

The Brave New World of Big Brother Bob

Sometime within the next few months the Carr government will introduce legislation which will determine what control NSW citizens have over their own DNA in the coming decades. Those decades will see the completion of the Human Genome Project and with it, a revolution in genetic technology which will bring profound changes to medicine, agriculture, criminology, ethics, property rights, policing and our concept of privacy.

While doctors discuss the ethical implications of the new reproductive technologies and communities engage in debate about the introduction of GM crops, behind closed doors Bob Carr and Peter Ryan have been privately crafting forensic DNA laws which will give the police unprecedented powers to physically invade the bodies of citizens and to establish a database of the DNA profiles thus obtained.

The closest thing we have seen to public consultation has been the 'voluntary' mass screening of Wee Waa men in an attempt to solve a rape case. In an echo of the first mass DNA test in the UK, it was not solved with the new technology after all, but by the more traditional means of 'information from the public'.

DNA 'Fingerprinting' is the term coined by British geneticist Alec Jeffries who first applied the methods of DNA paternity testing to criminal investigation and who now receives a royalty on every forensic DNA test done worldwide. However the deceptiveness of this term has led to a ban on its use in the courts of several US states.

DNA sampling is more invasive than fingerprinting and reveals more information than merely identity. The DNA data obtained with current forensic techniques can already tell a geneticist things about paternity which the donors may not know themselves and researchers are already claiming breakthroughs in identifying genes which reveal appearance, race and behavioural traits.

DNA evidence is easier to plant than fingerprints, but much harder to analyse and interpret. While courts and the press are always regaled with DNA 'match odds' of the order of one in millions or billions (the theoretical limits of the technology), what always seems to be neglected is what is called in the labs 'match by error' (the human limits upon its use).

It will come as little surprise to those who know the cases of Lindy Chamberlain or Colin Campbell Ross that forensic labs can sometimes get it completely wrong. About 1% of the time in US DNA labs, according to testing by the American Society of Crime Laboratory Directors. New Zealand has recently seen Justice Department inquiries into several such errors at the ESR labs at Mt Albert.

In one case, an accused rapist facing a strong prosecution case was exonerated by DNA testing. He was rearrested following at least two more rapes. Further tests contradicted the results of the first and finally got a conviction. In another case DNA from a Christchurch assault victim apparently contaminated samples from two Wellington murder scenes. Following a four month police investigation which eliminated the rather unlikely suspect, Justice Minister Phil Goff said of the case "What worried me was that, okay, this was a very clear-cut case where the man couldn't have committed the crimes. Had he been a gang member and lived in Wellington ...". In spite of numerous investigations the cause of the contamination has never been determined.

Proposals to mass test serving and former NSW prisoners, as well as anyone arrested for "serious summary offences" or worse, not only ignore the current limits of the technology, they also ignore the most basic consideration of civil rights and privacy.

Legislation in Victoria allows up to four officers to hold a prisoner down while another forces a swab into his/her mouth. The prisoner need not be suspected of involvement in any unsolved crime. What NSW police might make of such powers, especially if invoked against a non-English speaker or someone having trouble comprehending the situation, is probably best not imagined.

Several US states allow samples and data from police DNA databases to be on sold for 'research and education purposes'. The government of Iceland recently went the full monty and sold the genetic database of their entire population to the US company 'Decode', without asking the donors of course.

Although New York police chief Howard Safir is an enthusiastic proponent of police use of DNA technology he has strong objections to the forcible collection of samples, onselling of data or the retention of records of those not convicted for serious offences. However he does favour indefinite detention of anyone unwilling to give 'consent' for a police test.

But many NSW citizens have already had their DNA harvested and used in police investigations without their knowledge or consent.

The blood from donors to the Sydney Red Cross has been used in compiling forensic DNA databases for about a decade. Although identifying data is not kept, the DNA information from the samples of unsuspecting donors has been used in several criminal prosecutions. When Western Australian legislation threatened to allow police access to the DNA samples routinely collected from newborns one WA hospital burned years worth of these records rather than let them fall into the wrong hands.

Responsible legislation governing the collection, testing, storage and databasing of DNA is urgently needed in NSW and will only come after broad community and expert

consultation. It seems unlikely to be produced by backroom deals between the Attorney General on one hand and the Premier and Police on the other.