



QUEENSLAND POLICE SERVICE

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Mr Peter Ford
Part 1D Review Committee Secretariat
c/o Criminal Justice Division
Attorney-General's Department
3-5 National Circuit
Barton ACT 2600

Dear Mr Ford

Thank you for the opportunity to provide submissions on matters for consideration in the review of Part 1D of the *Crimes Act 1914* (the Act). The terms of reference for the Review appear to be derived from the *Report of the Independent Review of Part 1D of the Crimes Act 1914 – Forensic Procedures* (the Sherman Report). It is my understanding that many of the items nominated for Committee consideration have already been settled.

The issues raised are complex. To assist in the Committee's consideration of the matters from a Queensland Police Service perspective, I offer the following comments in relation to the terms of reference:

(a) The operation of Part 1D of the Act

Part 1D of the Act is the Commonwealth legislation specific to the taking and use of forensic material, including the use of the National Criminal Investigation DNA Database (NCIDD). From a Queensland perspective, NCIDD is currently utilised for the matching of de-identified DNA profiles on the database. Any subsequent exchange of information relating to a matched profile does not involve the use of NCIDD, with information being exchanged directly between the law enforcement agencies of the two jurisdictions concerned.

The Queensland Police Service (QPS) would not support an expansion of NCIDD involvement in the exchange of information relating to the matching of DNA profiles.

(b) The extent to which the forensic procedures permitted by Part 1D have contributed to the conviction of suspects

No comment is provided as generally State provisions are utilised and not those under Part 1D of the Act.

(c) The effectiveness of independent oversight and accountability mechanisms for the DNA database system

Section 23YUD of the Act allows for the Minister on behalf of the Commonwealth to enter Ministerial arrangements for the sharing of information held on Commonwealth and State/Territory DNA database systems. Currently, *'The Ministerial Arrangement for the Sharing of DNA Profiles and Related Information'* (the Arrangement) requires each State or jurisdiction to facilitate compliance with the accountability requirements of the States, subject to restrictions imposed by the owning State or jurisdiction's laws. In practice, this agreement translates to the requirement of each State or jurisdiction to utilise its own oversight body. For Queensland, the oversight body is the Crime and Misconduct Commission. By virtue of the Arrangement, each State respects the individual State arrangements with the understanding and acceptance that similar protocols have been established in each jurisdiction.

On this basis, the QPS supports maintaining independent oversight and accountability mechanisms for the DNA database system.

(d) Any disparities between the legislative and regulatory regimes of the Commonwealth and participating jurisdictions for the collection and use of DNA evidence

The QPS recognises that the disparities in DNA legislation throughout Australia reflect each responsible Government's position regarding the collection and use of DNA material. CrimTrac, through the administration of NCIDD, ensures that the comparison of DNA profiles is regulated by the operational matching tables of the participating jurisdictions. While Queensland's matching table is more liberal than some other jurisdictions, the creation of and participation in the Arrangement ensures the administrative mechanisms exist to allow each jurisdiction's legislation to work effectively. The Arrangement clearly stipulates that where the tables do differ, the most restrictive of the tables will be applied to the matching of DNA profiles. The QPS would not support the creation of a uniform matching table that mirrors any of the more restrictive matching tables.

In this regard, the QPS recognises that the disparities in the matching tables do affect operational capabilities, but accepts the right of all jurisdictions to have the legislation that is best suited to that jurisdiction.

Under section 525 'Effect of registration' of the *Police Powers and Responsibilities Act 2000* (PPRA), where, upon application to the Commissioner, a forensic procedure order from another jurisdiction is registered in Queensland, the order has effect and may be treated as a forensic procedure order issued under the PPRA. This seems to allow, for example, for the detention of the person and the use of reasonable force in enforcing the order under the PPRA and not the requesting jurisdiction's legislation. Practical difficulties in enforcing such an order may arise where the terms of the interstate order conflicts with Queensland laws. It is envisaged that this type of issue will be considered

through relevant inter-jurisdictional agreements which are being developed to support the process of the registration and enforcement of interstate forensic procedure orders.

Uncertainty currently surrounds the legislative provisions and protocols applicable to Queensland police officers who arrest an offender for a Commonwealth offence that is not by definition an indictable offence in Queensland. The Act states that where a suspect is arrested for an indictable offence under a Commonwealth Act or an indictable State offence that has a federal aspect, the authorisation of a sergeant or higher (senior constable) is required to carry out a non-intimate forensic procedure, which does not include a buccal swab. Under the PPRA, approval is required from a senior sergeant or higher (senior officer) to take a DNA sample which may be taken through a buccal swab without application to a court.

In effect, where a Queensland police officer needs to gain authority to take a DNA sample for a Commonwealth indictable offence that is not a Queensland indictable offence, authority must be sought from an Australian Federal Police senior constable. That authorisation can only be for the taking of a sample of hair.

The QPS would support an amendment to Part 1D of the Act to allow approval for the taking of a DNA sample to be given by a 'senior constable or equivalent from another jurisdiction'.

Furthermore, the QPS takes the view that it is less invasive and more appropriate to take a buccal swab than a sample of hair in the first instance. The QPS would support an amendment to 1D of the Act to include a buccal swab as a non-intimate procedure. This would enhance consistency between the jurisdiction's forensic procedures.

(e) Any issues relating to the privacy or civil liberties arising from forensic procedures permitted by Part 1D

Currently information contained on NCIDD is barcoded and therefore de-identified. It has been agreed between all jurisdictions that the legislation of each State/Territory applies to the information it uploads onto NCIDD.

Under section 533 'Ministerial arrangements' of the PPRA, the Commissioner may use DNA material to which he has access under an arrangement. To this end, a Ministerial Arrangement has been endorsed by all jurisdictions which dictates the terms of the exchange of DNA information between jurisdictions following the matching of DNA profiles on NCIDD.

If the DNA information exchanged on NCIDD were to include personal information, the process would potentially conflict with existing State-based restrictions designed to protect the privacy and civil liberties of an individual subject to a forensic procedure.

Other issues

The QPS does not support a Victims of Crime Index. Queensland does not load known victim profiles on the crime scene index. It is a common scenario for a victim to provide a DNA sample to enable matching to occur with DNA profiles located at a crime scene to enable police to focus that direction of the investigation. When this occurs, the DNA profile of the victim is undertaken in accordance with the informed consent provisions, with the victim's DNA profile loaded either onto the volunteer (limited purpose) or volunteer (unlimited purpose) index, depending on the victim's election.

While the QPS takes the view that innocence testing is a matter for the individual jurisdiction, the QPS does not support such testing that is not associated with any decision of the Court of Appeal. The retesting of forensic evidence is costly and ignites some legal issues such as the publication of a victim's identity.

The QPS would not support a deletion of any of the existing forensic procedure powers contained should a national scheme be adopted. Furthermore, support is not given for the inclusion of any identifiable information on NCIDD.

The QPS supports the continued use of reasonable force when performing a forensic procedure. This is reflected in the PPRA which is similar to the use of force options contained within the Act.

I trust this information is of assistance and would welcome the opportunity at a later stage to meet and discuss the general issues raised in greater detail once the Review Committee has had an opportunity to broadly consider the issues raised by the terms of reference.

Yours sincerely



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ACTING COMMISSIONER

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