



SOUTH AUSTRALIA POLICE
KEEPING SA SAFE

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27 November 2009

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 Peter,

Re: Review of Part 1D of the Crimes Act 1914

Thank you for the opportunity to participate in the review of Part 1D of the Crimes Act, 1914.

There are many similarities between Part 1D of the Crimes Act 1914 and the Criminal Law Forensic Procedures (CLFP) Act (SA), 2003. This Act was amended however in May 2007, providing significant benefits to police investigations in this State and address, in this jurisdiction, many of the issues raised in the Sherman Report. Those amendments delivered improvements in relation to the collection, storage, administration and use of DNA profiles on the South Australian Criminal Reference DNA Database (SACREDD).

In reference to the issues raised in the Sherman Report, the Criminal Law Forensic Procedures Act (SA) 2007 provides the following:

Complexity of Informed Consent

Complexity has been minimized via the introduction of defined procedures for the collection of DNA profiles from volunteer/victims (Section 7) and suspect/offender (Section 20). There is no destruction requirement for DNA profiles lawfully obtained from persons suspected or convicted of a 'serious offence', as defined by the Act. Lawfully obtained DNA profiles of suspects or offenders may be retained indefinitely on SACREDD, regardless of a Court finding of "not guilty" or the matter later being withdrawn.

Persons who are "suspected" of committing a "serious offence", as defined by the Act, may have a DNA profile taken for upload to the SACREDD. A sample cannot

be taken as a Victim/Volunteer procedure if the person is suspected of that offence.

A Victims of Crime Index

The Victim/Volunteer procedures of the South Australia Act, allow persons to provide a DNA profile to assist Police in investigations. Victim/Volunteers provide written consent as to how their DNA profile is to be utilised and which indices of the SACREDD their profile is to be compared. A Victim/Volunteer can request to have their profile destroyed (Section 39) by written application to the Commissioner of Police. Police have a legislative obligation to complete the destruction within 21 days of request.

Protocols for mass screenings

South Australia Police policy provides instruction to members on how to conduct mass screenings of the public when investigating a criminal offence, utilizing the Victim/Volunteer provisions of the Act. Investigators must receive approval from the Officer in Charge of the investigating Local Service Area or Branch.

Voluntary Buccal Swabs as a non intimate procedure

Simple Identity Procedures (Buccal Swab and Finger prick samples) are excluded from the definition of Intrusive Forensic Procedure, by the South Australia Act. This exclusion has removed the necessity to videotape simple identity procedures and the procedure can now be conducted at the direction of a Police Officer (Suspect/Offender) or by consent (Victim/Volunteer). There is no requirement to obtain a Senior Police Officer's order.

Common methods for taking hair samples

The removal of loose hair from clothing is excluded from the Act and is no longer considered a 'Forensic Procedure'. The removal of hair from the person is defined as an 'Intrusive Forensic Procedure' and must be conducted by a medical practitioner.

Innocence Testing

Victim/Volunteer provisions allow for the taking of voluntary samples for comparison to specific indices of the SACREDD or "within case" comparisons as indicated by the Volunteer/Victim.

Evidentiary provisions

Evidentiary certificates are provided for in the Act (Section 49). South Australia Police have drafted Evidentiary Certificates and training for Senior Police Officers in order to implement the certificates will be delivered in early 2010.

Matching Tables

The introduction of the CLFP Act, 2007 allowed South Australia to match DNA profiles and exchange information via the NCIDD with all Australian jurisdictions (Section 56).

Legislative change to support inter-jurisdictional accountability

Section 57 of the South Australian Act requires an annual audit of the SACREDD database by the Police Complaints Authority to monitor compliance with the Act. Audit results must be tabled by the Attorney General to both houses of parliament within 12 sitting days after receipt.

Minimum requirements for membership of the national scheme

South Australia and all other jurisdictions have met minimum requirements and are participating in the NCIDD.

Use of force

Under the South Australia Act, police may use force to obtain a DNA sample from a Suspect/Offender. A "Use of Force Warning" applies (Section 31).

Any major change to legislation can generate a degree of public apprehension. Since the introduction of the Criminal Law Forensic Procedures Act (SA) in May 2007, the number of profiles on the Suspect/Offender index of the SACREDD has increased from approximately 21,000 to 62,000. Acceptance of the legislation can be gauged by the low number of requests from Suspect/Offenders to have DNA profiles removed from the SACREDD. Since May 2007, 12 persons suspected or convicted of a "serious offence" have requested that DNA profiles be removed from the SACREDD.

There has been no adverse media commentary in South Australia relating to the taking and retention of DNA profiles on the SACREDD.

If you require further information please contact Superintendent Peter Anderson, Officer in Charge Forensic Services Branch on (08) 81725228.

Yours Sincerely,



(Malcolm A Hyde)
COMMISSIONER OF POLICE