
GENERAL NOTICE

NOTICE 875 OF 2014

NOTICE CALLING FOR PUBLIC COMMENTS

The South African Police Service is consulting on proposed regulations under section 6 of the Criminal Law (Forensic Procedures) Amendment Act, 2013 (Act No. 37 of 2013), before submitting the regulations to the Minister of Police for approval.

An invitation is hereby extended to any person, or private or public institution that may have an interest in the matter to comment on the draft regulations within 21 days from the date of publication of this *Gazette*.

Comments must be in writing and directed to:

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DEPARTMENT OF POLICE

Government Notice Rxxxxx xx Month XXXX 2014

CRIMINAL LAW (FORENSIC PROCEDURES) AMENDMENT ACT, ACT 37 OF 2013

FORENSIC DNA REGULATIONS, 2014

The Minister of Police has, under section 15AD of the South African Police Service Act, made the regulations in the Schedule.

SCHEDULE

Definitions

1. In these Regulations, any word or expression to which a meaning has been assigned in the Act shall have the meaning so assigned and, unless the context otherwise indicates —
 - (a) “**assessment committee**” means a committee contemplated in section 15AA(2) of the Act;
 - (b) “**Board**” means the National Forensic Oversight and Ethics Board established in terms of section 15V(1) of the Act;
 - (c) “**chairperson**” means the chairperson of the Board;
 - (d) “**complainant**” means a person who lodges a complaint in terms of these regulations;
 - (e) “**complaint**” means a complaint contemplated in section 15Z(1)(d)(i) of the Act;
 - (f) “**Criminal Procedure Act**” means the Criminal Procedure Act, 1977 (Act No. 51 of 1977);
 - (g) “**DNA match**” means the positive outcome of a comparison between the forensic DNA profile of a suspect and another forensic DNA profile;
 - (h) “**DNA reference samples**” means a buccal - or blood sample taken from a person;
 - (i) “**forensic DNA investigative lead**” means the outcome of a comparative search done on the forensic DNA database;

- (j) “**FSL admin system**” means the Forensic Science Laboratory Administration system; and
- (k) “**the Act**” means the Criminal Law (Forensic Procedures) Amendment Act, 2013 (Act No. 37 of 2013).

The taking of a buccal sample

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- (1) The authorised person must supervise the taking of a buccal sample from a person who is required to submit such sample, and who requests to take the sample himself or herself.
 - (2) The person who consents that the buccal sample may be taken, must, in the presence of a witness, before the buccal sample is taken, confirm his or her consent in writing by signing the form, which is included in the DNA reference (buccal) collection kit.
 - (3) The DNA reference (buccal) collection kit must be used to collect the buccal sample.
 - (4) In the absence of a buccal sample or upon a specific request of a person from whom the sample is required, a control blood sample may be taken by a registered medical practitioner or registered nurse.
 - (5) Personnel protective clothing must be worn when a buccal sample is collected from any person. The personnel protective clothing provided in the DNA reference (buccal) collection kit must be disposed of by placing these items in the original packaging (pouch) of the kit, which in turn must be attached to the evidence sealing bag containing the DNA reference sample.
 - (6) A victim of a sexual offence must be taken to a registered medical practitioner or registered nurse for the medico-legal examination.
 - (7) The appropriate evidence collection kit for examining a victim of a sexual offence must be handed to the registered medical practitioner in order to collect the forensic evidence. The investigating officer must ensure that the evidence collection kits are submitted for forensic DNA analysis within 30 days after the examination.
 - (8) Only a registered medical practitioner or registered nurse may take intimate samples from any person.
 - (9) The authorised person must take the buccal sample immediately after the fingerprints of the person are taken.

The keeping of records in respect of collected buccal and crime scene samples**3 (1) Samples taken from an arrested person**

- (a) When a buccal sample is collected from an arrested person, the DNA Reference (buccal) Collection kit must be utilized and his or her fingerprints must be taken on form SAPS 76.
- (b) The unique barcode form reference number of the DNA Reference (buccal) Collection kit must be recorded on form SAPS 76 and on the collection form (provided with the DNA Reference (buccal) Collection kit). The original collection form must be filed in the docket and the copy of the form, together with the buccal sample, must be placed in the evidence sealing bag.
- (c) The collection form (provided with the DNA Reference (buccal) Collection kit) must be completed before the sample is actually taken.
- (d) The form SAPS 76, the barcode number on the evidence sealing bag and the unique barcode reference number of the DNA Reference (buccal) Collection kit and the particulars of person from whom the buccal sample was taken, must immediately be captured on the CAS/ICDMS system.
- (e) The following contact particulars of the arrested person, where available, must be captured on the ICDMS system once a sample has been taken:
 - (i) cell phone number;
 - (ii) email address; and
 - (ii) postal address.

(2) Samples taken from persons for investigative purposes

- (a) When a buccal sample is collected for investigative purposes from a person who is not arrested, the DNA Reference (buccal) Collection kit must be utilized and his or her fingerprints must be taken on form SAPS 192.
- (b) The original collection form must be filed in the case docket and the copy of the form, together with the buccal sample, must be placed in the evidence sealing bag.
- (c) The collection form provided with the DNA Reference (buccal) Collection Kit must be completed before the actual taking of the sample.
- (d) The contact particulars of the person from whom the buccal sample is taken, (including the cell phone number, where available) must be recorded in the investigation diary (SAPS 5) in

the case docket.

(3) **Samples collected by IPID officials**

- (a) If a buccal sample is collected (using the DNA Reference (buccal) Collection kit) by an IPID official and this is not captured on the CAS/ICDMS system, the fingerprints of the person must be taken on form SAPS 192. The IPID official must clearly indicate on the collection form that the sample was collected for investigative purposes.
 - (b) The original collection form must be filed in the case docket and the copy thereof must be placed, together with the buccal sample, in the evidence sealing bag. The words "for investigative purposes" must be recorded on the evidence sealing bag and also in the covering letter.
 - (c) The collection form provided with the DNA Reference (buccal) Collection kit must be completed.
 - (d) The contact particulars of the person from whom the buccal sample is taken, (including his or her cell phone number where available), must be recorded in the investigation diary (SAPS 5) in the case docket.
- (4) Detective commanders must inspect the CAS/ICDMS on a weekly basis and ensure that the information is correctly captured on the CAS/ICDMS. The fact that an inspection was conducted must be recorded in the Occurrence book (SAPS 10).
- (5) Officials responsible to process form SAPS 76 at the Component: Criminal Record and Crime Scene Management must ensure that the unique barcode reference number of the DNA Reference Sample Collection kit that is recorded on form SAPS 76 is captured with the fingerprint number and the particulars of the person arrested or charged on the CRIM system.
- (6) Any office or place that is private, out of sight and hearing of other persons, may be used as a place where a buccal sample may be taken.
- (7) The buccal sample must be taken in the presence of a witness who must countersign the collection form.
- (8) The detective commander or designated person must take the necessary steps to ensure that every bodily sample taken is, submitted to the Forensic Science Laboratory for examination within 30 days after the sample is taken.
- (9) The re-taking of a buccal sample must be done within 30 days after

receiving the request from the Forensic Science Laboratory.

- (10) The detective commander must perform monthly inspections at the SAPS 13 stores to ensure that no bodily samples are kept at the station for a period longer than 30 days. The inspection must also ensure that bodily samples that have not yet been sent for analysis to the Forensic Science Laboratory are properly recorded and safely kept in the exhibit store and recorded in the SAPS 13 register. The fact that an inspection was conducted and any corrective steps taken, must be recorded in the Occurrence book.

Preservation and timely transfer of collected samples to the Forensic Science Laboratory

- 4 (1) The approved evidence collection kits and DNA reference (buccal) kits that have specifically been designed for the purpose of collecting evidence must be utilized for the collection of DNA evidence and buccal samples respectively.
- (2) The evidence collection kits must be packaged in evidence sealing bags and must clearly indicate the relevant station and CAS number, before they are submitted to the Forensic Science Laboratory, unless compelling reasons (such as the size of the forensic sealing bags) that hamper the packaging thereof in the supplied evidence sealing bags.
- (3) If an evidence collection kit is not available or there are compelling reasons as contemplated in sub-regulation (2), the detective concerned must consult with the Forensic Science Laboratory to ascertain how the exhibit or sample must be dealt with.
- (4) The forensic evidence packaged in the marked evidence sealing bags may be submitted to the Forensic Science Laboratory by means of a reliable courier service. If the handling of the items is monitored by a track-and-trace system, this system must be audited by the authorised officer or a person designated by him or her.
- (5) Reasonable steps must be taken to ensure that the exhibits or samples are not exposed to heat degradation.
- (6) A buccal sample —
 - (a) may not be packaged with other exhibits;
 - (b) must be packaged in a separate evidence sealing bag and submitted to the Forensic Science Laboratory; and
 - (c) must be accompanied by a covering letter that clearly request that it be compared with a crime scene sample that has previously been submitted.

- (7) A covering letter must be attached to the marked evidence sealing bag containing the buccal sample submitted to the Forensic Science Laboratory. The following information must be recorded in the covering letter:
- (a) barcode of the buccal sample;
 - (b) station and CAS number, or the reference sample where relevant;
 - (c) it must be indicated whether the buccal sample was taken from:
 - (d) a child;
 - (e) an arrested person;
 - (f) a victim or complainant;
 - (g) a person who is under investigation, but not arrested and with his or her informed consent or authorised by the court
 - (h) from a family member of a missing person or unidentified human remains; and
 - (i) whether the bodily sample or crime scene sample is from –
 - (i) a missing or unidentified person; or
 - (ii) unidentified human remains
- (8) The Forensic Science Laboratory may request that buccal samples be submitted to them to verify that a person is the donor of the genetic material in the exhibits. The Forensic Science Laboratory may refer to such a sample as a “confirmation DNA reference sample” in correspondence. On submitting the confirmation DNA reference sample, the evidence sealing bag must be marked as: “confirmation DNA reference sample” and must also clearly indicate this in the covering letter.
- (9) The detective commander must ensure proper management of requests for confirmation DNA reference samples. This may include monthly docket inspections to ascertain if a buccal sample from a person was actually submitted to the laboratory for analysis.
- (10) The authorised officer may determine the Forensic Science Laboratory to which the buccal samples and exhibits may be submitted.

Conducting of comparative searches

- 5 (1) The administration, maintenance and comparative searches on the NFDD must be conducted independently of the analysis, custody and disposal of DNA samples by competent forensic examiners attached to the Quality Management Component in the Division: Forensic Services.
- (2) Examiners in the Forensic Science Laboratory must ensure that the following information is captured on the appropriate information technology system utilized to manage the analysis of bodily samples:
- (a) the barcode of the buccal sample;
 - (b) the station and CAS/ICDMS number, where relevant;
 - (c) whether the buccal sample was taken from:
 - (i) a child;
 - (ii) an arrested person;

- (iii) a person convicted of an offence;
 - (iv) a person who is under investigation, but not arrested and with his or her informed consent or authorised in accordance with section 36E(2) of the Criminal Procedure Act;
 - (v) a police official, or any other person, who as part of his or her official duties attends or processes a crime scene;
 - (vi) a police official or any other person, who may be handling or processing or examining crime scene samples or bodily samples for forensic analysis;
 - (vii) a person directly involved in the servicing or calibration of equipment in laboratories used in the forensic DNA analysis process;
 - (viii) a person who was a visitor and who entered an examination area in a forensic DNA laboratory;
 - (ix) a contractor or supplier directly involved in the manufacturing of consumables, equipment, utensils or reagents;
 - (x) the victim of the offence; or
 - (xi) a family member of a missing person or unidentified human remains; and
- (d) whether the bodily sample or crime scene sample is from –
- (i) a missing or unidentified person; or
 - (ii) unidentified human remains.

- (3) The NFDD system, or the casework system (until the NFDD system is available), must be used to conduct comparative searches to identify candidate forensic DNA leads. Candidate forensic DNA leads must be verified by the examiners from the NFDD before forensic DNA leads are reported to investigating officers.

Communication of forensic DNA findings and related information

- 6 (1) A police official, member of IPID or official of the court must request in writing that an examination be conducted and findings be made on exhibit material submitted to the Forensic Science Laboratory. A request for examination must accompany all exhibits submitted to the Forensic Science Laboratory.
- (2) If the court date is known at the time of submitting the exhibits, the court date must be clearly indicated in the covering letter that accompanies the exhibit material.
- (3) The particulars of the person and the court date must be updated on the CAS/ICDMS and CRIM systems respectively. The investigating officer must inform the section responsible for forensic database management in the Division: Forensic Services, as soon as possible, but within 7 days after becoming aware of the findings of the court.

- (4) A forensic analyst attached to the Forensic Science Laboratory must analyse the forensic DNA profiles derived from a crime sample, bodily sample and buccal sample and make the forensic DNA findings in a case. The relevant investigating officer must be informed of the result of the analysis and must include the report of the result in the police docket.
- (5) The forensic analyst must report to the investigating officer the outcome of the examination after examination of the results of the tests in accordance with section 212(6)(a) and (b) of the Criminal Procedure Act if —
 - (a) the person under investigation or the DNA of a suspect matches the DNA found in the crime samples;
 - (b) an identification of the human remains has been made;
 - (c) preliminary tests on the exhibit material in the case is negative or no DNA could be found on the crime samples with evidential value in the case;
 - (d) a person under investigation or a suspect may be excluded from the DNA found in the crime scene sample; and
 - (e) DNA was found in crime scene samples in the case, but no match could be made as no buccal sample was received by the Forensic Science Laboratory for comparison.
- (6) The following findings must, in addition to the report, be communicated through a system notification by means of the FSL Admin system to the docket diary of the CAS/ ICDMS system if —
 - (a) preliminary tests are negative;
 - (b) the forensic DNA of a suspect is excluded from the DNA found in the exhibits;
 - (c) the forensic DNA of a suspect matches the DNA in the exhibits examined;
 - (d) no forensic DNA finding could be made;
 - (e) human remains or a missing person is identified; and
 - (f) different cases are linked to each other.
- (7) The Forensic Science Laboratory may implement a process related system consisting of different teams to process DNA crime samples, bodily samples and DNA reference samples. The DNA process teams may, *inter alia*, consist of the following:
 - (a) case reception and registration of forensic casework;
 - (b) evidence recovery;
 - (c) submission of DNA crime samples, bodily samples and buccal samples to the DNA analysis process laboratory;
 - (d) DNA analysis process laboratory;
 - (e) monitoring the status of the DNA analysis process; and
 - (f) to analyse forensic DNA profiles and associated data derived from the samples and compile a DNA report.

- (8) The findings of the case must be reported by the forensic examiner as contemplated by sub-regulations (6) and (7).
- (9) Forensic investigative leads must be communicated to the investigator responsible for investigating a particular case. The system solution for the NFDD must communicate the forensic investigative leads to the docket diary of the CAS/ICDMS system.
- (10) The investigating officer must investigate, follow-up forensic investigative leads and record progress in the docket diary of the CAS/ICDMS system of each case linked. Progress must be reported to the section head at the Division: Forensic Services responsible for the NFDD.

DNA examinations conducted at the Forensic Science Laboratories

- 7 (1) DNA examinations must be performed in accordance with the Quality Management System of the Forensic Science Laboratory, based on ISO17025 principles.
- (2) The Forensic Science Laboratory must perform forensic DNA examination on all casework and buccal samples received at the laboratory.
- (3) DNA casework with fixed court dates and with known suspects must be prioritised and completed within the timeframe as agreed upon by the prosecutor.
- (4) Cases which have been identified where a serial offender is involved or where an offender is involved in multiple offences, must be prioritised by the Forensic Science Laboratory and completed within 30 days after receiving confirmation of DNA reference samples or confirmation that the cases are linked. The Head: Forensic Science Laboratory must implement monitoring measures to ensure compliance thereto.
- (5) The Forensic Science Laboratory must ensure that forensic DNA profiles are submitted for loading onto the NFFD or a similar system within 30 days after receipt of the case at the Forensic Science Laboratory.
- (6) All DNA casework must be examined and completed within the target dates as established by the authorised officer.

Request for access to information stored on the NFDD

- 8 (1) Police officials responsible for the investigating or coordinating of criminal investigations or casework related to the identification of missing persons or unidentified human remains may, in writing, request

comparative searches for criminal investigative purposes and be provided with the outcome of the search or with a forensic DNA investigative lead report.

- (2) All staff of the NFDD must be vetted.
- (3) Only examiners in the section: Forensic Database Management of the Quality Component are authorised to perform comparative searches and have access the NFDD.
- (4) A person may in writing request the authorised officer to confirm whether his or her forensic DNA profile is contained on the NFDD: Provided that a person must first apply on a form determined by the National Commissioner for a clearance certificate. The criminal record, if any, must be attached to the application.
- (5) Management information such as relating to successes, the number of forensic DNA profiles loaded on the NFDD and the number and type of forensic DNA leads issued may be communicated with the consent of the authorised officer.

Follow-up of forensic investigative leads

- 9 (1) The Divisional Commissioner: Detective Service must establish nodal points within that division to monitor and follow-up unsolved forensic investigative leads with Provincial Commissioners.
- (2) Every Provincial Commissioner must ensure that unresolved forensic investigative leads, multiple offenders and serial cases involving murder, rape, sexual assault and psychologically motivated crimes are investigated and resolved.
- (3) All the dockets linked in a serial case or where an offender is involved in multiple offences, must be obtained and re-opened on the CAS/ICDMS. All evidence must be considered and followed-up and a profile of the serial offender must be compiled.
- (4) Before the prosecutor has taken a formal decision on whether to proceed with a prosecution or not, serial cases may only be closed on the CAS/ICDMS with the approval of the Provincial Commissioner concerned and the Divisional Commissioner: Detective Service.
- (5) The Divisional Commissioner: Detective Services and the Provincial Commissioner must ensure that investigations and leads are communicated and coordinated across station borders or, where applicable, provincial borders. He or she must also facilitate the identification of psychologically motivated crimes (such as serial murders, serial rapes, muti-murders, child murders, sexual murders, mass murders, spree murders) and liaise with the Investigative

Psychological Unit when such cases occur and when serial offences occur in more than one province.

- (6) Every task team must consolidate all forensic investigative leads or cases which indicate links based on information such as modus operandi, DNA, fingerprints, cell phone data, or identikits.
- (7) When cross-over series occurs between different offences (for example when the suspect originally committed rape and then proceeded to commit murder), appropriately trained and experienced investigators in murder casework must be co-opted to the initial task team or, if the dockets are handed over to another unit (such as Organized Crime or Family Violence, Child Protection and Sexual Offences) members of such units may form part of the task team to ensure continuity.
- (8) The roles and responsibilities between national and provincial task teams and specialized investigation units must be clearly defined by the Provincial Commissioner of the Province in consultation with the Divisional Commissioner: Detective Service.
- (9) The task team must —
 - (a) coordinate their investigations across stations and provincial borders and between specialized investigative units; and
 - (b) investigate any case which has been closed and which is now linked by a forensic investigative lead.
- (10) Investigating officers must investigate the modus operandi in their cases and identify trends where the same modus operandi had been used, in order to link the same perpetrator. The investigating officer must report instances where investigations or modus operandi link a suspect to different cases to the relevant task team.
- (11) The Crime Intelligence Analysis Centre (CIAC) must assist investigating officers by performing modus operandi and intelligence screening to identify possible suspects.
- (12) The investigating officer must consult the Investigative Psychology Unit to assist with the investigation to confirm any behavioural links between cases.
- (13) The investigating officer must ensure that the National Prosecuting Authority is informed of any case prepared for trial, in which forensic investigative leads or information links the suspect to other cases.
- (14) A Provincial Commissioner must, after consultation with Divisional Commissioner: Detective Service, establish a nodal point in his or her province to monitor the progress of task teams in his or her province in

respect of the investigation of forensic investigative leads. The nodal point must, at least on a monthly basis, provide feedback to the nodal point at the Division: Detective Service.

- (15) The nodal point at the Division: Detective Service must, at least on a monthly basis, provide feedback to the section head: Forensic Database Management on progress on reported forensic investigative leads.

Destruction of buccal samples

- 10 (1) Buccal samples must be destroyed within 30 days after obtaining a forensic DNA profile or after the sample has been processed by the Forensic Science Laboratory.
- (2) Buccal samples must be disposed of in medical waste removal containers and incinerated.
- (3) Any other extract or processed portion of a buccal sample must be disposed of in medical sharps container and incinerated.
- (4) The destruction of the buccal samples must be recorded in the laboratory case file or appropriate register. The appropriate register may be a logbook or the information system used in the laboratory to support DNA casework.

Notification of court findings

- 11 (1) The clerk of the court must notify the authorised officer of the outcome of the court case by completing a form SAPS 69 and provide the form to the investigating officer after the finalization of the case in court. The clerk of the court must record the identity number and full names of the accused and relevant station and CAS/ICDMS number on form SAPS 69.
- (2) The information, if applicable, that must be recorded on form SAPS 69 is that the —
- (a) child has been diverted in accordance with Chapter 8 of the Child Justice Act, Act 75 of 2008;
 - (b) person was not prosecuted in court;
 - (c) accused was acquitted;
 - (d) accused was discharged at a preparatory examination;
 - (e) conviction was set aside on appeal or review; or
 - (f) person was convicted.
- (3) In the case of a conviction, the complete details of the offence(s) the sentence, including the particulars of the sentence and period of suspension (if applicable) must be recorded on form SAPS 69.
- (4) The investigating officer must capture the judgment of the court on the CAS/ICDMS system and provide form SAPS 69 to the authorised officer

or a person designated by him or her to ensure that the necessary steps are taken to update the information on the CRIM system and NFDD.

Removal of forensic DNA profiles from the NFDD

- 12 (1) A person who wishes to have his or her forensic DNA profile removed, must apply for a police clearance certificate on a form determined by the National Commissioner to confirm that he or she has no criminal record.
- (2) The police clearance certificate that indicates that the person has no criminal record, must be attached to the written application for the removal of the forensic DNA profile. The application must be made on the form determined by the National Commissioner
- (3) The application must contain the —
- (a) complete particulars of the applicant;
 - (b) reason why the buccal sample was originally obtained from the person; and
 - (c) relevant station and CAS/ICDMS number if a forensic DNA profile was derived from a buccal sample that was taken in respect of the investigation.
- (4) The Director General: Department of Justice and Constitutional Development or person designated by him or her must inform the authorised officer of convictions pardoned in terms of section 84(2)(j) of the Constitution of the Republic of South Africa, 1996. The authorised officer or designated officer must ensure that criminal records which have been pardoned are expunged.
- (5) If a buccal sample has been taken from a person who was not arrested, because it was believed that the forensic DNA profile of that person may be of value to include or exclude that person as the perpetrator of the crime, the investigating officer must, within 30 days after the finalisation of the case, inform the section head: Forensic Database Management in the Division: Forensic Services of the outcome.
- (6) If the person is included in the investigation of a case, the forensic DNA profile of that person must remain in the Investigative Index of the NFDD until the finalisation of the case.
- (7) If a person is excluded from the investigation of a case or acquitted, the forensic DNA profile of that person must be removed from the Investigative Index of the NFDD within 30 days after receiving notification from the investigating officer that the case has been finalised.
- (8) The investigating officer must, within 30 days after the finalisation of the case, inform the authorised officer of the outcome to enable him or her

to remove the forensic DNA profile of that person, to enable the investigating officer to inform him or her in writing accordingly.

Protocols and training relating to familial searches

- 13 (1) The NFDD system or a system designed to perform familial searches may be utilized to conduct familial searches in respect of forensic DNA profiles to identify missing persons or unidentified human remains.
- (2) A likelihood ratio calculation may be applied to the outcome of the familial search to identify investigative leads in order to enable an investigation officer to —
- (a) interview family members of near matches; or
 - (b) identify unidentified human remains.
- (3) The Divisional Commissioner: Detective Service must, after consultation with the Provincial Commissioners, identify specific detectives at national - or provincial level, to be trained in order to investigate and follow-up investigative leads that have been identified by means of familial searches.
- (4) The National Commissioner must ensure that a training program is developed for detectives referred to in sub-regulation (3) to ensure that they are properly trained to investigate forensic investigative leads generated by means of familial searches.

Complaints to the Forensic Oversight and Ethics Board

- 14 The Chairperson of the Board must ensure that —
- (a) complaints lodged in terms of these regulations are —
 - (i) properly assessed; and
 - (ii) efficiently dealt with and disposed of;
 - (b) complainants are treated with respect and courtesy;
 - (c) complainants receive, as far as is reasonably practical, assistance to enable them to understand the procedure in relation to complaints lodged;
 - (d) complainants receive a timely and appropriate response; and
 - (e) complainants are informed of the outcome of the investigation of their complaints.

Lodging of complaints

- 15 (1) A complaint may be lodged by a person who —
- (a) has knowledge, or becomes aware, of any violation relating to the manner in which a DNA sample or forensic DNA profiles is or has been handled;
 - (b) who is affected, or likely to be affected, by the action, omission or decision of the NFDD relating to manner in which a DNA sample or forensic DNA sample is or has been handled;
 - (c) who has knowledge, or becomes aware, of any breach of security relating to —

- (i) the safe transportation or storage of a DNA sample;
 - (ii) the safe transportation or storage of a forensic DNA profile;
 - (iii) the physical security of the NFDD; or
 - (iv) any other matter that breaches that prejudices or compromises the proper management of DNA samples, forensic DNA profiles or the integrity of the NFDD;
 - (d) who has knowledge of unethical conduct by a employee in the exercise of any function of the NFDD, or is affected by unethical conduct; or
 - (e) has knowledge of unethical conduct by an independent provider in the provision of services under arrangement with the NFDD.
- (2) A complaint may be made by a person acting on behalf of a person mentioned in sub-regulation (1) who —
- (a) is a child;
 - (b) is unable to make the complaint himself or herself because of —
 - (i) physical disabled; or
 - (ii) mental disability; or
 - (c) has requested a representative to act on his or her behalf.

Dealing with complaints

- 16 (1) The Board may receive complaints made in accordance with these Regulations about any matter referred to in regulation 15.
- (2) The Chairperson must ensure that any complaint that is received in terms of regulation 15 is dealt with in terms of these regulations.
- (3) The Chairperson must appoint an assessment committee within seven days of receipt of a complaint to assess the complaint and submit a report with recommendations to the Board.
- (4) A complaint must be made not later than 12 months after —
- (a) the date on which the matter which is the subject of the complaint occurred; or
 - (b) the date on which the matter which is the subject of the complaint came to the knowledge of the complainant.
- (5) The time limit in sub-regulation (4) shall not apply if the Board is satisfied that —
- (a) the complainant had good reasons for not making the complaint within that time limit; and
 - (b) notwithstanding the delay, it is still possible to investigate the complaint effectively and fairly.

Lodgement of a complaint

- 17 (1) A member of the public, body or an organ of state, including a member

of the Service, who wishes to lodge a complaint must submit the complaint to the Chairperson in writing.

- (2) A complaint made on behalf of another person may be lodged with the Chairperson, provided that the person on whose behalf a complaint is lodged consents thereto in writing.
- (3) The requirement of consent shall not apply if the person on whose behalf a complaint is lodged is for some reason of legal incapacity unable to do so, or where the Chairperson has, in his or her sole discretion, authorized a deviation from this requirement.
- (4) A complaint must be signed by a person who is lodging a complaint and the complainant or his or her representative must -
 - (a) provide his or her full name, identity number and contact details;
 - (b) specify the nature of the complaint and the basis for the allegation;
 - (c) provide relevant information on the complaint; and
 - (d) specify the nature of recourse sought by the complainant.
- (5) A written complaint must be lodged with the Chairperson of the Board.
- (6) A written acknowledgement of receipt of the complaint must be issued within 5 (five) working days from the date of receipt of the complaint.

Complaints lodged anonymously

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- (1) A complaint may not be lodged anonymously, unless exceptional circumstances require that this is done.
 - (2) Where the Chairperson has deemed it necessary that a complaint may be lodged anonymously, the complainant must provide the information referred to in Regulation 17(4)(b),(c)(d) and regulation 17(5).

Receiving, registering, processing, referring, and disposing of complaints

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- (1) A complaint which falls outside the mandate of the Board may be referred in writing, within seven days of receipt of the complaint, to an appropriate authority or institution that is competent to deal with such complaint.
 - (2) Where a complaint has been referred in terms of sub regulation (1), the complainant must be informed in writing of such referral within seven days of such referral.
 - (3) A complaint which falls within the mandate of the Board must be registered in a computer-based register allocated for this purpose and the complainant must be informed in writing, within seven days of the receipt of the complaint, that his or her complaint has been received and referred to a committee for attention and follow-up.

- (4) A complaint which has been registered in terms of sub-regulation (3) must be disposed of within one month or such other period that the Board may authorize in writing.

Appointment and composition of complaints assessment committee

- 20 (1) The Board must appoint an assessment committee of not more than three persons contemplated in section 15AA(2) to assess the complaint.
- (2) The assessment committee must include a member of the Board –
- (a) who has knowledge and experience in forensic science, if the complaint relates to forensic science;
 - (b) who has knowledge and experience in human rights law, if the complaint relates to a human rights violation; or
 - (c) who has knowledge and experience in ethics relating to forensic science, if the complaint relates to unethical conduct.
- (3) The Board must appoint the assessment committee within seven days upon receipt of a complaint.

Assessment of a complaint

- 21 (1) In assessing a complaint, the assessment committee may take into consideration the following factors –
- (a) whether the Board is mandated to receive and investigate the complaint;
 - (b) whether the Service has conducted or is conducting an investigation of its own;
 - (c) whether the complainant has exhausted the internal remedies available in the Service;
 - (d) whether the complainant has also exercised his or her right in a court of law or another competent tribunal;
 - (e) whether the complaint is of a trivial, frivolous, vexatious nature or made in bad faith; and
 - (f) whether the complaint should be referred to an appropriate authority or institution that is competent to deal with such complaint.
- (2) Where the assessment committee is of the opinion that additional information is required to make a proper assessment, it may request such information from the complainant or the authorized officer of the NFDD.
- (3) In conducting an assessment, the assessment committee shall be entitled to be furnished with the following information by the authorised officer of the NFDD –
- (a) reasonable access to the NFDD;

- (b) access to systems in place to store and destroy DNA samples
 - (c) access to records maintained in the Division: Forensic Services relating to the transportation, storage and destruction of DNA samples;
 - (d) policies relating to the management of DNA samples and forensic DNA profiles;
 - (e) statistics relating to all DNA samples received, disposed of and forensic DNA profiles that are stored, destroyed or removed from the NFDD;
 - (f) measures taken by the NFDD to put in place remedial measures to reduce or address the factors that gave rise to a valid complaints; and
 - (g) any other reasonable information that the assessment committee may require.
- (4) The authorised officer of the NFDD must provide the information referred to in sub-regulation (3) to the assessment committee within (14) fourteen days after being so requested.
 - (5) The assessment committee may request written or oral submissions from any person or authority which may be necessary to properly assess the merit of the complaint.
 - (6) Any such request to a person or authority to provide a submission must be made by written notice and delivered by registered post or delivered by hand directly to the relevant person requesting information or to the executive authority of the organization or organ of state where information is kept.
 - (7) The assessment committee, after considering all the relevant factors and available information, must report in writing to the Board on the outcome of such assessment within seven days of making an assessment.
 - (8) The Chairperson must table the assessment committee's report for discussion at the next Board meeting.
 - (9) The Board may request the assessment committee to further investigate the complaint if the assessment is not considered adequate.
 - (10) Where the Board, after considering the report and recommendations of the assessment committee, has made a decision that the complaint should be pursued, the Chairperson must, within ten days, communicate such decision in writing to the complainant and to any other party that may be involved.
 - (11) Where the Board has made a decision not to pursue the complaint after considering the report and any recommendations of the assessment

committee, it must, within ten days of making such decision, inform the complainant in writing of such decision and the reason for such decision.

- (12) Where an assessment relates to an alleged criminal act, the Board must submit the complaint and any documents the assessment committee may have obtained, within ten days to –
 - (a) the National Commissioner for investigation; or
 - (b) a relevant authority for further action and finalization.
- (13) Where a complaint is referred to a relevant authority, the authorized officer of the NFDD must ensure that full cooperation, assistance and support is provided to the relevant authority.
- (14) The findings and any recommendation of the Board may be communicated to the National Commissioner or the relevant authority for information and follow-up.
- (15) Where an assessment relates to an act of misconduct requiring disciplinary action against a member of the Service or IPID, the Board must submit the complaint and any documents the assessment committee may have obtained, together with the reasons for the recommendation, within ten days to –
 - (a) the National Commissioner for further investigation and finalization, if the alleged act of misconduct relates to a member of the Service; or
 - (b) the Executive Director of IPID for further action and finalization, if the alleged act of misconduct relates to a member of IPID.
- (16) The National Commissioner or the Executive Director, as the case may be, must consider and give effect to the Board's findings and any recommendations.
- (17) Where the National Commissioner or the Executive Director fails or refuses to implement the Board's recommendation, the National Commissioner or the Executive Director must provide written reasons to the Chairperson within 10 days of receipt of the report and recommendations for such failure or refusal.
- (18) Where the Board is not satisfied with the reasons provided, it may refer the report and recommendations to the Minister of Police within 14 days after being informed thereof.

Alternative dispute resolution

- 22 (1) The Board may, if it deems it necessary in the interests of a service delivery, proceed to resolve a complaint through a mediation and conciliation process contemplated in section 15Z(d)(iii) of the Act.

- (2) The decision to refer the complaint for resolution or mediation and conciliation must be done in consultation with the complainant and the affected party.
- (3) Where the informal resolution or mediation fails, the Board may refer the matter complained of to the Minister for direction.
- (4) In the case where a criminal act is alleged to have been committed by a person subject to an assessment, the Board must refer the matter to the relevant authorities for further action.
- (5) The Board must ensure that recommendations regarding disciplinary matters are referred to —
 - (a) the National Commissioner;
 - (b) the Executive Director; or
 - (c) any other relevant authority.

Reports

- 23 (1) The report contemplated in section 15AA(5) containing recommendations regarding disciplinary action against a member of the Service, IPID, or any other relevant authority must be furnished to the National Commissioner, the Executive Director of IPID or the head of the relevant executive authority, as the case may be, within ten (10) days for compliance.
- (2) The National Commissioner, the Executive Director of IPID or the head of relevant authority to which the report and recommendation have been submitted, must provide the Chairperson with a written report within one month of receipt of the recommendations on the outcome or disciplinary action.
 - (3) The Chairperson must ensure that a report is compiled on the status of all complaints received and assessed, including, but not limited to, any systemic matter that constitutes an abuse of power, impropriety or prejudice to any person or community that lodged a complaint.
 - (4) The Chairperson must ensure that the report referred to sub-regulation (5) is submitted to the Minister on a bi-annual basis.
 - (5) The report contemplated in section 15Z(6) of the Act must contain the following information —
 - (a) the number of complaints which the Board received;
 - (b) the nature of the complaints received;
 - (c) the number of complaints which the Board decided were well-founded;
 - (d) the number of complaints which the responsible body has been informed have been referred to —

- (i) the National Commissioner;
 - (ii) the Executive Director of the Independent Police Investigative Directorate; and
 - (iii) any other relevant authority.
- (e) a summary of —
- (i) the subject matter of complaints that the responsible body received;
 - (ii) any matters of general importance arising out of those complaints, or the way in which the complaints were handled;
 - (iii) any matter where action has been or is to be taken to improve services as a consequence of those complaints.
- (6) The report contemplated in section 15Z(6) of the Act, must be sent as soon as is reasonably practicable to any authority established by law regulating the protection of personal information.

Register

- 24 (1) The Chairperson must ensure that all complaints are categorized and kept in a register.
- (2) The register must contain —
- (a) details of every complaint that is lodged;
 - (b) details of the nature and category of each complaint;
 - (c) the date of receipt of the complaint;
 - (d) the date of referral of the complaint to the committee for assessment;
 - (e) the outcome of the assessment of each complaint; and
 - (f) the outcome of disciplinary action that has been recommended.

Public awareness

- 25 The Board must make information available to the public as to —
- (a) the arrangements for dealing with complaints; and
 - (b) how additional information about those arrangements may be obtained.

Access to the forensic DNA profile and crime scene sample for exoneration purposes

- 26 (1) Any person who believes he or she has wrongfully been convicted of an offence may, in writing, request the authorised officer to have access to the forensic DNA profile derived from a crime sample that was collected and submitted to the Forensic Science Laboratory in a particular case.
- (2) The request must contain the relevant station and case number in respect of which it is alleged that there was a wrongful conviction and the request must set out reasons why the forensic DNA profile is required.

- (3) The authorised officer or his or her delegate must consider the request within 30 days after having received the request at the Forensic Science Laboratory. If a request is refused, written reasons must be provided.

Forensic awareness, investigation and examination interventions

- 27 (1) The National Commissioner must take appropriate measures to implement a forensic awareness program for police officials and the public.
- (2) The Divisional Commissioner: Human Resource Development must, after consultation with the authorised officer, develop training programs to ensure that police officials from the Divisions: Visible Policing and Detective Service are trained on —
- (a) the manner in which the first responder must deal with a crime scene;
 - (b) the manner in which the integrity of a crime scene must be properly secured and maintained;
 - (c) the evidential value and packaging of exhibit material; and
 - (d) the provisions of the Act.
- (3) The authorised officer must appoint staff to develop training programs and ensure that crime scene examiners are trained —
- (a) in the processing and examination of different types of crime scenes;
 - (b) the performing of preliminary tests for body fluids;
 - (c) the manner in which the integrity of a crime scene must be properly secured and maintained;
 - (d) the evidential value and packaging of exhibit material; and
 - (e) the provisions of the Act.
- (4) The authorised officer must liaise with the National Prosecuting Authority and, if so requested, provide assistance in respect of the training of prosecutors in the evidential value of forensic evidence and the interpretation of forensic report findings.

Information technology infrastructure and systems

- 28 (1) The Divisional Commissioner: Technology Management Services must, after consultation with the authorised officer, implement and maintain information technology systems to —
- (a) support an efficient DNA examination service;
 - (b) ensure that effective system solutions are maintained for the capturing of fingerprint numbers and buccal samples, together with the suspect information on CAS/ICDMS system and CRIM system;
 - (c) perform the comparative search, verification of candidate forensic investigative leads, linking forensic DNA investigative leads to other forensic investigative lead, reporting of forensic DNA investigative leads and administration of the NFDD;

- (d) provide for adequate system solutions to support the combining and management reporting of different forensic investigative leads (such as forensic DNA, ballistics and fingerprints) to the investigating officers on the CAS/ICDMS and BI systems; and
 - (e) provide adequate system solutions to provide members of the detective service functionality to manage unsolved serial and multiple offender cases and compile a profile of persons and suspects identified through forensic investigative leads.
- (2) The information technology systems for DNA examinations and system solution for the NFDD must have adequate security measures to prevent unauthorised access and maintain data integrity, including annual risk assessments and adequate disaster recovery measures. The Divisional Commissioner: Technology Management Services must annually report to the Forensic Oversight and Ethics Board on measures taken to ensure the integrity of the data on the casework systems and NFDD system.
 - (3) The Divisional Commissioner: Technology Management Services and the Corporate Executive Officer: State Information Technology Agency System must ensure that risk assessments on the data integrity, access and security including disaster recovery is performed within 60 days after the coming into operation of the Act, on the system solution for the NFDD, CRIM, CAS/ICDMS, DE-STRIlab, AFIS, IBIS, FSL Admin, PCEM and other forensic systems.
 - (4) A risk assessment must be conducted on an annual basis to ensure the data integrity and security measures.
 - (5) The risk assessment report must take into consideration current industry standards, identify shortcoming and recommend the measures to address the shortcomings and best practices. The risk assessment report and the implementation plan to address and resolve the identified shortcomings must be submitted to the Minister of Police within 30 days after the risk assessment was performed.
 - (6) The Divisional Commissioner: Technology Management Services and the Corporate Executive Officer: State Information Technology Agency must report on a quarterly basis to the Minister of Police on the progress on mitigating the risks identified.

General

- 29 (1) The Divisional Commissioner: Human Resource Development must, on an annual basis, after consultation with the Department of Health and the National Health Laboratory Services, compile a training plan, to ensure that authorised persons are properly trained in the taking of buccal samples.

- (2) The Divisional Commissioner: Detective Service must, —
 - (a) within 90 days of the commencement of the Act, obtain a list of offenders who are serving a sentence of imprisonment in respect of an offence referred to in Schedule 8, as well as persons who have been released on parole or under correctional supervision in respect of an offence referred to in Schedule 8 from the Department of Correctional Services;
 - (b) compile an action plan for implementation to support the taking of buccal samples from persons referred to in sub-regulation (a), as well as persons awaiting trial in respect of offences referred to in Schedule 8 of the Criminal Procedure Act; and
 - (c) liaise with the authorised officer to ensure that the forensic DNA profiles of persons referred to in sub-regulations (a) and (b) are included in the NFDD.
- (3) The National Commissioner must, within 90 days of the commencement of the Act, ensure that assessment tools are developed to measure the effectiveness and timely compliance of —
 - (a) the submission of buccal and crime samples to the Forensic Science Laboratory for examination;
 - (b) the performance of forensic DNA analysis of buccal samples and crime scene samples; and
 - (c) responding to, and performing follow-up of unsolved forensic investigative leads reported.
- (4) The National Commissioner must ensure that cases are re-opened and appropriately reflected as such in the case docket diary of the CAS/ICDMS when forensic investigative leads are identified.
- (5) A case where a forensic investigative lead has been reported may only be closed on the CAS/ICDMS if so authorised by the detective commander, provided that the unsolved investigative lead has been investigated and followed-up.
- (6) The authorised officer must, in consultation with the Divisional Commissioner: Technology Management Service, create a national central repository for forensic animal DNA profiles. Access to this repository may be granted to testing laboratories performing animal forensic DNA analysis.
- (7) The authorised office may determine national standards for testing laboratories that perform animal forensic DNA analysis and may facilitate research with academic institutions and other facilities to develop procedures, best practices and chemistries in the identification of animal DNA for forensic purposes or criminal investigation.

- (8) The Director General: Department of Justice and Constitutional Development must provide the authorised officer or person designed by him or her, on a monthly basis, of the particulars of persons whose names have been included in the National Register for Sex Offenders contemplated in section 50(1) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2008 (Act No. 32 of 2008).
 - (9) The National Commissioner must, in consultation with the Department of Public Works, ensure that adequate forensic facilities are provided and maintained in accordance with the relevant accreditation standards.
 - (10) The Director General: Department of Public Works must, after consultation with the authorised officer, on an annual basis, provide the Minister of Police with a risk assessment of the laboratory facilities provided for forensic services which addresses the following matters:
 - (a) evaluate the quality and adequacy of the facilities;
 - (b) maintenance measures to support the facility services and utilities of the facilities;
 - (c) the manner in which the shortcomings identified in the risk assessment will be resolved and recurrence thereof prevented;
 - (d) steps taken to ensure that the accreditation status or quality management program of the forensic service is not negatively impacted by the current state of the facility;
 - (e) the refurbishment of facilities to support the implementation of new technologies and instrumentation to improve forensic services; and
 - (f) provision of adequate storage facilities for the safekeeping of exhibits and case files and measures taken to ensure that the exhibits and case files in storage are not compromised.
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