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When Government Grabs your Genes

As Sydney shivers through the long nights of its Olympics year, NSW parliamentarians have been working overtime to pass into law sweeping new police powers to collect and examine our DNA. Laws which will serve to pass control of our genetic information to the government, whether or not we have committed a criminal act.

The Crimes (Forensic Procedures) Bill does not only allow for the testing of someone arrested for a serious offence for which DNA evidence may be relevant.

From Jan 1, 2001 those merely suspected of a summary or indictable offence will be subjected to the forcible sampling of bodily material, something previously considered an assault in this State. It will also lead to the compulsory extraction and databanking of DNA information from most NSW prisoners and juvenile detainees, whether or not they are suspected of having committed any further offences.

Contrary to the Premier's assurances that the bill has been subjected to 'extensive public consultation', not a single NSW legal, criminal justice, indigenous or community body was able to comment on, or even see, the legislation until the final draft was presented to parliament.

The Bar Association, the Council for Civil Liberties, the Indigenous Social Justice Association, Justice Action, the Aboriginal Legal Service, parliamentary crossbenchers, Justice Michael Kirby, the Law Society, CRC Justice Support and the Ethnic Communities Council, among others, have expressed alarm at its draconian provisions and regret at the way in which it was drawn up in closed sessions by the Police and Attorney Generals Departments.

Privacy Commissioner Chris Puplick noted that "the contempt for privacy considerations shown by the Government...should set alarm bells ringing". Not loud enough to be heard by the State Opposition unfortunately, who guaranteed passage of the bill free of the many amendments urged by the Bar Association, the Law Society and community groups.

DNA profiling is a powerful investigative tool which, properly implemented, can solve crime, eliminate innocent suspects and free the wrongfully convicted. Without adequate safeguards and oversight however, it will lead to abuse of civil rights and miscarriage of justice.

Inadequate standards in New Zealand's ESR forensic laboratories have already lead to the freeing of a serial rapist who went on to commit at least three more rapes and the four month investigation of a mild mannered Christchurch assault victim for two Wellington

gang murders when DNA from his sample contaminated those taken from the crime scenes.

FBI DNA laboratories were subjected to a 1998 US Justice Department investigation which revealed systematic biasing of results in favour of the prosecution, including at least one technician who manipulated any tests he believed to be of African-American suspects in order to gain matches.

Australian forensic labs have an equally chequered history. Few could forget the part Joy Kuhl's evidence played in the wrongful conviction of Lindy Chamberlain.

The first case in Australia decided on forensic evidence saw the execution of Colin Campbell Ross for the rape and murder of a Melbourne schoolgirl. Recent testing on the original evidence has confirmed that the tests were bogus and Ross was innocent.

Nicholas Cowdery QC has described NSW forensic laboratories as "the worst in the world".

Although DNA profiling in the US has often exposed earlier abuses of forensic science, there can be little doubt that it has now become part of the repertoire of those who seek to gain convictions through the abuse of forensic technology.

There is no provision in the NSW bill for monitoring of standards in testing laboratories or even for determining their error rate. Overseas testing reveals about a 1% error rate in accredited DNA laboratories, a level which makes a mockery of the astronomical match odds routinely quoted in media and the courts.

There is also no sign of the UK-style independent body to collect samples and gather evidence which was promised by the Premier in May. Merely a provision that the Ombudsman should 'monitor the functions of police officers' during the first 18 months, after which they will be able to take hair and perform mouth swabs with no legal or medical oversight.

The Wood Royal Commission revealed that the Police Medical Officers who will be charged with these duties regularly come under pressure from investigating police to substitute or alter forensic evidence.

The bill has not ignored the possibility of contamination of DNA evidence however. If an investigating officer suspects that you might do something which could lead to the destruction or contamination of evidence, like washing your hands for instance, he may employ 'reasonable force' to prevent it. No warning is necessary.

A unique feature of the NSW bill is the way it ensures that once a DNA profile has been placed on police record it will never be removed. Whether it came from a suspect or volunteer, whether it was collected legally or not, the most you can hope to have removed from the record is your identifying data, even though the profile itself is all that is needed to identify you.

Why would the NSW government want to keep on file the 'anonymous' profiles of innocent people?

Money of course.

The government of Iceland recently sold the DNA database of its entire population to US company Decode for US\$200 million, without consultation or consent.

Police forces in the US routinely onsell their databases for 'research and educational' purposes and the Lifecodes corporation sells a reference database made up from samples sent by US police forces to their laboratories as part of its commercial DNA laboratory 'starter kit'.

The failure of a private members bill introduced nearly a decade ago by qualified geneticist and then Democrat Senator John Coulter means that Australians have no protection from multinational pharmaceutical companies who may seek to patent parts of their DNA. The Crimes (Forensic Procedures) bill has been designed to enable government harvesting of citizens DNA.

So when you are surrounded by swab wielding police officers and hear the command, "DNA please", rest assured that regardless of guilt or innocence you will be contributing your own genetic code to the public purse.