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## TOPIC 4: FINGERPRINTING

### Fingerprinting

S464(2)CA: 'Includes finger, palm, toe and sole prints'

Fingerprints can be taken manually (ink) or using a device such as a fingerscan, or any other means – 464N(1)

Privilege against self-incrimination does not apply to physical evidence such as fingerprints – Sorby v Cth

Prints should be taken by a person of the same sex of the accused and not a PO investigating the offence, if reasonably practicable 464N(2)

**R v Parker [1912] HC:** 'A finger print is therefore in reality an unforgeable signature'; **BUT Mickelberg v The Queen (1989):** fingerprints can be forged / planted

### Ages

<10 = no fingerprinting or request – 464L(1)(a/b)

10-14 = fingerprinting in some circumstances – 464L(2)

15+ = general provisions – 464K(1)

Before a person **15-17** may be fingerprinted, a parent, guardian or independent third person must be present for the request and taking of prints – 464K(8)(a)

If the child and parent do not consent, a children's court order is required – 464M(5)

A person **10-14** and their parent must both consent to the fingerprinting (464L(2)(d)) and if consent is refused, an order of the children's court may be obtained – 464M(5)

Language used must be likely to be understood by the child and told that if they don't consent an order may be requested – 463L(3) Police must believe on reasonable grounds that child has committed an indictable offence or a summary offence in Sch 7

**Application for order of children's court** must be in writing and supported by evidence on oath or by affidavit 464M(2)

Notice of application must be served on (464M(3)):

- o a) a parent or guardian of the child; and
- o b) the child if they are not in custody

Service on parent may be dispensed if impracticable to comply 464M(4)

464M(5)

Children's court must be satisfied on BOP that:

- there are reasonable grounds to believe that the child has committed an indictable offence or a summary offence listed in SCH 7 AND
- in all the circumstances, the making of the order is justified (464M(5)) taking into account 464M(6):
  - o Seriousness of circumstances surrounding offence (a)
  - o Degree of child's participation (b)
  - o Age of child (c)

464M(12) Children's court may issue warrant to arrest when subject of an order under 464M(5) and take the child to the nearest police station for fingerprinting. This authorises police to break, enter and search any place where child named in warrant is suspected to be

### General Procedure – 464K(1)

Police may use **reasonable force** to fingerprint a person aged **15 or above** where that person is **charged with, summonsed** to answer a charge, or **reasonably believed** to have committed either an **indictable offence** or a **summary offences** listed in **Sch 7** of the Crimes Act 1958 (Vic)

#### Sch 7: Summary offences for which a person may be fingerprinted

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

Reasonable force must be authorised by the PO rank of sergeant or above or in charge (464K(7)) and must occur before the use of force (Watkins v State of Victoria) – this should be rigorously adhered to

### Giving of Information

Before fingerprinting, police must have **informed S** (464K(2)):

- Purpose of taking print
- Alleged offence they are suspected of
- Print may be used as evidence
- Reasonable force if refuse to consent
- Rules regarding destruction of prints

Giving of information should be recorded (audio, writing): s 464K(3)  
(if S in custody for indictable offence, must be recorded)

Magistrate or judge may issue warrant to arrest someone 15+ for fingerprinting – 464M(5)

**Fingerprints taken in contravention of this procedure are inadmissible unless** the prosecution satisfies the court on BOP that exceptional circumstances justify the reception of the evidence – 464Q(2)(a) or that the accused consented to taking of the prints – 464Q(2)(b). Probative value of evidence is not an exceptional circumstance (3).

### Destruction of Fingerprints

Prints should be destroyed where:

1. No charge within 6 months / charged but not proceeded with – 464O(2)(a)
2. Person found not guilty at trial or appeal – 464O(3)(b)
3. Prints are from a child with no further offence before 26 years old

### **Breach of Statutory Obligation**

464Q(1) Evidence in respect of fingerprints is inadmissible if the procedure of sections 464K to 464N have not been complied with or (b) the fingerprints should have been destroyed as required by 464O or 464P

But

Court may still admit prints if prosecution satisfies on BOP that the circumstances are exceptional and justify the reception of the evidence (464Q(2)(a) or D consents (b)

- Probative value not relevant for exceptional circumstances – 464Q(3)

R v Sarlija – Limitation of 6 months applies to the date a person was charged – improper to admit but can in exceptional circumstances

Wheelman v Police – photos of prints may not establish which side of glass prints on – permanent stay of proceedings

- **Discretion of courts:** Court may still admit evidence if on BOP the circumstances are exceptional and justify the reception of the evidence: **s464Q(2)(a)** OR if the D consents: **S464Q(2)(b)**.
- **Probative** value of fingerprints (if it is the ONLY evidence linking accused to the crime) is **NOT relevant** to determining if there are exceptional circumstances: **S464Q(3)**

### **Commonwealth fingerprinting**

Non-intimate forensic procedure – 23WA

#### **Person in lawful custody**

If a person is in lawful custody, then fingerprinting can proceed by informed consent or senior police authorisation (if consent refused)

- For aboriginal or torres straight suspect must have 'interview friend' present
- Special provisions re children and young people  
(mag. can order fingerprinting of child under 10 who is not a suspect: S 3ZJ(9))

PO can take fingerprints when:

1. Person consents (in custody or not)
2. Person in lawful custody AND police officer believes on reasonable grounds that it is necessary to take fingerprints:
  - (i) establish person; or
  - (ii) identify person as person who committed offence; or
  - (iii) provide evidence of, or relating to, the offence
3. Person in lawful custody AND police officer believes on reasonable grounds that fingerprints would identify person who committed other offence
4. Person in lawful custody AND offence for which they are in custody for is punishable by prison for 12 months or more

#### **Person not in custody**

Order of a Magistrate: (Div 5 Part ID)

- Young person 10 – <18; or
  - An adult unable to understand the general nature, effect and purpose of prints; or
  - A person incapable of indicating whether or not they consent to fingerprinting
- can have fingerprints taken only if Magistrate makes order

Person volunteers and gives their informed consent.

- Procedures and rules: volunteers informed of their rights and the uses of their fingerprints

Commonwealth offence: fingerprints and bodily samples

**S3ZJ(3) Crimes Act 1914 (Cth)**, a police officer of the rank of sergeant or higher or in charge of a police station, may fingerprint a person 18 years or over if the **person consents in writing or it is necessary to establish the identity of the person** who committed the offence, or provide evidence of the offence

- Reasonable force may be used to take the identification material: **s 3ZJ(4)**.
- Person > 10 years and under age of 18 can only be fingerprinted by order of a magistrate.
- Refer to the extract of s 3ZJ: Taking fingerprints, recordings, samples of handwriting or photographs (pages 188 of the textbook).

**Suspects not in custody may only be fingerprinted with their consent or by order of Magistrate.**

- Persons < 10 years of age → may not be fingerprinted.
- Identification material may be taken from other persons by a PO who is of or above the rank of sergeant or who is at the time in charge of a police station to take identification material (including fingerprints) from a person who is in lawful custody in respect of an offence if he or she believes on reasonable grounds that it is necessary to establish the identity of the person or to provide evidence in relation to an offence or if there are reasonable grounds that the person has committed another offence and it will provide evidence for that other offence.