________________________ (COPS Event No. ____________ )

signed ……………. date…………………………. date…………
(Victim)

Signed…………………………………… date………………………….
(Person legally responsible for the victim) *

signed ……………. date…………………………. date…………
(Witness) *

Signed…………………………………… date………………………….
(Interpreter – if applicable)

* This Consent Form should be used when a Sexual Assault Kit has been obtained from the victim, by a doctor or nurse, prior to the offence being reported to the police.

* a forensic procedure cannot be performed on a child over 10 years of age but less than 14 years of age unless consent is obtained from the child and the person legally responsible for the victim.

* if reasonably practicable, the witness should be someone other than a police officer or a person involved in the investigation of the offence to which the procedure relates.
ANNEXURE C

Forensic Procedure Information Sheet
Victims of Personal Violence Offences

Adult or Child / Young Person 14 Years of Age or Over

Prior to asking you to consent to undergo a forensic procedure, wish to provide you with the following information.

- The forensic procedure is needed:

  (state the reason why police believe the forensic procedure is required)

- The offence the procedure relates to is:

- The procedure will be carried out by an appropriately qualified police officer or person in the following manner:

  (self-administered or other-administered buccal (mouth) swab, hair sample, blood sample, photograph etc.)

- The forensic procedure will only be carried out with your written consent. You may withdraw this consent at any time.

- You have the right to consult a legal practitioner of your choice prior to consenting.

DNA Sample
(cross out if not applicable)

- The DNA sample to be taken from you will be placed in a tamper-evident bag, which will be sealed in your presence. The sample will be stored securely by the NSW Police Force until it is taken to the Division of Analytical Laboratories for analysis and profiling.

- At all times, your DNA profile and the remainder of the DNA sample will be stored securely by the Division of Analytical Laboratories.

- Your DNA profile will only be used for the purpose of investigating the offence committed against you and evidence in relation to the profile may be used in Court in proceedings against the alleged offender in connection with that offence.

- After the investigation and all Court proceedings in connection with the offence have been finalised, you may request that the police officer in charge of your case ensures that the remainder of the DNA sample, any existing DNA extract and information linking the profile to you is destroyed.

- The request for destruction will need to be in writing to the NSW Police Force. The NSW Police Force will consider any such request on its merits. In some circumstances e.g. if there is a risk that a case could be re-opened, a request may not be granted immediately.

- Do you understand the information that has just been read to you? Yes / No
Forensic Procedure Information Sheet
Victims of Personal Violence Offences

Child Under 10 Years of Age or Incapable Person

(Information Sheet to be read to person legally responsible for the victim)

Prior to asking you to consent to ________________ undergoing a forensic procedure, I wish to provide you with the following information:

- The forensic procedure is needed:
  
  ____________________________
  
  (state the reason why police believe the forensic procedure is required)

- The offence the procedure relates to is:
  
  ____________________________

- The procedure will be carried out by an appropriately qualified police officer or person in the following manner:
  
  ____________________________
  
  (self-administered or other-administered buccal (mouth) swab, hair sample, blood sample, photograph etc.)

- The forensic procedure will only be carried out with your written consent. You may withdraw this consent at any time.

- You have the right to consult a legal practitioner of your choice prior to consenting.

**DNA Sample**
(cross out if not applicable)

- The DNA sample to be taken from you will be placed in a tamper-evident bag, which will be sealed in your presence. The sample will be stored securely by the NSW Police Force until it is taken to the Division of Analytical Laboratories for analysis and profiling.

- At all times, your DNA profile and the remainder of the DNA sample will be stored securely by the Division of Analytical Laboratories.

- Your DNA profile will only be used for the purpose of investigating the offence committed against you and evidence in relation to the profile may be used in Court in proceedings against the alleged offender in connection with that offence.

- After the investigation and all Court proceedings in connection with the offence have been finalised, you may request that the police officer in charge of your case ensures that the remainder of the DNA sample, any existing DNA extract and information linking the profile to you is destroyed.

- The request for destruction will need to be in writing to the NSW Police Force. The NSW Police Force will consider any such request on its merits. In some circumstances e.g. if there is a risk that a case could be re-opened, a request may not be granted immediately.

- Do you understand the information that has just been read to you?   Yes   No
Prior to asking you and ________________ (person legally responsible for the victim) to consent to you undergoing a forensic procedure, I wish to provide you with the following information.

- The forensic procedure is needed:

  ____________________________________________
  (state the reason why police believe the forensic procedure is required)

- The offence the procedure relates to is:

  ____________________________________________

- The procedure will be carried out by an appropriately qualified police officer or person in the following manner:

  ____________________________________________
  (self-administered or other-administered buccal (mouth) swab, hair sample, blood sample, photograph etc.)

- The forensic procedure will only be carried out with your written consent and the written consent of ________________ (person legally responsible for the victim).

- You or ________________ (person legally responsible for the victim) may withdraw this consent at any time.

- You have the right to consult a legal practitioner of your choice prior to consenting.

**DNA Sample**
(cross out if not applicable)

- The DNA sample to be taken from you will be placed in a tamper-evident bag, which will be sealed in your presence. The sample will be stored securely by the NSW Police Force until it is taken to the Division of Analytical Laboratories for analysis and profiling.

- At all times, your DNA profile and the remainder of the DNA sample will be stored securely by the Division of Analytical Laboratories.

- Your DNA profile will only be used for the purpose of investigating the offence committed against you and evidence in relation to the profile may be used in Court in proceedings against the alleged offender in connection with that offence.

- After the investigation and all Court proceedings in connection with the offence have been finalised, you may request that the police officer in charge of your case ensures that the remainder of the DNA sample, any existing DNA extract and information linking the profile to you is destroyed.

- The request for destruction will need to be in writing to the NSW Police Force. The NSW Police Force will consider any such request on its merits. In some circumstances e.g. if there is a risk that a case could be re-opened, a request may not be granted immediately.

- Do you understand the information that has just been read to you? **Yes / No**
<table>
<thead>
<tr>
<th>Type of forensic procedure</th>
<th>Who may carry out the forensic procedure</th>
</tr>
</thead>
</table>
| External examination of a person’s private parts | Medical practitioner  
Nurse  
Appropriately qualified police officer or person |
| The taking of a sample of blood | Medical practitioner  
Nurse  
Appropriately qualified police officer or person |
| The taking of a sample of saliva, or a sample by an other-administered buccal swab | Medical practitioner  
Nurse  
Appropriately qualified police officer or person |
| The taking of a sample of pubic hair | Medical practitioner  
Nurse |
| The taking of a sample of any matter, by swab or washing from the person's private parts | Medical practitioner  
Nurse  
Appropriately qualified police officer or person |
| The taking of a sample by vacuum suction, scraping or lifting by tape from the person's private parts | Medical practitioner  
Nurse  
Appropriately qualified police officer or person |
| The taking of a dental impression | Medical practitioner  
Dentist  
Dental technician |
| The taking of a photograph of, or an impression or cast of a wound from a person's private parts | Medical practitioner  
Nurse  
Appropriately qualified police officer or person |
| External examination of a part of the body other than a person’s private parts that requires touching of the body or removal of clothing | Medical practitioner  
Nurse  
Appropriately qualified police officer or person |
| The taking of a sample of hair other than pubic hair | Medical practitioner  
Nurse  
Appropriately qualified police officer or person |
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Nurse  
Appropriately qualified police officer or person |
| 12 The taking of a sample of any matter, by swab or washing from any external part of the body other than the person's private parts | Medical practitioner  
Nurse  
Appropriately qualified police officer or person |
| 13 The taking from a person of a sample of any matter, by vacuum suction, scraping or lifting by tape from any external part of the body other than the person's private parts. | Medical practitioner  
Nurse  
Appropriately qualified police officer or person |
| 14 The taking of a hand print, finger print, foot print or toe print | Appropriately qualified police officer or person |
| 15 The taking of a photograph of a part of a person's body, other than the person's private parts | Appropriately qualified police officer or person |
| 16 The taking of an impression or cast of a wound from a part of the body other than the person's private parts. | Appropriately qualified police officer or person |
| 17 The taking of a person's physical measurements (whether or not involving marking) for biomechanical analysis of an external part of the body other than the person's private parts. | Appropriately qualified police officer or person |