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OVERVIEW AND PURPOSE OF THE DNA ACT

1. Establishes and regulates the administration and maintenance of the **National Forensic DNA Database of South Africa (the "NFDD")** by amending the South African Police Service Act, 1995.
2. Provides for the use of forensic DNA profiles in the **investigation of crime and the use of such profiles in proving the innocence or guilt of persons before or during a prosecution or the exoneration of convicted persons**. In addition, it will assist in the **identification of missing persons and unidentified human remains**.
3. Provides for the **taking of specified bodily samples from certain categories of persons** for the purposes of forensic DNA analysis. The offences for which **DNA samples** must be taken are listed in **Schedule 8**, which has been added to the Criminal Procedure Act, 1977.
4. Provides for the conditions under which the DNA samples, or forensic DNA profiles derived from the samples, may be **retained or the periods within which they must be destroyed**.
5. Provides in particular for the protection of the **rights of women and children** in the taking of DNA samples and in the retention and removal of the forensic DNA profiles of children from the NFDD.
6. Provides for **oversight over the NFDD** and the handling of complaints relating to the taking, retention and use of DNA samples and forensic DNA profiles.
7. Provides for **transitional provisions** in respect of the current repository of DNA profiles held by the Forensic Science Laboratory (FSL).
8. Stipulates **Regulations** that the Minister of Police must make in order to achieve the provisions of this Act.

USEFUL DEFINITIONS OF TERMS USED IN THE DNA ACT

AUTHORISED OFFICER	The police officer commanding the Division responsible for forensic services within the SAPS, or his or her delegate.
AUTHORISED PERSON	With reference to buccal samples, any police official or member of the Independent Police Investigative Directorate ('IPID'), who is not the crime scene examiner of the particular case, but has successfully undergone the training prescribed by the Minister of Health under the National Health Act, in respect of the taking of a buccal sample.
CHILD	A person under the age of 18 years.
BODILY SAMPLE	Intimate or buccal samples taken from a person which includes physical evidence, collected from the body of a person, including a sample taken from a nail or from under the nail of a person.
BUCCAL SAMPLE	A sample of cellular material taken from the inside of a person's mouth by an authorised person who is of the same gender as the person from whom the sample is being taken.
CRIME SCENE SAMPLE	Physical evidence, which is retrieved from the crime scene or any other place where evidence of the crime may be found and may include physical evidence, collected from the body of a person, including a sample taken from a nail or from under the nail of a person.
INTIMATE SAMPLE	A sample of blood or pubic hair or a sample taken from the genitals or anal orifice area of the body of a person, excluding a buccal sample, which samples may only be taken by a medical practitioner or registered nurse.
DNA	Deoxyribonucleic acid which is a bio-chemical molecule found in the cells and that makes each species unique
FORENSIC DNA ANALYSIS	The analysis of non-coded sections of the DNA of a bodily sample or crime scene sample to determine the forensic DNA profile: Provided that this does not relate to any analysis pertaining to medical tests or for health purposes or mental characteristic of a person or to determine any physical information of the person other than the sex of that person.

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FORENSIC DNA PROFILE	The results obtained from forensic DNA analysis of bodily samples taken from a person or samples taken from a crime scene, providing a unique string of alpha numeric characters to provide identity reference: Provided this does not contain any information on the health or medical condition or mental characteristic of a person or the predisposition or physical information of the person other than the sex of that person.
GENDER	The state of being male or female (typically used with reference to social and cultural differences rather than biological ones). In other words, how the person identifies him or herself. This is as opposed to the sex of the person, which is determined by the XX or XY chromosome with which they were born. A forensic DNA Profile reveals the sex of the person, but the gender of that same person, may differ from their sex. For example, a person may be born with an XX chromosome, in which case their sex is female, but they may identify themselves as a man, in which case their gender will be male.
NFDD	The National Forensic DNA Database of South Africa consisting of forensic DNA profiles categorised into six indices.
NFOEB / THE BOARD	The National Forensic Oversight and Ethics Board established in terms of the DNA ACT to monitor implementation, provide oversight and handle complaints.
COMPARATIVE SEARCH	The comparing of forensic DNA profiles derived from bodily samples against forensic DNA profiles contained in the different indices of the NFDD.
FAMILIAL SEARCHING	A technique whereby a forensic DNA profile derived from a sample: <ul style="list-style-type: none"> i. of a missing person; or ii. obtained from a family member of a missing person is deliberately searched against the Missing Persons and Unidentified Human Remains Index and the Crime Scene Index of the NFDD to obtain a list of forensic DNA profiles that are almost similar to the forensic DNA profile derived from a sample referred to in the above subparagraph (i) or (ii).

DNA SAMPLE TAKING: WHO CAN TAKE WHAT TYPE OF SAMPLE FROM WHOM?

The DNA ACT differentiates between different types of DNA samples as well as who can take which types of samples from different categories of people. Medical practitioners and registered nurses will continue to play a role in respect of the taking of DNA samples, but the DNA ACT allows the taking of buccal samples from convicted offenders and arrestees to be performed by or under the supervision of 'authorised persons' who have undergone special training. SAPS will carry the cost of all the training as well as the cost of the buccal and bodily sample kits.

TYPE OF SAMPLE	WHO CAN TAKE IT	FROM WHOM THE SAMPLE IS TAKEN
<p>BUCCAL SAMPLE (A sample of cellular material taken from the inside of a person's mouth)</p>	<p>An 'authorised person', namely any police official or member of the Independent Police Investigative Directorate ('IPIID'), who is not the crime scene examiner of the particular case, but has successfully undergone the training in respect of the taking of a buccal sample. These trained police officials or 'authorised persons' will be required to carry with them identification to show that they have undergone this form of training.</p> <p>The person taking the sample must be of the same gender as the person from whom the sample is being taken and with strict regard to 'decency and order' and 'in a designated area deemed suitable for such purposes'.</p> <p>The taking of a buccal sample is a quick and simple process which can be done in less than a minute.</p>	<p>From arrestees and convicted offenders of schedule 8 offences.</p> <p>Volunteers for Investigative or Elimination purposes.</p>
<p>SELF TAKING OF A BUCCAL SAMPLE (A sample of cellular material taken from the inside of a person's mouth)</p>	<p>If someone requests to take the buccal sample by him or herself, this is allowed under the provisions of the DNA ACT. In that case the 'authorised person' must supervise the taking of a buccal sample from the person who is required to submit such sample and who requests to take it himself or herself.</p> <p>This will be covered in the training of the authorised persons in the taking of buccal samples from persons.</p>	<p>Any person required to submit a DNA sample in terms of the provisions of the DNA ACT may request the self taking of a buccal sample under supervision.</p>

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<p>BODILY SAMPLE (Intimate or buccal samples taken from a person. May be a crime scene sample)</p>	<p>A registered nurse or medical practitioner may take bodily samples, in most cases from victims. Note: The Bill does not preclude a registered nurse or medical practitioner from taking buccal samples from arrestees and convicted offenders should they, in certain circumstances, be called upon to do so.</p> <p>In the transitional phases and whilst the police officials and members of the IPID are being trained, this function may need to be carried out by medical practitioners and registered nurses where necessary.</p>	<p>In most cases, from victims of crime, but may also be from arrestees where for example the victim's DNA may be present on the suspect, for instance if the victim had bitten the perpetrator or from an arrestee if the victim had scratched the suspect.</p>
<p>INTIMATE SAMPLE (A sample of blood or pubic hair or a sample taken from the genitals or anal orifice area of the body of a person)</p>	<p>Intimate samples may only be taken by a medical practitioner or registered nurse.</p> <p>The DNA ACT is silent on the issue of gender for the taking of intimate samples.</p>	<p>In most cases, from victims of crime, but may also be from arrestees where for example the victim's DNA may be present on the suspect or where a sample of blood is required to be taken from the suspect or convicted offender.</p>

PURPOSE AND COMPOSITION OF THE NATIONAL FORENSIC DNA DATABASE (NFDD)

PURPOSE OF THE NFDD	S. 15F	<p>The objective of establishing and maintaining the NFDD is to perform comparative searches in order to:</p> <ol style="list-style-type: none"> a. Serve as a criminal investigative tool in the fight against crime b. Identify persons who might have been involved in the commission of offences, including those committed before the passing of the DNA ACT c. Prove the innocence or guilt of an accused person in the defence or prosecution of that person d. Exonerate a person incorrectly convicted of an offence e. Assist with the identification of missing persons or unidentified human remains
COMPARATIVE SEARCHING AND DISCLOSURE OF INFORMATION ON THE NFDD	S.15N	<p>The authorised officer must perform comparative searches for the above purposes only and may only disclose the results of the comparative search:</p> <ol style="list-style-type: none"> a) if he or she is a person who of necessity supplies it in the performance of his or her functions in terms of the provisions of the DNA ACT or any other Act; b) in respect of information which is required in terms of any law or as evidence in any court of law; c) to any competent authority which requires it for the institution of any criminal proceedings, including a preliminary investigation or an inquest ; d) to an accused person, or where the person is a child to his or her parent or guardian, or his or her legal representative, for criminal defence purposes; e) to a person convicted of an offence, or his or her legal representative, for exoneration purposes.

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<p>*SHARING OF INFORMATION ON THE NFDD WITH FOREIGN LAW ENFORCEMENT AGENCIES</p>	<p>S. 150</p>	<ol style="list-style-type: none"> 1. A forensic DNA profile received from a foreign state or a recognised international law enforcement organisation, court or tribunal may be compared with the forensic DNA profiles on any of the Indices in the NFDD, except the Investigative Index, for the purposes set out in section 15F. 2. A forensic DNA profile contained in the Crime Scene Index and the Missing Persons and Unidentified Human Remains Index of the NFDD may be communicated to a foreign state or a recognised international law enforcement organisation, court or tribunal for the purposes set out in section 15F [see provisions of S15F above]. <p>Note: Any request in terms of this section and the outcome thereof must be reported to the NFOEB</p>
<p>COMPOSITION OF NFDD</p>	<p>S.15G</p>	<p>The NFDD will consist of the following indices which contain forensic DNA profiles:</p> <ol style="list-style-type: none"> 1. Crime Scene Index 2. Arrestee Index 3. Convicted Offender Index 4. Investigative Index 5. Elimination Index 6. Missing Persons and Unidentified Human Remains Index <p>**Sub-indices for children will be created under the relevant indices referred to above.</p> <p>NOTE: The analysis, custody and disposal of samples at the FSL must be managed independently of the administration and maintenance of the NFDD.</p>

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CRIME SCENE INDEX	S.15H	<p>The Crime Scene Index will contain forensic DNA profiles obtained from DNA samples of unknown origin that are found and collected:</p> <ul style="list-style-type: none">a. At any place where an offence was, or is reasonably suspected of, having been committed.b. On, or in, the body of the victim or suspect. Such DNA evidence may be used to identify the person who was in contact with the victim during the commission of the offence.c. On anything worn or carried by the victim, or suspect, at the time when an offence was, or is reasonably suspected of having been committed.
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CONVICTED OFFENDER INDEX	S 15J	<p>The Convicted Offender Index will contain the forensic DNA profiles from any arrestee who has subsequent to the entering of his or her forensic DNA profile on the Arrestee Index been convicted of an offence and of any person who has been convicted of an offence either before or after the coming into operation of the DNA ACT and of any person whose name appears on the National Register for Sex Offenders.</p> <p>Forensic DNA profiles entered on the Convicted Offender Index will be stored and retained indefinitely on the NFDD except for the following:</p> <ol style="list-style-type: none">1. Upon the conviction of a child, the child's forensic DNA profile must be retained on the NFDD subject to the provisions relating to expungement of a conviction or sentence of a child as provided for in section 87 of the Child Justice Act, 2008.2. The forensic DNA profile of a convicted offender who has been pardoned or whose criminal record has been expunged must be removed by the authorised officer from the Convicted Offender Index within three years of being notified of the pardon or expungement by the DG of Justice and Constitutional Development.3. In the case of a child, the forensic DNA profile on the Convicted Offender Index must be removed within 12 months if no application for expungement or pardon has been received from or on behalf of such child.
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ARRESTEE INDEX	S.15 I	<p>The arrestee index will contain Forensic DNA Profiles obtained from any person arrested and formally charged with any offence referred to in schedule 8 or any person released on bail in respect of a schedule 8 offence (if a DNA sample was not previously taken upon that person's arrest).</p> <p>The forensic DNA profile in the Arrestee Index will be migrated to the Convicted Offender's Index if that person's arrest results in a conviction, failing which the person may apply to the authorised officer to have it immediately removed from the NFDD when a:</p> <ul style="list-style-type: none"> a) child is diverted in accordance with Chapter 8 of the Child Justice Act, 2008 b) decision was made not to prosecute a person c) person is discharged at a preparatory examination d) person is acquitted at his or her trial e) person's conviction is set aside on appeal or review <p><i>Note:</i> The removal of the applicant's DNA profile from the Arrestee Index is dependent on there being no other outstanding criminal investigation against that person and on confirmation by the Court or Prosecutor, as the case may be, that the original arrest did not result in a conviction. If the DNA profile is removed from the Arrestee Index, the authorised officer must notify the Board and the person of the removal of the Forensic DNA profile from the Arrestee Index.</p> <p>If no application to remove the forensic DNA profile from the Arrestee Index has been received, the authorised officer must remove the DNA profile from the Arrestee Index within three years, in the case of an adult and within twelve months, in the case of a child.</p> <p>It is the responsibility of the Clerk of the Court or Registrar of the High Court to notify the authorised officer of an acquittal, conviction, setting aside or finding of a preliminary investigation within 60 days from the date of the verdict or outcome of the matter. In respect of a decision not to prosecute or the diversion of a child in accordance with Chapter 8 of the Child Justice Act, the Prosecutor who made the decision must notify the authorised officer within 60 days from the date of the decision.</p>
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INVESTIGATIVE INDEX	S.15K	<p>The Investigative Index will contain forensic DNA profiles obtained with <i>informed consent</i>* from any person who an authorised person believes will be of value to an investigation by either excluding or including that person as a possible perpetrator of the offence or where the authorised officer suspects that a person may have committed an offence referred to in Schedule 8. If a person does not consent, a warrant may be issued by a judge or magistrate if it appears that the forensic DNA profile obtained from that person may assist with investigation or where there are reasonable grounds to suspect that a person from whom the profile is required, may have committed an offence listed in Schedule 8.</p> <p>Note: If the person is a child, the sample may be taken with the informed consent of the child's parent or guardian.</p> <p>*"<i>informed consent</i>" means that the person consents, in writing, to the taking of a buccal sample, after a police official has informed him or her:</p> <ul style="list-style-type: none">a) Of the manner in which the buccal sample will be taken.b) That he or she is under no obligation to give a buccal sample.c) That the sample or the forensic DNA profile derived from it may produce evidence that might be used in a court of law.d) That the buccal sample taken under this section, and the forensic DNA profile derived from it, may only be used for purposes referred to in section 15F. <p>A forensic DNA profile stored in the Investigative Index must be removed within three months after the authorised officer is notified that the case is finalised and the relevant person must be notified, within the same period of such removal.</p>
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<p>ELIMINATION INDEX</p>	<p>S.15L</p>	<p>The Elimination Index will contain forensic DNA profiles obtained from:</p> <ol style="list-style-type: none"> 1. A police official, or any other person, who as part of his or her official duties attends or processes a crime scene or who may be handling or processing or examining crime scene samples or bodily samples. 2. Any person directly involved in the servicing or calibration of equipment or in laboratories used in the forensic DNA analysis process. 3. Any person, who enters an examination area in a forensic DNA laboratory, or processes, handles or examines crime scene samples or bodily samples, under this Chapter. 4. Where possible, any person directly involved in the manufacturing of consumables, equipment, utensils or reagents. 5. From the commencement of the DNA ACT, all new recruits to the SAPS must submit their forensic DNA profiles to the authorised officer to be included in the Elimination Index. <p>Note:</p> <ul style="list-style-type: none"> • Forensic DNA profiles in the elimination index may be subjected to a comparative search for purposes referred to in section 15F. • The forensic DNA profiles in the Elimination Index must be stored on the NFDD and be retained, unless the profile has been migrated to another Index or is no longer required. • A person whose DNA profile has been entered onto the Elimination Index, may apply to have his or her profile removed from the Elimination Index when it is no longer required.
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<p>MISSING PERSONS & UNIDENTIFIED HUMAN REMAINS INDEX*</p>	<p>S.15M</p>	<p>The Missing Persons and Unidentified Human Remains Index will contain forensic DNA profiles obtained from:</p> <ol style="list-style-type: none"> 1. Any bodily sample of a missing or unidentified person. 2. Any bodily sample or crime scene sample taken from unidentified human remains. <p>Forensic DNA profiles in this index must be stored until the purpose for which they have been stored has been achieved, and must then be removed.</p>
<p>*FAMILIAL SEARCHING</p>		<p><i>Familial searches may be conducted in respect of forensic DNA profiles retained in the Missing persons and Unidentified Human Remains Index only.</i></p> <p>For the purposes of this section, 'familial searches' means a technique whereby a forensic DNA profile derived from a sample:</p> <ol style="list-style-type: none"> i. of a missing person; or ii. obtained from a family member of a missing person <p>is deliberately searched against the Missing Persons and Unidentified Human Remains Index and the Crime Scene Index of the NFDD to obtain a list of forensic DNA profiles that are almost similar to the forensic DNA profile derived from a sample referred to in subparagraph (i) or (ii) above.</p> <p>Procedures to be followed when conducting a familial search:</p> <ol style="list-style-type: none"> 1. A request to conduct a familial search must be submitted to the authorised officer and a copy thereof provided to the Board. 2. The Board must be notified of any request for the use of familial searches and the outcome thereof. 3. The Minister of Police must ensure that a policy relating to familial searches is developed. <p>SAPS may use the results of the familial searches as an investigative lead, by a specially trained police official, to:</p> <ol style="list-style-type: none"> a. interview family members of the near matches. b. identify unidentified human remains. <p>Note: The results of familial searches must be dealt with in a 'sensitive manner'.</p>

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TIME FRAMES

DEALS WITH	TIME FRAMES	TIME
TAKING OF SAMPLES FROM CONVICTED OFFENDERS	A buccal sample must be taken within two years of any person serving a sentence of imprisonment in respect of any Schedule 8 offence and before the release of the person, if the buccal sample had not already been taken upon his or her arrest. This also applies to convicted offenders released before their sentence is completed who are either on parole or under correctional supervision by a court.	2 YEARS
TAKING OF SAMPLES FROM CONVICTED OFFENDERS	The DG of the Dept of Justice and Constitutional Development must, on a monthly basis provide the National SAPS Commissioner with an updated list of all persons that were ordered to be entered on the National Register for Sexual Offenders, until the NFDD system solution comes into operation.	MONTHLY
DELIVERY OF SAMPLES TO THE FSL & LOADING TO THE NFDD	The Station Commander or other relevant commander must within 30 days furnish every bodily sample taken, to the authorised officer, who must carry out a forensic DNA analysis on every such sample.	30 DAYS
DELIVERY OF SAMPLES TO THE FSL & LOADING TO THE NFDD	Bodily samples and crime scene samples received at the forensic laboratory must be analysed and loaded on the NFDD within 30 days, unless there is a compelling reason in terms of priorities why such samples cannot be analysed and loaded within that period.	30 DAYS
SAMPLE DESTRUCTION	Any bodily sample taken from a person which is not a crime scene sample must be destroyed and disposed of within three months after a forensic DNA profile is obtained and loaded on the NFDD.	3 MONTHS 1 YEAR

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DEALS WITH	TIME FRAMES	TIME
FORENSIC DNA PROFILES RETENTION FRAMEWORK	The Clerk of the Court or Registrar of the High Court must notify the authorised officer of an acquittal, conviction, setting aside or finding of a preliminary investigation within 60 days from the date of the verdict or outcome of the matter. In respect of a decision not to prosecute or the diversion of a child in accordance with Chapter 8 of the Child Justice Act, the Prosecutor who made the decision must notify the authorised officer within 60 days from the date of the decision.	60 DAYS
FORENSIC DNA PROFILES RETENTION FRAMEWORK	In the case of a child, the forensic DNA profile on the Convicted Offender Index must be removed within 12 months if no application for expungement or pardon has been received from or on behalf of such child.	12 MONTHS
FORENSIC PROFILES RETENTION FRAMEWORK	Any forensic DNA profile in the Investigative Index must be removed within three months after the authorised officer is notified that the case is finalised and the relevant person must be notified, within the same period of such removal.	3 MONTHS
FORENSIC PROFILES RETENTION FRAMEWORK	If no application for removal of a forensic DNA profile contained in the Arrestee Index has been received, that profile must be removed immediately after the authorised officer has been notified and may not be retained for longer than three years, in the case of an adult; or twelve months, in the case of a child.	3 YEARS 12 MONTHS
NFOEB / THE BOARD	The Board must be appointed before the commencement of the DNA ACT, and have its first meeting convened within 30 days after the commencement of the DNA ACT. The Board must consist of not more than ten persons appointed by the Minister of Police on a part-time basis for a period not exceeding five years . The term of appointment of a member of the Board may be renewed for an additional term. In the case of a vacancy, the Minister must fill the vacancy within six months. A member may resign by giving 30 days written notice of his or her resignation to the Minister.	NOW & 30 DAYS TERM: 5 YEARS
NFOEB / THE BOARD	The Board must submit a report annually to the National assembly on its functions as per the DNA ACT	ANNUALLY

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DEALS WITH	TIME FRAMES	TIME
NFOEB / THE BOARD	The Minister must report to the National Assembly on the— (a) appointment of the Board, including the names of the members of the Board and a synopsis of their expertise and suitability to serve on the Board; and (b) removal or resignation of members from the Board, within 14 days of the appointment, removal or resignation, if Parliament is in session or, if Parliament is not in session, within 14 days after the commencement of its next ensuing session.	14 DAYS
NFOEB / THE BOARD	In the case of a vacancy on the Board, the Minister of Police must fill the vacancy within a reasonable period of time, which period must not exceed six months.	6 MONTHS
NFDD SYSTEM SOLUTION	The NFDD system solution must be operational within a period of four years (which may be extended by the Minister, on the request of the National Commissioner and after approval by the National Assembly) The forensic DNA profiles which were administered and maintained before the DNA ACT came into operation, must be maintained by the authorised officer until the system solution to support the NFDD is operational. The current forensic DNA profiles contained in the Casework Index and the Reference Index must be transferred to the NFDD within three months of the NFDD system solution being operational. The removal of the forensic DNA profiles in the Casework Index and Reference Index must be performed within one year after the system solution to support the operation of the NFDD has been established.	4 YEARS 3 MONTHS
NFDD SYSTEM SOLUTION	The National Commissioner of the SAPS must report quarterly, in writing, to the National Assembly and the Board on the progress made in the acquisition of the system solution to support the NFDD until it is fully operational.	QUARTERLY
DISCIPLINARY PROCEEDINGS	The National Commissioner or the Executive Director must finalise disciplinary proceedings relating to DNA within 60 days from the initiation thereof and must report to the Board and the Minister the reasons for not finalising the proceedings within that period. (note: If the disciplinary proceedings are not instituted and finalised within the periods referred to above, it would not invalidate the proceedings.) The National Commissioner or the Executive Director must, within 30 days of receipt thereof, initiate disciplinary proceedings in terms of the recommendations made by the Board and immediately on finalisation of the disciplinary matter inform the Minister in writing of the outcome thereof and provide a copy thereof to the Board.	60 DAYS 30 DAYS

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DEALS WITH	TIME FRAMES	TIME
SOP'S (Standard Operating Procedures)	The National Commissioner, after consultation with the Board, must within six months of the commencement of the DNA ACT develop standard operating procedures regarding <p style="margin-left: 40px;"><i>(a)</i> access to the NFDD; and <i>(b)</i> the implementation of safety measures to protect the integrity of information contained on the NFDD.</p>	6 MONTHS
REGULATIONS	The regulations recommended in the DNA ACT must be tabled in Parliament for notification within six months after the commencement of the DNA ACT.	6 MONTHS
LEGISLATIVE REVIEW	The Minister must not later than five years after the commencement of the DNA ACT submit a report** to the National Assembly on whether any legislative amendments are required to improve the functioning of the NFDD and the use of forensic DNA evidence in the combating of crime. After the initial period of five years the Minister must every three years submit a report to the National Assembly. **the report must provide details in respect of the performance of the NFDD, any disciplinary hearings concerning forensic DNA matter and matters relating to the use of forensic DNA evidence in the investigation of crime.	5 YEARS
PENALTIES	Any person who uses or allows the use of a bodily sample, crime scene sample or any forensic DNA profile derived from such sample for any purpose other than as contemplated in the DNA ACT is guilty of an offence and liable in the case of a natural person, to imprisonment for a period not exceeding 15 years, and in the case of a juristic person, to a fine.	15 YEARS

NATIONAL FORENSIC OVERSIGHT AND ETHICS BOARD

COMPOSITION	<p>Not more than ten persons appointed by the Minister of Police:</p> <p>(1) five persons must be from outside the public sector with knowledge and experience in forensic science, human rights law or ethics relating to forensic science; and</p> <p>(2) four persons must be from the public sector, on the level of at least a Chief Director, namely—</p> <ul style="list-style-type: none"> (i) the Secretary of Police or his or her representative; (ii) a representative of the Department of Health who has knowledge in the field of DNA; (iii) a representative from the Department of Justice and Constitutional Development who has a sound knowledge of constitutional law; (iv) a representative from the Department of Correctional Services. <p>(3) a retired judge or a senior advocate with knowledge and experience in the field of human rights who will be appointed as the Chair of the Board. A deputy chairperson will be appointed from the remaining members of the Board - the deputy chairperson must exercise all the powers and perform all the duties of the chairperson whenever the chairperson is unable to do so</p>
TERM OF APPOINTMENT	Five years which may be renewed for an additional term.
REMOVAL	The Minister may, after due enquiry, remove a member from the Board on account of misconduct, incapacity, incompetence, absence from three consecutive meetings of the Board without the prior permission of the Board, except on good cause shown, ill health, conflict of interest, unethical conduct or disqualification as contemplated in subsection.
RESIGNATION	A member may resign by giving 30 days written notice of his or her resignation to the Minister.
SUSPENSION	A member of the Board may be suspended from the Board by the Minister pending the consideration of the removal of such member from the Board.

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DISQUALIFICATION	A person is disqualified from being appointed or continuing to serve as a member of the Board if he or she is not a citizen of the Republic; is an un-rehabilitated insolvent; has been declared by a court to be mentally ill or unfit or has been convicted of a criminal offence.
MEETINGS	The first meeting of the Board must be convened by the Minister and thereafter the meetings of the Board must be held at least quarterly.
GOVERNANCE	The Board may determine its own governance rules and procedures and may establish committees to deal with specific matters as and when required.
FUNCTIONS	<ol style="list-style-type: none"> 1. Monitor the implementation of the provisions of the DNA ACT; 2. Make proposals on the improvement of practices regarding the overall operations of the NFDD, the ethical, legal and social implications of the use of forensic DNA profiles and on the training and the development of criteria for the use of familial searches; 3. Provide oversight over the processes relating to the collection, retention, storage, destruction and disposal, of forensic DNA samples; the retention and removal of forensic DNA profiles, and familial searches; any breach in respect of the taking, transporting, analysis, storing, use and communication of forensic DNA samples and forensic DNA profiles, including security breaches; and security and quality management systems.
REPORTING REQUIREMENTS	The Board must submit a report on the execution of its functions to any authority established by law regulating the protection of personal information. The Board must annually submit a report to the National Assembly on its functions.
COMPLAINTS	<p>The Board must receive and assess complaints about alleged violations relating to the abuse of DNA samples and forensic DNA profiles and/or security breaches, and reporting to complainants in respect thereof. The Board must refer a complaint received to a committee of the Board for assessment in the prescribed manner and the committee must, after its assessment of the complaint, report to the Board on the outcome of such assessment including recommendations relating thereto. The Board must ensure that recommendations regarding disciplinary matters are referred to either the National Commissioner or the Executive Director or any other relevant authority. The Board must attempt to resolve complaints by means of dispute resolution mechanisms such as mediation and conciliation and must refer complaints to relevant authorities where applicable. The outcome of every complaint must be reported to the Minister.</p> <p>Note: 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.</p>

TRANSITIONAL ARRANGEMENTS

The following transitional arrangements will apply directly after the promulgation of the DNA ACT and until such time as the necessary new arrangements have been put in place as determined by the provisions of the DNA ACT.

<p>CURRENT REPOSITORY OF DNA PROFILES HELD BY THE FSL</p>	<p>Comparative searches between forensic DNA profiles may be conducted using the current repository of DNA profiles held by the FSL which have been categorized into a Casework Index and a Reference Index***.</p> <p>***The "Casework Index" means the index containing the forensic DNA profiles derived from crime scene samples collected before the commencement of the DNA ACT and the "Reference Index" means the index containing the forensic DNA profiles derived from bodily samples of victims, suspects, convicted offender, volunteers, contractors or supplier of re-agents or equipment to the forensic DNA laboratory, personnel employed at the forensic DNA laboratory and visitors to the forensic DNA laboratory. Currently the DNA repository held by the FSL consists of only these two indices.</p> <p>The forensic DNA profiles contained in the Casework Index and the Reference Index must be transferred to the NFDD within three months of the system solution being operational, which must be within four* years from the date of the coming into operation of the DNA ACT. Until such time as this migration has occurred, these forensic DNA profiles must be maintained by the authorised officer until the system solution to support the NFDD is operational. The removal of the forensic DNA profiles in the Casework Index and Reference Index must be performed within one year after the system solution to support the operation of the NFDD has been established.</p> <p>* The period of four years referred to above may be extended by the Minister, on the request of the National Commissioner of the South African Police Service, or of his or her own accord and after approval by the National Assembly.</p>
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SYSTEM SOLUTION TO ADMINISTER THE NFDD: CODIS	The system solution the FSL are planning to implement to administer the NFDD, is CODIS, which is the acronym for the "Combined DNA Index System" and is the generic term used to describe the open source software used to run criminal justice DNA databases. The Portfolio Committee on Police indicated that they were in favour of the implementation of CODIS as the software solution to manage and administer the NFDD in South Africa. CODIS was developed by the United States Federal Bureau of Investigation (FBI) which was adapted specifically for police enforcement purposes. As well being an open-sourced software, hand in hand with implementation, CODIS developers also provide training courses and run a well-organized and skillful help-desk for on-going support. The associated cost implications of this open-sourced computer system are therefore minimal. The FSL currently use a locally developed program called STR-Lab (developed in 1998). In comparison, CODIS is utilised by over 195 USA laboratories and approximately 50 forensic laboratories throughout the world and has been accepted as the standard for DNA profile database intelligence facilities. For more information about CODIS click here: http://www.fbi.gov/about-us/lab/biometricanalysis/codis/codis-and-ndis-fact-sheet
QUARTERLY PROGRESS REPORT	The National Commissioner of the South African Police Service must report quarterly, in writing, to the National Assembly and the Board on the progress made in the acquisition of the system solution to support the NFDD until it is fully operational.
RETROSPECTIVE TAKING OF BUCCAL SAMPLES FROM CONVICTED OFFENDERS	The National Commissioner of the SAPS must, with the assistance of the National Commissioner of Correctional Services ensure that a buccal sample is taken within two years of any person serving a sentence of imprisonment in respect of any offence listed in Schedule 8, Before the release of the person, if the buccal sample had not already been taken upon his or her arrest; or who is released before their sentence is completed either on parole or under correctional supervision by a court.
LIST OF OFFENDERS	The National Commissioner of Correctional Services must, from the date of commencement of the DNA ACT, provide the National Commissioner of the SAPS with the list of offenders who are serving a sentence in respect of any offence listed in Schedule 8 and have been released on parole or under correctional supervision.
TAKING OF BUCCAL SAMPLES FROM SUSPECTS IN CUSTODY	The National Commissioner, with the assistance of the National Commissioner of Correctional Services, must ensure that the forensic DNA profiles of persons who are in custody pending their reappearance in court in respect of any offence referred to in Schedule 8 of the Criminal Procedure Act, and whose DNA samples were not taken upon arrest when the DNA ACT commences, are taken.

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APPOINTMENT & FIRST MEETING OF NFOEB	The Board must be appointed before the commencement of the DNA ACT, and have its first meeting convened within 30 days after the commencement of the DNA ACT.
NATIONAL REGISTER FOR SEXUAL OFFENDERS	The DG of the Department of Justice and Constitutional Development must, on a monthly basis provide the National Commissioner of the SAPS with an updated list of all persons that were ordered to be entered on the National Register for Sexual Offenders, until the system solution comes into operation.
PROFILES RECEIVED FROM FOREIGN LAW ENFORCEMENT AGENCIES	Any forensic DNA profile derived from a crime scene sample or derived from a sample related to a missing person or unidentified human remains and which was received from or communicated with a foreign state or a recognised international law enforcement organisation, court or tribunal before the commencement of the DNA ACT, must be deemed to have been received from or communicated in compliance with the terms of s.150 of DNA ACT.

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REGULATIONS

The Minister of Police must make the following Regulations in order to achieve the objectives of the DNA ACT and these must be followed by all police officials or members of the IPID. These regulations must be tabled in Parliament for notification within six months after the commencement of the DNA ACT.

Note: The Minister of Police can make additional regulations if required.

SUITABILITY OF SAMPLE TAKING AREA	The requirements for the suitability of areas to be designated in terms of section 36A(5)(b) of the DNA ACT.
SECURING OF CRIME SCENES	The manner in which to secure a crime scene for the purposes of collecting crime scene samples.
TIMELY TRANSFER OF SAMPLES TO THE FSL	The manner in which to safely preserve and ensure timely transfer of collected samples to the forensic science laboratories.
ACCESSING INFORMATION ON THE NFDD	The manner in which to request access to information stored on the NFDD.
DESTRUCTION OF DNA SAMPLES	The manner in which DNA samples must be destroyed.
COMPLAINTS TO THE NFOEB	The manner in which complaints must be lodged to, and assessed by the Board.
ACCESS TO NFDD FOR EXONERATIONS	The application process for access to the forensic DNA profile and crime scene sample for exoneration purposes.
MEMBERS OF THE NFOEB	The process to be followed by the Minister in the appointment, suspension and removal of members of the Board.

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EXPUNGEMENT OF DNA PROFILES FROM THE NFDD	The process to be followed with regard to the destruction of DNA samples and the removal of forensic DNA profiles derived therefrom.
BUCCAL SAMPLES	The requirements for the taking of buccal samples in a designated area.
FAMILIAL SEARCHES	The development of strict protocols and training relating to familial searches.

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RELEVANT ACTS

South African Police Service Act, 1995 (amended by the DNA ACT)

Firearms Control Act, 2000 (amended the DNA ACT)

Explosives Act, 2003 (amended by Act)

Criminal Procedure Act, 1977 (amended by Act)

Child Justice Act, 2008 (referred to in Act)

National Health Act, 2003 (referred to in Act)

LIST OF SCHEDULE 8 OFFENCES

1	Treason.
2	Sedition.
3	Public violence.
4	Murder.
5	Any offence referred to in Part I or Part II of Schedule 1 to the Implementation of the Rome Statute of the International Criminal Court Act, 2002 (Act No. 27 of 2002).
6	Culpable homicide.
7	Rape or compelled rape as contemplated in sections 3 and 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007), respectively.
8	Sexual assault, compelled sexual assault or compelled self-sexual assault as contemplated in section 5, 6 or 7 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007), respectively.
9	Any sexual offence against a child or a person who is mentally disabled as contemplated in Part 2 of Chapter 3 or the whole of Chapter 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007), respectively.
10	Trafficking in persons for sexual purposes by a person contemplated in section 71 (1) or (2) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007).
11	Robbery.
12	Kidnapping.
13	Child-stealing.
14	Assault, when a dangerous wound is inflicted.
15	Arson.

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16	Breaking or entering any premises, whether under the common law or a statutory provision, with intent to commit an offence.
17	Theft, whether under the common law or a statutory provision.
18	Escaping from lawful custody, where the person concerned is in such custody in respect of any offence referred to in Schedule 1, or is in such custody in respect of the offence of escaping from lawful custody.
19	Any offence under the Firearms Control Act, 2000 or the Explosives Act, 2003, which is which is punishable with imprisonment for a period of five years or longer in terms of the said Act.
20	Convention offence or specified offence as defined in section 1 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004 (Act No. 33 of 2004).
21	Trafficking in persons as defined in section 1 of the Prevention and Combating of Trafficking in Persons Act, 2013 (Act No. 7 of 2013).
22	Torture as defined in the Prevention and Combating of Torture of Persons Act, 2013 (Act No. 13 of 2013).
23	Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule.

AWARENESS AND TRAINING PROGRAMMES: SAPS, IPID AND GENERAL PUBLIC

DEVELOPMENT OF TRAINING AND AWARENESS PROGRAMMES FOR SAPS AND IPID	S.15T (2)	The National Commissioner and Executive Director must develop awareness and training programmes for SAPS and IPID based on the regulations referred to in S15AD which deals with, amongst other, the manner in which to secure a crime scene for the purposes of collecting crime scene samples and the manner in which to safely preserve and ensure timely transfer of collected samples to the forensic science laboratories.
DEVELOPMENT OF AWARENESS PROGRAMMES FOR GENERAL PUBLIC	S.15T (3)	The National Commissioner must develop awareness programmes to make the public aware of the provisions of the DNA ACT, in particular with regard to the public's rights relating to the taking of DNA samples, the keeping and destruction of DNA samples and the powers of the Board to receive and assess complaints relating to DNA.
OVERSIGHT BY THE SECRETARY OF POLICE	S.15T (1)	The Secretary of Police must develop guidelines relating to awareness programmes referred to in S15T (2) and (3) of the DNA Act and ensure that their implementation is monitored and assessed on regular basis.