



**JUSTICE ACTION LEGISLATION ALERT  
CRIMES (FORENSIC PROCEDURES) BILL 2000**

The Legislative Council will shortly be asked to vote upon the Crimes (Forensic Procedures) Bill 2000, a long and complex document which has been available for scrutiny for less than a week and which will have far reaching implications for policing, privacy, courts and civil rights in NSW.

Contrary to assurances given by the Premier, the Model Criminal Code Officers draft upon which the NSW act is allegedly modelled was subject only to limited consultation six years ago while in a form which had little in common with the bill now before the Legislative Council. The proposed legislation raises many concerns about privacy, civil liberties, legal procedure etc, yet no NSW privacy, civil rights, legal or community organisations have been consulted prior to the drafting of the bill. Even the NSW Privacy Commissioner has been prevented from making a contribution.

Although the Premiers, Police and Attorney Generals Department have spent many months in the drafting of the Crimes (Forensic Procedures) Bill, parliamentarians will be expected to make a decision about the 95 page document within a matter of days and without the benefit of expert or community consultation.

In its rush to introduce this legislation the government has overlooked several important provisions.

The independent guardian over DNA samples and data promised by the Premier last month is still a long way off. The responsibilities given the Ombudsman under the Act do not include the vital oversight of laboratory standards and data security. Funds are yet to be made available for the scrutiny over the exercise of police powers mandated by the Act.

The Act does not take into account the value which the data from DNA testing has assumed in recent years. By maintaining the fiction that destroying identifying information equates to destroying the DNA profile the Act will serve to irretrievably remove from the donor control over his/her own genetic information should his/her name be removed from the database. The limited safeguards over DNA data proposed by the Act are subverted by the provision that data can be shared with jurisdictions having no such safeguards.

There are no guidelines in the Act which might serve to avoid the US experience of massive overuse of DNA testing by police and courts. This led to a backlog of nearly half a million untested DNA samples in US labs by 1998 and the establishment of the US Justice Department's "Inquiry Into the Future of DNA Evidence".

No provision has been made for the extra resources the courts and Legal Aid will require if they are to be expected to deal with the complexities of the new technology.

No provision has been made to establish and guarantee minimum standards of training, procedure or data security by the laboratories charged with testing forensic samples.

If the Crimes (Forensic Procedures) Act is passed in its current form:

- Noone who is ever subjected to a police DNA test in NSW, voluntary or otherwise, will ever be able to have their profile removed from the police database, even if they are exonerated of all offences and the sample was taken in a manner not in accordance with the Act. This would seem to be a deliberate attempt to transfer control of this data, which has become an asset, from NSW citizens to the government.
- Police officers with no medical training can be authorised to perform medical procedures upon NSW citizens without their consent. In the case of non-intimate samples and buccal swabs the subject will have no right to request the presence of a medical practitioner. Police will be subject to less oversight while searching a suspect's body than they are currently subject to when searching a house.
- Samples will be transported and analysed by Police Medical Officers. The Wood Royal Commission revealed that PMOs are subject to pressure from investigating officers to corruptly alter evidence. In 1997 a US Justice Department investigation revealed that FBI DNA labs have engaged in systematic distortion of test results in order to favour the prosecution.
- It will be left to police discretion whether to put data obtained from volunteers on the 'limited use' or 'unlimited use' index. Although the officer must state intent when obtaining the sample, s/he is not required to notify the donor should s/he later change intent.
- Serious indictable offenders who consent to DNA testing will not be eligible to have their names removed from the offenders index should the test result in the overturn of their conviction. Only those who have demanded a magistrates order before submitting to the test will retain this right.

- Police may request or order forensic tests upon subjects for spurious reasons. (e.g. "I am conducting this test because the results will tend to disprove that you committed the 1966 Wanda Beach murders".)
- There is no guaranteed access to DNA evidence for independent testing by defendants or prisoners in cases where such tests may exonerate them. Crime scene samples can be subjected to unnecessary tests until they are used up.
- Anyone who has ever been convicted of an offence carrying a penalty of 5+ years in any state or territory is considered a 'serious indictable offender' and subject to compulsory testing. So an 80 year old can be subject to compulsory forensic examination in spite of having been out of prison and out of trouble for many decades.
- Someone convicted of an offence carrying less than 5 years in NSW will be considered a serious indictable offender if the offence could have carried a 5 year penalty in any other state or territory. Thus a NSW citizen convicted in a NSW court of an offence committed in NSW can be considered a serious offender by virtue of Western Australia's three strike laws.
- An order can be obtained for a nonconsensual test to be ordered upon a child or incapable person merely because the parent or guardian is a suspect or has given consent which was later withdrawn. This seems to be a deliberate loophole to allow police to build up a DNA profile of someone not subject to compulsory testing by collecting the profiles of family members.
- Police are not required to warn a suspect that force may be used to prevent them from contaminating or destroying forensic evidence. Someone can become the target of an unexpected police assault for simply washing their hands.
- Subjects need not be informed that the results of DNA testing might be used to identify family members, might reveal information about family relationships of which the subject is unaware or might mistakenly result in their investigation for crimes they did not commit, as has recently been the case in New Zealand.

This is only a few of the serious drawbacks and inadequacies which have become evident in the short time the Bill has been available for public scrutiny. In order for the Bill to be subject adequate expert and community examination it is vital that it be referred to the Standing Committee on Law and Justice for public inquiry.

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