

# Crimes (Blood Samples) Bill

No.

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By Authority Jean Gordon Government Printer Melbourne



# LEGISLATIVE ASSEMBLY

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Read 1° 15 November 1989

*(Brought from the Legislative Council)*

## A BILL

*for*

An Act to amend the *Crimes Act* 1958 to permit the taking of blood samples by consent or upon the order of a court from persons suspected of having committed certain offences and for other related purposes.

### **Crimes (Blood Samples) Act 1989**

The Parliament of Victoria enacts as follows:

#### **Purpose**

- 5 1. The purpose of this Act is to permit the taking of blood samples by consent or upon the order of a court from persons suspected of committing certain offences.

#### **Commencement**

2. This Act comes into operation on a day or days to be proclaimed.

#### **Principal Act**

3. In this Act, the *Crimes Act* 1958 is called the Principal Act.

No 6231.  
Reprinted to No.  
19/1987 and  
subsequently  
amended by Nos  
70/1987,  
78/1987,  
36/1988,  
37/1988,  
40/1988,  
12/1989,  
19/1989,  
25/1989,  
39/1989,  
44/1989,  
51/1989,  
56/1989 and  
57/1989.

**Definitions****4. In section 464 (2) of the Principal Act—**

(a) after “In this Subdivision—” insert—

‘ **“Detained or protected person”** means a person who—(a) is held in a prison, police gaol or youth training centre; 5  
or(b) is held in an institution within the meaning of section 56 of the *Corrections Act 1986*; or(c) is a security resident within the meaning of the *Intellectually Disabled Persons’ Services Act 1986*; or 10(d) is an involuntary or security patient within the meaning of the *Mental Health Act 1986*.’; and

(b) after the definition of “Prison” insert—

‘ **“Relevant suspect”** means a person of or above the age of 17 years who— 15

(a) is suspected of having committed or attempted to commit murder or a sexual offence; or

(b) is suspected of having committed manslaughter; or

(c) has been charged with murder, attempted murder, manslaughter or a sexual offence. 20

**“Sexual offence”** means an offence under Subdivision (8), (8A), (8B), (8C) or (8D) of Division 1 of Part I.’**New sections 464S—464ZG inserted****5. In Division 1 of Part III of the Principal Act, before the heading to Subdivision (31) insert—** 25**Blood samples**

“464s. (1) A member of the police force may request a suspect to give a sample of his or her blood only if there are reasonable grounds to believe that the taking of a sample would tend to confirm or disprove the involvement of the suspect in the commission of an indictable offence and the suspect— 30

(a) is suspected of having committed the indictable offence; or

(b) has been charged with the indictable offence; or

(c) has been summonsed to answer to an information for the indictable offence. 35

(2) A blood sample may be taken from a suspect if—

(a) the suspect gives his or her informed consent; or

(b) if the person is a relevant suspect, a Magistrates’ Court makes an order under section 464U (3). 40

(3) A blood sample for the purposes of this Subdivision must not exceed 10 millilitres and must be taken by a duly qualified medical practitioner—

5 (a) in a manner consistent with the appropriate medical standards; and

(b) in circumstances affording reasonable privacy to the person from whom the sample is to be taken; and

(c) in the presence only of—

10 (i) a member of the police force of the same sex, if practicable, as the person from whom the sample is to be taken; and

(ii) a person required by section 464Y to be present; and

15 (iii) if the person from whom the sample is to be taken so requests and if practicable, a medical practitioner chosen by the person.

(4) A person from whom a blood sample is to be taken may request that a medical practitioner of his or her choice take the sample.

20 (5) This Subdivision does not compel any medical practitioner to take a blood sample from a person nor to be present when a blood sample is taken.”

**Informed consent**

25 “464T. (1) A person gives informed consent to a request for a sample of his or her blood if he or she consents to the request after a member of the police force informs the person in language likely to be understood by the person—

(a) of the purpose for which the sample is required; and

30 (b) of the procedure by which it is proposed to obtain the sample; and

(c) that the person may request that the sample be taken by or in the presence of a medical practitioner of his or her choice; and

35 (d) of the offence which the person is suspected of having committed or with which he or she has been charged; and

(e) that the procedure could produce evidence to be used in a court; and

(f) that the person may refuse to give the sample; and

40 (g) where—

(i) the person is a relevant suspect; and

(ii) the member believes on reasonable grounds that the person has committed the offence in respect of which the blood sample is requested; and

- (iii) the person refuses to give the sample—  
that an application may be made to a Magistrates’ Court for an order authorising the taking of the sample.
- (2) A member of the police force who informs a person of the matters in sub-section (1)— 5
  - (a) must record the giving of the information and the person’s responses, if any, by tape-recording or by record in writing signed by the person; and
  - (b) must give or send by registered post to the person or his or her legal practitioner, without charge— 10
    - (i) if the giving of the information and the responses are recorded by tape-recording, a copy of the tape-recording as soon as practicable but not more than 7 days after the information is given, and, if a transcript of the tape-recording is prepared, a copy of the transcript as soon as practicable; and 15
    - (ii) if the giving of the information and the responses are recorded in writing signed by the person, a copy of the record forthwith.
- (3) If— 20
  - (a) a person—
    - (i) is held in a prison or youth training centre; or
    - (ii) is held in an institution within the meaning of section 56 of the *Corrections Act* 1986; and
  - (b) within 24 hours after the giving of the information referred to in sub-section (1) the person refuses or fails to consent to the request for a blood sample— 25

the person is to be taken as having refused consent.”

**Court may order blood sample to be taken**

- “464U. (1) If— 30
  - (a) a person refuses to give a sample of his or her blood after being requested to do so; and
  - (b) the person is a relevant suspect; and
  - (c) a member of the police force believes on reasonable grounds that the person has committed the offence in respect of which the blood sample was requested— 35

the member may apply to a Magistrates’ Court for an order directing the person to give a sample of his or her blood.

(2) An application under sub-section (1)—

(a) must be in writing supported by evidence on oath or by affidavit; and

(b) if the person is a detained or protected person, must state that fact and identify the place where the person is held or resides.

(3) The Court may make an order directing a person to give a sample of his or her blood if the Court is satisfied that—

(a) the person is a relevant suspect; and

(b) there are reasonable grounds to believe that the person has committed the offence in respect of which the application is made; and

(c) material reasonably believed to be from the body of a person who committed the offence has been found—

(i) at the scene of the offence; or

(ii) on the victim of the offence or on anything reasonably believed to have been worn or carried by the victim when the offence was committed; or

(iii) on an object or person reasonably believed to have been associated with the commission of the offence; and

(d) there are reasonable grounds to believe that the taking of the blood sample from the person would tend to confirm or disprove his or her involvement in the commission of the offence; and

(e) the person has refused to give consent to a request under section 464s (1); and

(f) in all the circumstances, the making of the order is justified.

(4) A Magistrates' Court must not make an order directing a person to give a sample of his or her blood unless the person is present.

(5) If a Magistrates' Court makes an order under sub-section (3), it must—

(a) give reasons for its decision; and

(b) state the evidence on which it is satisfied of the matters referred to in sub-section (3); and

(c) cause a note of the reasons to be entered in the records of the Court; and

(d) inform the person ordered to give a blood sample that a member of the police force may use reasonable force to assist a medical practitioner to take the blood sample.

(6) A failure of a Court to comply with sub-section (5) does not invalidate any order made by it.

(7) If—

- (a) a member of the police force proposes to make an application to a Magistrates' Court under sub-section (1) in respect of a person; and
- (b) the person is a detained or protected person— 5  
 a Magistrates' Court may, on the application of a member of the police force, issue a warrant directing the officer-in-charge of the place where the person is held to deliver the person into the custody of the applicant or another member of the police force for the purpose— 10
  - (c) of attending the hearing of the application under sub-section (1); and
  - (d) if that application is granted, of taking the blood sample from the person.
- (8) A member of the police force into whose custody the person is delivered under a warrant issued under sub-section (7), must return the person to the officer-in-charge of the place where the person was held— 15
  - (a) forthwith after the hearing of the application under sub-section (1); or 20
  - (b) if the application is granted, within such period after the hearing of the application as reasonably permits the taking of a blood sample from the person.”

**Blood samples from children**

- “464v. (1) A member of the police force must not request a child to give a sample of his or her blood or request that a blood sample be taken from the child if the child— 25
  - (a) is under the age of 10 years; and
  - (b) is suspected of having done or omitted to have done any act which is an offence or would have constituted an offence had the child been of the age of criminal responsibility. 30
- (2) A member of the police force must not request a young person who—
  - (a) is suspected of having committed an offence; or 35
  - (b) has been charged with an offence; or
  - (c) has been summonsed to answer to an information—
 to give a sample of his or her blood or request that a blood sample be taken from the young person except in accordance with an order made under sub-section (4). 40
- (3) A member of the police force may apply to a children's court for an order under sub-section (4) if the young person—
  - (a) is suspected of having committed or attempted to commit murder or a sexual offence; or

- (b) is suspected of having committed manslaughter; or
- (c) has been charged with murder, attempted murder, manslaughter or a sexual offence—

5 and the member believes on reasonable grounds that the young person has committed the offence.

(4) A children's court may make an order directing a young person to give a sample of his or her blood if satisfied that—

- (a) the young person is a person referred to in sub-section (3) (a), (b) or (c); and
- 10 (b) there are reasonable grounds to believe that the young person has committed the offence in respect of which the application is made; and
- (c) material reasonably believed to be from the body of a person who committed the offence has been found—

- 15 (i) at the scene of the offence; or
- (ii) on the victim of the offence or on anything reasonably believed to have been worn or carried by the victim when the offence was committed; or
- 20 (iii) on an object or person reasonably believed to have been associated with the commission of the offence; and

- (d) there are reasonable grounds to believe that the taking of the blood sample from the young person would tend to confirm or disprove his or her involvement in the commission of the offence; and
- 25 (e) in all the circumstances, the making of the order is justified.

(5) In considering whether the making of the order is justified, the court must take into account amongst other things—

- 30 (a) the seriousness of the circumstances surrounding the commission of the offence; and
- (b) the alleged degree of participation by the young person in the commission of the offence; and
- (c) the age of the young person.

35 (6) If a children's court makes an order under sub-section (4), it must—

- (a) give reasons for its decision; and
- (b) state the evidence on which it is satisfied of the matters referred to in sub-section (4); and
- 40 (c) cause a note of the reasons to be entered in the records of the Court; and
- (d) inform the young person that a member of the police force may use reasonable force to assist a medical practitioner to take a blood sample.

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- (7) A failure of a court to comply with sub-section (6) does not invalidate any order made by it.
- (8) An application under sub-section (3)—
- (a) must be in writing supported by evidence on oath or by affidavit; and 5
  - (b) if the young person is a detained or protected person, must state that fact and identify the place where the young person is held or resides.
- (9) Notice of an application under sub-section (3) must be served on— 10
- (a) a parent or guardian of the young person in respect of whom an order is sought; and
  - (b) if the young person is not in custody within the meaning of this Subdivision, the young person.
- (10) The court may dispense with the requirement of sub-section (9) (a) if satisfied that it is impracticable for the applicant to comply. 15
- (11) A children’s court must not make an order under sub-section (4) unless the young person is present.
- (12) The provisions of section 464U (7) and (8) apply as if— 20
- (a) a reference to an application to a Magistrates’ Court under sub-section (1) of that section were a reference to an application to a children’s court under sub-section (3) of this section; and
  - (b) a reference to the person were a reference to the young person; and 25
  - (c) a reference to a Magistrates’ Court were a reference to a children’s court.
- (13) With the leave of the court, a young person may be represented on an application under this section by a parent or guardian of the young person.” 30

**Warrants**

- “464w. (1) If an application is made to—
- (a) a Magistrates’ Court under section 464U (1); or
  - (b) a children’s court under section 464v (3)— 35
- and the person in respect of whom the application is made is not a detained or protected person, the court may issue a warrant authorising the person to whom it is directed—
- (g) to break, enter and search, if necessary, by day or by night any place where the person named in the warrant is suspected to be; and 40
  - (h) to arrest the person; and

- (i) to bring the person before the court for the hearing of the application; and
- (j) if that application is granted, to detain the person for as long as reasonably permits the taking of a blood sample.

(2) If a court issues a warrant under sub-section (1) of this section, it must—

- (a) give reasons for its decision; and
- (b) cause a note of the reasons to be entered in the records of the court.

(3) A failure of a court to comply with sub-section (2) does not invalidate any order made by it.

(4) If a person is apprehended under a warrant issued under sub-section (1), the warrant ceases to have effect immediately after the blood sample is taken or on the expiration of a reasonable time (whichever is the earlier).”

**Caution before taking of blood sample**

“464x. (1) Immediately before a blood sample is taken in accordance with this Subdivision, a member of the police force must inform the person from whom the sample is to be taken that he or she does not have to answer any questions asked by the medical practitioner taking the sample but that anything the person does say may be given in evidence.

(2) A member of the police force who informs a person of the matters in sub-section (1)—

- (a) must record the giving of the information and the person’s responses, if any, by tape-recording or by record in writing signed by the person or, if the person refuses to sign, by an independent person, if present; and
- (b) must give or send by registered post to the person or his or her legal practitioner, without charge—
  - (i) if the giving of the information and the responses are recorded by tape-recording, a copy of the tape-recording as soon as practicable but not more than 7 days after the information is given, and, if a transcript of the tape-recording is prepared, a copy of the transcript as soon as practicable; and
  - (ii) if the giving of the information and the responses are recorded in writing, a copy of the record forthwith.”

**Execution of order**

“464Y. (1) If a court makes an order under section 464U (3) or 464V (4) for the taking of a blood sample, a member of the police force with such assistance as he or she considers necessary, may use reasonable force to assist a medical practitioner to take the sample. 5

(2) If practicable, a member of the police force acting in accordance with sub-section (1) and any person assisting the member—

- (a) must be of the same sex as the person from whom the blood sample is to be taken; and 10
- (b) must not be involved in investigating the offence for which the blood sample is required.

(3) The taking of a blood sample in accordance with an order of a court must be video-recorded, if practicable, or witnessed by an independent person. 15

(4) After an order under section 464U (3) or 464V (4) is executed—

- (a) if the taking of the blood sample was video-recorded, the medical practitioner who took the sample must endorse on the order the name of the person who video-recorded the taking of the sample; or 20
- (b) if an independent person witnessed the taking of the blood sample, the person must endorse on the order his or her name and sign the endorsement— 25

and the medical practitioner who took the sample must give the copy of the order so endorsed to the person from whom the sample was taken.

(5) If a children’s court makes an order under section 464V (4), a parent or guardian of the young person or, if a parent or guardian is not available, an independent person must be present during the taking of a blood sample from the young person. 30

(6) If the taking of a blood sample in accordance with an order of a court is video-recorded, the applicant for the order must— 35

- (a) without charge; and
- (b) as soon as practicable but not more than 7 days after the sample was taken—

give or send by registered post a copy of the video-recording to the person from whom the sample was taken or his or her legal practitioner.” 40

**Analysis of blood sample**

“464Z. If a sample of blood taken in accordance with this Subdivision is analysed, it must be analysed in accordance with any prescribed procedure.”

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**Analysis of material found at scene of offence etc.**

“464ZA. If material reasonably believed to be from the body of a person who committed an indictable offence has been found—

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- (a) at the scene of the offence; or
- (b) on the victim of the offence or on anything reasonably believed to have been worn or carried by the victim when the offence was committed; or
- (c) on an object or person reasonably believed to have been associated with the commission of the offence—

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and there is sufficient material to be analysed both in the investigation of the offence and on behalf of a person from whom a blood sample has been taken in relation to that offence, a part of the material sufficient for analysis must, on request, be delivered to that person.”

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**Forensic reports to be made available**

“464ZB. If a blood sample has been taken from a person in accordance with this Subdivision, a copy of every forensic report must be given or sent by registered post as soon as practicable but in any event not more than 7 days after receipt by the prosecution to that person or his or her legal practitioner.”

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**Evidence relating to blood sample**

“464ZC. (1) Subject to sub-section (4), evidence in respect of a blood sample taken from a person is inadmissible as part of the prosecution case in proceedings against that person for an offence if—

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- (a) the sample was not taken in accordance with section 464S to 464Y; or
- (b) the sample was not taken in accordance with the prescribed procedure, if any; or
- (c) the sample was not analysed in accordance with the prescribed procedure, if any; or
- (d) the blood sample and any information which may identify the person contained in any record of or report concerning the sample or in any copy of a record or report should have been but has not been destroyed as required by section 464ZD.

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(2) A court may admit the evidence in respect of a blood sample otherwise inadmissible by reason of sub-section (1) (a) if—

- (a) the prosecution satisfies the court on the balance of probabilities that the circumstances are exceptional and justify the reception of the evidence; or 5
- (b) the accused consents to the reception of the evidence.

(3) For the purposes of sub-section (2) (a), the probative value of the blood sample as evidence is not to be regarded as an exceptional circumstance. 10

(4) If the taking of a blood sample is video-recorded, the recording is inadmissible as evidence except—

- (a) to establish or rebut an allegation that unreasonable force was used to enable the blood sample to be taken; or 15
- (b) to determine the admissibility of a confession or admission or other evidence adverse to the accused where the accused alleges that the evidence was induced or obtained by the use of unreasonable force.”

#### **Destruction of identifying information** 20

‘464ZD. (1) In this section, “**relevant offence**” means—

- (a) the offence in respect of which the blood sample was taken; or
- (b) any other offence arising out of the same circumstances; or 25
- (c) any other offence in respect of which the blood sample has probative value.

(2) Information (other than information which may identify the person from whom a blood sample is taken) obtained from analysis of blood samples taken in accordance with this Subdivision may be used for compiling a computerised database for statistical purposes. 30

(3) Subject to sub-section (2), if a blood sample has been taken from a person in accordance with this Subdivision and—

- (a) the person has not been charged with a relevant offence at the end of the period of 6 months after the taking of the sample; or 35
- (b) the person has been so charged before the end of that period but subsequently is not convicted of the offence— 40

the Chief Commissioner of Police, subject to sub-section (4), must destroy, or cause to be destroyed, the sample and any information which may identify the person contained in any record of or report concerning the sample and in any copy of a record or report— 45

(c) in a case to which paragraph (a) applies, immediately after that period of 6 months; or

(d) in a case to which paragraph (b) applies—

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(i) within 1 month after the conclusion of the proceedings and the end of any appeal period ; or

(ii) if the proceedings have been adjourned under section 83 of the *Penalties and Sentences Act* 1985, within one month of dismissal under section 84 of that Act.

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(4) A member of the police force may, before the end of a period referred to in sub-section (3) (c) or (d), apply, without notice to any other person, to a Magistrates' Court or a children's court (as the case requires) for an order extending that period and, if the court makes such an order, the reference to the period in sub-section (3) (c) or (d) is a reference to that period as so extended.

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(5) If a Magistrates' Court or a children's court makes an order under sub-section (4), it must give reasons for its decision and cause a copy of the order to be served on the person from whom the blood sample was taken.

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(6) If a blood sample or part of any record of or report concerning a blood sample or part of any copy of a record or report is destroyed in accordance with this section, the Chief Commissioner of Police must, within 14 days, give notice of the destruction to the person from whom the sample was taken.

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(7) A person must not—

(a) use or make; or

(b) cause or permit to be used or made—

a blood sample or any record of or report concerning a blood sample or any copy of a record or report required by this section to be destroyed.

Penalty: 100 penalty units or 12 months' imprisonment.

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(8) A person must not at any time—

(a) use or make; or

(b) cause or permit to be used or made; or

(c) otherwise disseminate information derived from—

any blood sample, any record of or report concerning a sample or any copy of a record or report except in good faith for the purposes of a relevant offence or for the purposes of sub-section (2).

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Penalty: 100 penalty units or 12 months' imprisonment.'

**Immunity of medical practitioners**

“464ZE. No action lies against a legally qualified medical practitioner or person assisting the medical practitioner in respect of anything properly and necessarily done by the practitioner or person in the course of taking any blood sample which the practitioner or person believes on reasonable grounds was requested to be taken from another person under this Subdivision in accordance with a request of a member of the police force given under section 464s or in accordance with an order made by a court under this Subdivision.” 5 10

**Regulations**

“464ZF. (1) The Governor in Council may make regulations for or with respect to—

- (a) accreditation of experts giving forensic evidence in a court; and 15
- (b) testing of the proficiency of experts in conducting procedures about which an expert gives forensic evidence; and
- (c) the application and use of statistical analysis to data the subject of forensic evidence; and 20
- (d) standards for the procedures of taking blood samples in accordance with this Subdivision and analysis of those samples.

(2) Regulations made under sub-section (1) may be disallowed in whole or in part by resolution of either House of Parliament in accordance with the requirements of section 6 (2) of the *Subordinate Legislation Act 1962*. 25

(3) Disallowance of a regulation under sub-section (2) is deemed to be disallowance by Parliament for the purposes of the *Subordinate Legislation Act 1962*. 30

(4) If, under sub-section (2), either House of the Parliament disallows a regulation, no regulation, being the same in substance as the regulation so disallowed shall be made within 6 months after the date of the disallowance unless the resolution to disallow the regulation has been rescinded by the House of the Parliament by which it was passed. 35

(5) Any regulation made in contravention of sub-section (4) is void.”

**Operation of other Acts**

“464ZG. Nothing in sections 464s to 464ZF affects the operation of any other Act or enactment with respect to the taking of blood samples.” 40

**Amendment of section 464J**

6. In section 464J of the Principal Act, for “sections 464 to 464I” substitute “this Subdivision”.

**Amendments consequential on *Magistrates’ Court Act 1989***

5 7. The Principal Act is amended as follows:

(a) In section 464s (1) (c), for “an information” substitute “a charge”;

(b) In section 464s (2) (b), for “a Magistrates’ Court” substitute “the Magistrates’ Court”;

10 (c) In section 464T (1) (g), for “a Magistrates’ Court” substitute “the Magistrates’ Court”;

(d) In section 464U (1), for “a Magistrates’ Court” substitute “the Magistrates’ Court”;

15 (e) In section 464U (4), for “A Magistrates’ Court” substitute “The Magistrates’ Court”;

(f) In section 464U (5), for “a Magistrates’ Court” substitute “the Magistrates’ Court”;

(g) In section 464U (6), for “a Court” substitute “the Court”;

(h) In section 464U (7)—

20 (i) for “a Magistrates’ Court” (where first occurring) substitute “the Magistrates’ Court”; and

(ii) for “a Magistrates’ Court” (where secondly occurring) substitute “the Court”;

25 (i) In section 464v (2), for “an information” substitute “a charge”;

(j) In section 464v (12), for “a Magistrates’ Court” (wherever occurring) substitute “the Magistrates’ Court”;

(k) In section 464w (1), for “a Magistrates’ Court” substitute “the Magistrates’ Court”;

30 (l) In section 464ZD (4), for “a Magistrates’ Court” substitute “the Magistrates’ Court”;

(m) In section 464ZD (5), for “a Magistrates’ Court” substitute “the Magistrates’ Court”.

**Amendments consequential on *Children and Young Persons Act 1989***

35 8. The Principal Act is amended as follows:

(a) In section 464v—

(i) in sub-sections (4) and (11), for “A children’s court” substitute “The Children’s Court”; and

- (ii) in sub-sections (3), (6), (12) (a) and (12) (c), for “a children’s court” substitute “the Children’s Court”; and
- (iii) in sub-section (7), for “a court” substitute “the Court”; and
- (iv) in sub-sections (10) and (13), for “court” substitute “Court”; 5
- (b) In section 464W (1) (b) for a “children’s court” substitute “the Children’s Court”;
- (c) In section 464Y (5) for “a children’s court” substitute “the Children’s Court”; 10
- (d) In section 464ZD (4) and (5) for “a children’s court” substitute “the Children’s Court”.

**Transitional provision**

9. The Principal Act, as amended by this Act, applies only to blood samples taken after the commencement of this section. 15

**Sunset provision**

10. This Act and the amendments made by this Act except for those in sections 7 and 8, continue in force until the day which is 12 months after the day on which this Act comes into operation and no longer and on and after that day any Act amended by this Act has effect as if this Act had not been enacted. 20