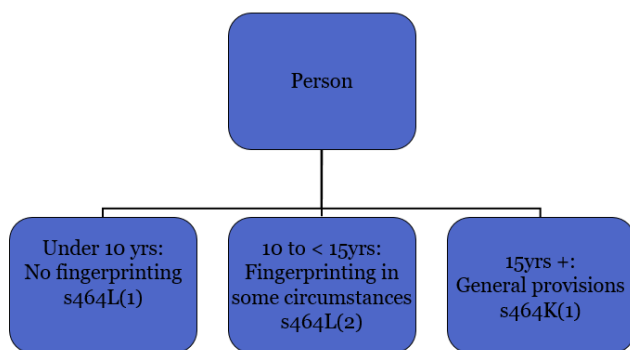


2. Age & fingerprinting



2.1 Fingerprinting of people aged 15 or above: Crimes Act 1958 (Vic) s 464K(1)

- (1) A PO may take the fingerprints of a person **of or above the age of 15** who;
- (a) Is believed on **reasonable grounds** to have committed; or
 - (b) Has been **charged with**; or
 - (c) Has been **summonsed to answer a charge** for –

An indictable/summary offence referred to in **Schedule 7**

2.2 Crimes Act 1958 (Vic) Schedule 7

1. where the maximum penalty is or includes a period of **imprisonment**
2. offence under **s 3(2) or 3(4) of the Court Security Act 1980**
3. offence under **s 6(2) of the Control of Weapons Act 1990**
4. offence **under s 36A of the Drugs, Poisons and Controlled Substances Act 1981**
5. offence under **s 97 of the Police Regulation Act 1958**
6. An offence under specified sections of the **Prevention of Cruelty to Animals Act 1986**

3. Caution

3.1 Giving of information

Crimes Act 1958 (Vic) s 464K(2) & (3)

- (2) A PO intending to fingerprint a person must **inform the person in a language likely to be understood by them**;
- (a) Purpose of taking print
 - (b) Alleged offence
 - (c) Print may be used in evidence in court
 - (d) Refusal of consent – PO may use **reasonable force to take print**
 - (e) That if the person isn't charged with the relevant offence within 6 months or is so charged but the charge isn't proceeded with/the person is found NG, the fingerprints will be destroyed

- (3) The PO who informs a person of the matters in **sub-s (2)** must:
- (a) Record (audio/audiovisual) or;
 - (b) Record in writing signed by the person

s 464N(2): taking of prints by force/court order should be PO of same sex if practicable and preferable not involved in investigation

- (6) **Reasonable force** may be used if authorised at the time of the request by **≥ sergeant OR** member in charge of station at the time

3.2 Fingerscanning for purpose of identification: s 464NA

- (1) person must be **≥ 15 years old**
 - (a) charged with indictable or summary offence in **schedule 7** (see above 2.2)
 - (b) is in a **police station or remanded in custody**

A PO may take a fingerscan of the person only for ID

- (1) Must inform the person in a **language likely to be understood** by the person that it's
 - (a) to be taking only to ID the person; and
 - (b) it's **inadmissible** as evidence
- (2) **Reasonable force** can be used if
 - (a) it's **authorised by a PO** in charge of the police station at the relevant time or if by a PO **≥ sergeant**; and
 - (b) before fingerscanning, the PO **informs the person** in a language likely to be understood that reasonable force may be used to obtain it
- (3) If practicable, same sex must take fingerscan
- (4) A fingerscan under **s 464NA** is inadmissible as evidence

4. Use of force

4.1 Authorisation

- **s 464K(7)**: must be authorised **at the time of the request by PO ≤ rank of sergeant or in charge of station** (and this person themselves can take prints)

4.2 PO who takes prints should:

- **s 464N(2)**: be of the **same sex** as the person having prints taken/not be involved in investigation

Watkins v State of Victoria [2010]

- **Facts**: W's girlfriend when to PO station to complain that he had stolen from/assaulted her
- W was arrested, cautioned, searched, charge with assault/theft/intentionally causing injury
- PO refused to have fingerprints taken; extensive injuries sustained

Court of Appeal: Police unlawfully assaulted W because

- No authorisation of use of force: **s 464K(7)**
 - Only purported authorisation was false document prepared after the assault (backdated)
 - Authorisation must be **at time of request for fingerprints**
- **Authorisation must be 'real and not a matter of indifference'**
- **s 464K** renders lawful what would otherwise be unlawful (assault) → breach meant PO not entitled to use reasonable force

5. Special provisions for children

5.1 If child is 15, 16, 17: s 464K(8)

*see 3.1 for (2) and

- (7) if the person is 15, 16 or 17 years old;
- (a) a **parent/guardian** of the child/independent person **must be present** during the request for the fingerprints, the giving of the information referred to in **sub-s (2)** and the taking of the fingerprints; and
 - (b) if the use of **reasonable force has been authorised** in accordance with **sub-s (7)**, the taking of fingerprints must be **recorded by audiovisual recording**, if practicable, or by audio recording

5.2 Child of under 10 years: s 464L(1)

- fingerprinting prohibited
- (a): must not be requested to give fingerprints
- (b): must not have their fingerprints taken

5.3 Child of 10-14: s 464L(2)

(2) A PO may take fingerprints of a child **aged 10 years but less than 15 years** who:

- (a) police *believe on reasonable grounds* that child has **committed**; or
- (b) has been **charged** with; or
- (c) has been **summonsed to answer a charge** for

An indictable/summary offence specified in **Schedule 7 Crimes Act** (see above 2.2) if:

- (d) Both the child AND parent/guardian **consent** to fingerprinting; or
- (e) If child/parent refuse consent/guardian cannot locate, **order obtained from CC under s 464M(5)** (see 5.3.3)

5.3.1 Information to child 10-14: s 464L(3)

(3) A PO wishing to fingerprint a child in **sub-(2)** must inform the child/parent/guardian in a language likely to be understood by each of them

- (a) **Purpose** of fingerprints; and
- (b) **Offence** which the child is believed to have committed/charged/summonsed to answer charge for; and
- (c) Fingerprints may be used as **evidence in court**; and
- (d) Parent/guardian may **refuse consent** to child's fingerprint being taken; and
- (e) If consent refused, **application may be made to Children's Court for order directing child to give fingerprints; and**
- (f) If child isn't charged with relevant offence within **6 months/charged but charge isn't proceeded/child found NG, fingerprints will be destroyed**

5.3.2 Application for order at Children's Court: s 464M

- (1) If a child referred to in **s 464L(2)** or their parent/guardian refuses consent to take fingerprints/cannot be located, PO may apply to **Children's Court** for an order under **sub-s (5)**
- (2) An application made under **sub-s (1)** –
 - (a) Must be in **writing** supported by **evidence on oath/affidavit**; and
 - (b) If child held in **police jail/detained in youth residential centre**, must state that fact
- (3) Notice of application under **sub-s (1)** must be served on –
 - (a) Parent/guardian; and
 - (b) If child not in custody, the child
- (4) Court may dispense requirement of **sub-s (3)** if satisfied that it's impracticable for applicant to comply

5.3.3 What matters will Children's Court consider: s 464M

- (5) Children's Court may take order **directing child aged 10-14** to give their fingerprints if **satisfied on BoP**;
- (a) There are **reasonable grounds** to believe the child has committed an **indictable/summary** offence in **schedule 7** (see above 2.2); and
 - (b) In all circumstances, making the **order is justified** (see (6))
- (6) In considering whether making order is justified, court take into account –
- (a) **Seriousness** of circumstances surrounding the offence;
 - (b) Degree of **participation** in offence
 - (c) **Age** of child

5.4 Warrant to arrest for fingerprinting

5.4.1 Adult

- MC may **issue warrant(s) to arrest** an adult; **MC Act 1989 (Vic) s 57**
- When that person is taken to PO; may seek to have fingerprints taken under **s 464K(1)**
- Authorises PO to **break, enter, search** any place where child named in warrant is **suspected to be**

5.4.2 Person 10-17: s 464M(12)

*CC may issue warrant to arrest a child who is ≥ 10 and <18 who meets the requirement of

- **s 464L(2): see 5.3 above**; or
 - **s 464K(1): see 2.1 above**
- (12) If CC makes order under **sub-s (5) see 5.3.3 above**, may issue warrant authorising;
- (a) **Break/enter/search** any place child is suspected to be
 - (b) **Arrest** child named in warrant
 - (c) Take child without delay to **nearest accessible police station for fingerprinting**

*persons must be under 19 when proceedings commence

6. Destruction of fingerprints

Crimes Act 1958 (Vic) s 464O

- (2) If a person has been fingerprinted; and
- (a) Hasn't been charged with **relevant offence within 6 months** after taking fingerprints; or
 - (b) Has been charged but charge **isn't proceeded with/found NG** before end of that period –
- Chief Commissioner of Police**, must, destroy the fingerprints at the **time specified in sub-s (3)**
- (2) Finger prints must be destroyed –
- (a) where the person hasn't been charged/charge isn't proceeded with: **immediately after 6-month period**
 - (b) where person found NG: **within 1 month after conclusion of proceedings/end of appeal period**

6.1 If fingerprinted as a child: s 464P(1)

- (a) If person fingerprinted as a **child**; and
- (b) Fingerprints aren't required to be destroyed; and
- (c) Person found NG of further offence **before attaining age of 26 years**;

Chief Commissioner must without delay **destroy the fingerprints and any record/copy/photograph**

Children, Youth and Families Act 2005 (Vic) s 3

Child: between 10-17