

Annexure A

In respect of specific proposed amendments the following comment is made:-

1. Clause 2: Insertion of proposed section 36A in Chapter 3 of Act 51 of 1977

- (a) The definition of “**body-prints**” is unnecessarily restrictive. Limiting such prints to a person’s ear, foot, nose, palm or toes would exclude prints that may otherwise be valuable in detecting criminals. Various other body parts may also provide unique prints such as the lips. With advances in technology a print may well also include the iris of the eye.

The NPA proposes that “**body prints**” be extended to include ‘or any other part of the body’.

See also: Clause 10(a): Amendment of section 1 of Act 60 of 2000

Clause 12(a): Amendment of Section 1 of Act 15 of 2003

- (b) The definition of “**NDDSA**” as a database requires the attribution of a technical definition inconsistent with the general usage. A database generally consists of a structured collection of records or data, rather than actual objects or samples. However, it is apparent that the intention is not only to create a database, but also to retain certain samples for later analysis. Although a database may be able to contain a description or reference of such samples, a database would not generally be described as including objects or samples.

The NPA proposes that where reference is intended to be made to retained samples as well as to DNA information in the NDDSA, that a reference to ‘samples retained’ be inserted.

See Clause 2: proposed section 36A(1)(k)(ii)

- (c) Within the definition of “**speculative search**”, the comma after the word “**taken**” in the second line should be moved to before the word “**taken**”.

2. Clause 3: Insertion of proposed section 36B in Chapter 3 of Act 51 of 1977

(a) The proposed section **36B(1)(a)(iv)** refers to “**if a non-intimate sample was not taken upon arrest**” after para (bb). This sentence should be deleted as the proposed section **36B(1)(a)** deals with fingerprints and non-intimate samples is dealt with in the proposed section **36B(1)(b)**.

(b) The proposed section **36B (6) (a)** requires the non-intimate samples or the information derived from such samples to be retained beyond their use for which they were initially taken. The word “**must**” is utilised. In the amendments proposed to the South African Police Service Act the retention of samples – referred to as bodily substance – is dependent upon “**where applicable and scientifically possible**”. This seems inconsistent.

Furthermore, under the present wording where non-intimate samples are unable to be analysed these samples ‘**must**’ be retained. This would seem unnecessary as there would be no value in retaining such non-intimate samples.

It is therefore proposed that the wording in section 36B (6) (a) be amended to read “**non-intimate samples** where applicable and scientifically possible”.

See also: **Clause 4: Insertion of section 36C(3)(a)**
 Clause 4: Insertion of section 36C(3)(d)
 Clause 5: Insertion of section 37(6)(a)
 Clause 11: Substitution of section 113(5)(a)
 Clause 13: Substitution of section 9(5)(a)

(c) The proposed section **36B (7)** refers to the word “**crime**” in the first part of the sentence, and later uses the word “**offence**” in the latter part of the sentence. The use of the word “**crime**” is also inconsistent with the use of the word “**offence**” in the proposed section 36B (1).

It is proposed that the word “**crime**” in the first part of the sentence be replaced by the word “**offence**”.

(d) The proposed section **36C(3)(d)** refers to Chapter “**6B**” of the South African Police Service Act. This should be a reference to Chapter “**5B**”.

3. Clause 5: Amendment of section 37 of Act 51 of 1977

- (a) The Bill incorrectly proposes the deletion of the word “**finger-prints**” from the original section when it deletes the expression “**palm-prints or foot-prints**” which have been substituted by a new definition of “**body-prints**” which includes palm and foot-prints.

It is proposed that the word “**finger-prints**” not be deleted, and that the word “or” be inserted before the word “**body-prints**”.