

Executive Summary

This report derives from section 23YV of the *Crimes Act 1914* which requires an independent review of Part 1D of that Act relating to forensic procedures, particularly the use of DNA material for law enforcement purposes.

The terms of reference set out in section 23YV require review of:

- the operation of Part 1D;
- the extent to which forensic procedures have contributed to the conviction of suspects;
- the effectiveness of oversight and accountability mechanisms;
- any disparities between the various jurisdictions' legislative and regulatory regimes; and
- any issues relating to privacy or civil liberties.

Part 1D establishes procedures for DNA testing in relation to Commonwealth offences, and establishes a national DNA database system which is coordinated by CrimTrac, a Commonwealth agency. The system when fully operational will enable the comparison of DNA profiles across all Australia's jurisdictions for law enforcement purposes. The system is underpinned by Commonwealth, State and Territory legislation.

The major deficiency identified by the Review is that the national system is not yet operational and only one jurisdiction (NSW) has loaded profiles onto the relevant CrimTrac database known as the National Criminal Investigation DNA Database (NCIDD). The Review calls for redoubled efforts on the part of the Commonwealth, the States and Territories to move quickly to negotiate the relevant arrangements which are necessary to make the system fully operational.

It follows that there has been relatively little experience of the operation of Part 1D to review. Nevertheless the Review has identified a number of areas for improvement and these are set out in the Review's recommendations which are consolidated in Chapter 8.

The most important issue has been the need to improve accountability arrangements both within and across Australia's jurisdictions. The Review sees effective accountability mechanisms as crucial to maintaining public confidence in the use of DNA analysis for law enforcement purposes.

The Review has recommended a number of measures to improve complaint handling, reporting and audits (both internal and external) in an endeavour to ensure the whole system is working properly.

The Review has recommended that the external scrutiny mechanisms be based upon existing cooperation between Australian Ombudsman with involvement of Privacy Commissioners and other monitoring bodies. The Review recommends that Ombudsman (or equivalents) in each jurisdiction report to their respective Ministers in twelve months on whether there are any legislative impediments to the cross referral of matters between jurisdictions.

Because of the lack of experience to date in the operation of the multi-jurisdictional system, the Review has identified a number of matters which the future review in two years time (contemplated in section 23YV(5)) should consider. These matters are consolidated in Chapter 8, paragraph 8.14.

The whole issue of yet undiscovered and undeveloped uses of DNA material is a sensitive one and care needs to be taken to ensure that the use of DNA material in law enforcement is carefully circumscribed. As the Attorney-General noted in Parliament in the debate on the relevant legislation:

It is important that we all appreciate the nature of forensic information that will be stored on the national law enforcement database as a DNA profile. The analysis of the DNA samples will only reveal the sex of the person from whom it is taken. It does not reveal any other personal characteristics.

It seems inevitable that the potential to use DNA material for purposes other than identification will continue to expand. The Review considers that as more becomes known about human DNA it will be essential to have an ongoing debate and consideration about whether these new developments should be used by law enforcement. It is, however, important that any extended use of these new developments should occur by way of deliberative action of parliament and not by way of some unregulated extension into these areas.

The Review concluded that Part 1D should only be used for analysis aimed at non personal identification and recommended that the legislation should be amended to specifically exclude testing of DNA for the purpose of detecting phenotypically expressed information including health or medical conditions.