CRIMINAL INVESTIGATION (IDENTIFYING PEOPLE) BILL 2001

Second Reading

Resumed from 8 November.

MR OMODEI (Warren-Blackwood) [4.35 pm]: I indicate the Opposition's support for this legislation. It is probably among the most important legislation to come before the Parliament this year. The legislation will aid the police by providing another tool to identify and root out crime in Western Australia. The Bill provides procedures for obtaining, using and destroying the identifying particulars, including DNA profiles, of volunteers, protected people, deceased people, police officers, involved people, uncharged suspects, charged suspects and people in our offender management system. The Bill modernises and enhances police powers pertaining to the prevention and resolution of crime. I place on record my thanks to the minister for agreeing to a briefing of opposition members, particularly of the member for Kingsley and me, by good officers of the Police Service, which was done with great efficiency and good humour. I also acknowledge the complexity and history of this legislation. I note that in the minister's second reading speech, she said that she had beseeched her predecessor to bring the legislation into the Parliament. She went on to say -

> I am sure members on this side of the House can well imagine my surprise and dismay, when I received a letter from the federal Attorney General indicating his concerns about the former Government's 2000 Bill and intimating that his concerns were of such magnitude that Western Australia might be prevented from participating in CrimTrac.

CrimTrac is the national crime data collection centre. All States are required to bring in similar legislation to the model 1995 legislation. I also note with interest that the minister referred to the fact that, on the basis of that letter, the Government's proposed legislation needed to be comprehensively reviewed in order to ensure the Bill's expeditious introduction to Parliament. It was essentially based on the 2000 Bill.

I will give members in the House a bit of insight into the amount of work that has gone into this legislation. The organisation known as the Model Criminal Code Officers Committee, or MCCOC as it is known, has been around for some time. I would appreciate it if the minister could provide me with a copy of the letter from the federal Attorney General. I have been able to find a letter on this issue from the Minister for Justice and Customs to the member for Darling Range when he was Minister for Police a year or so ago. That letter basically informed the minister that -

> . . . the Commonwealth Government has decided to implement the Model Forensic Procedures Bill as circulated by the Model Criminal Code Officers' Committee of the Standing Committee of Attorneys-General . . . in February 2000.

She goes on to say -

> I am pleased that all jurisdictions have or are moving to introduce legislation to provide appropriate procedures for the operation of the CrimTrac national DNA database. As with the other work in establishing CrimTrac, I hope that all the jurisdictions will continue to work closely together and develop as much consistency as possible in relation to the DNA legislation.
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> While I do not see much advantage in revisiting issues discussed at previous meetings, it would be useful to ensure consistency can be achieved in relation to as many issues as possible. Therefore, I think it would be worthwhile to review progress at the SCAG meeting in Brisbane on 27-28 July 2000.

I also found a letter from Geoff McDonald, the assistant secretary of the criminal law branch of the Attorney General's Department, to Lindy Jenkins, the senior assistant crown counsel for the Western Australian Crown Solicitor's Office. That letter talked about the range of offences, mouth swabs as non-intimate forensic procedures, the grounds required for forensic procedures, the treatment of charged suspects and providing a portion of a person's DNA sample and a copy of the DNA analysis results. It also talks about convicted offenders and destruction requirements.

In my investigations on this legislation, I found that all the States had in some way introduced legislation to comply with the 1995 model legislation. I did not go through all of these documents, as there are about eight of them. They include the forensic procedures model provisions; the custody and investigation definitions from Victoria; the Commonwealth's November 2000 update of the definitions; the Northern Territory's Police Administration Act; Queensland's powers in relation to persons in custody medical and dental procedures of November 2001; the Criminal Law (Forensic Procedures) Act 1998, which was consolidated on 14 August 2000; the Tasmanian Forensic Procedures Act 2000; and -

Mr Carpenter: I thought that the Tasmanian one was a particularly good one.

Mr OMODEI: I am sure the minister would be right across it.

The other document is the Australian Capital Territory's Crimes (Forensic Procedures) Act 2000. Most of these pieces of legislation were completed during 2000 and are in place. I found it somewhat disturbing that the Minister for Police would attack the former Government because the legislation it brought into Parliament just prior to the election was not completed. Had it been brought in a month or so earlier, it would have been in line with all the legislation of the other States, which was based on the model Bill produced by the Model Criminal Code Officers Committee.

There is no doubt that there are differences between the States' legislation. Despite what the minister had to say, Minister Foss, as former Attorney General, Minister Day and Minister Prince were very actively involved in the negotiations and discussions at the various ministerial conferences over a long period dating back to 1995. As a matter of fact, I took the time to check and found that Western Australia has always been represented on the Model Criminal Code Officers Committee, which developed the Model Forensic Procedures Bill. The Model Criminal Code Officers Committee reports to the Standing Committee of Attorneys General at each of its meetings on progress with model legislation. Model legislation is not released without the agreement of ministers, including the Western Australian Attorney General. In this case, the preparation of the Model Forensic Procedures Bill, was also agreed to by the Australasian Police Ministers Council and it was also informed of progress. That was in 1998.

In May 1999 a discussion paper with a draft Model Forensic Procedures Bill was released by the Standing Committee of Attorneys General. Following the release of the paper, there was nationwide consultation, which included seminars with law enforcement bodies as well as with other groups. At the end of that process there were submissions from many bodies, including the WA police and others from the WA community. The Western Australian Standing Committee on Legislation, chaired by Hon Bruce Donaldson, which also included ALP members, reported in September 1999. Although it recommended some departures from the model Bill, recommendation 128 states that the model Bill be closely scrutinised by Western Australia when drafting new legislation.

In February 2000 the Standing Committee of Attorneys General, including the Western Australian Attorney General, again redrafted the model. On 27 July 2000 at the Brisbane meeting of the standing committee, a comprehensive paper outlining the divergences between some of the new legislation that was being drafted and the model Bill was considered by the Attorneys General. Western Australia's Attorney General at that time, Peter Foss, was present at that meeting. The divergences were also raised at the Police Ministers Council meetings in 2000 and were well known to all officers associated with the CrimTrac project.

By the end of 2000, all jurisdictions, including Western Australia, had either passed or introduced legislation that would enable the collection of DNA from prisoners, but not all jurisdictions had followed the model Bill. Western Australia was one jurisdiction that departed from the model Bill, as did Queensland and the Northern Territory. At the time there was no need to write to the previous Western Australian ministers because they had made it clear at the ministerial councils that they favoured diverging from the model Bill.

At the end of March 2001 - by then the Labor Party was in power - the Bill before the Parliament lapsed. Following royal assent of the commonwealth Bill in April 2001, and allowing some time for the new Government to settle in, the Bill was brought forward in June at the Police Ministers Council meeting and at the July 2001 SCAG meeting. The letter was also given to Western Australia to develop a position at those meetings.

There is no suggestion that there has been a delay or an abrogation of responsibility on the part of Western Australia. I hope the minister responds to those issues. A lot of work has gone into this very important legislation. From what I can gather from the briefing that we received, there is not a lot of divergence. This Bill is stronger than the 1995 model Bill. I am guaranteed that this legislation will work better than that in other States. I understand that the legislation in Victoria, and particularly that in New South Wales, has some parts that are not the same as the model Bill. However, those States are having difficulty making those parts work. The process of how the information is collected has caused some concern for police in that area. It is a trial and error situation. As I mentioned, this is just another tool for the Police Service in Western Australia to use to resolve crime. I appreciate being provided with the DNA kit.

Mr Masters interjected.

Mr OMODEI: This is the mouth swab sampling kit. I guarantee that I will not put my foot on the chest of a Labor Party member when I try to take a swab. If there are any volunteers, it would be a good way to clear their names in case they are suspects.

The review that took place when the Labor Party came to power was ongoing. I am sure that examining legislation from other jurisdictions, including Hong Kong and the United Kingdom, has provided a good base for the Bill that was developed by the criminal code officers committee of the Standing Committee of Attorneys General.

The Minister for Police referred to a $22 million budget allocation to administer the new DNA legislation; in particular, the receipt and storage of evidence that requires modern procedures. The advancements made in DNA profiling and sampling will be beneficial for the application of this legislation.

In looking further into this issue I found that section 236 of the Criminal Code headed "Accused person in custody, examinations of, samples from" provides a process by which a police officer can search a person and take from him or her anything found on this person and to use such force as is reasonable and necessary for that purpose. It also refers to the more intrusive examination of a person and the qualifications of a person who would take those samples being a legally qualified medical practitioner or a nurse. It refers to grounds for believing that a sample of a person's blood, hair or any part of the body including nails or saliva or of any matter on the person's body or obtained by buccal swab will afford evidence of the commission of an offence. A detailed process is included in the Criminal Code for taking evidence from a suspect.

The Bill prescribes two procedures - intimate and non-intimate - that can be used to obtain identifying particulars, including palm prints, fingerprints, ear prints, footprints, photographs, hair, DNA profiles and impressions such as dental impressions. A non-intimate identification procedure includes taking hand, finger, feet, toe and ear prints and photographing a person, but not taking photographs of his or her private parts; it also allows a buccal swab and the taking of hair other than pubic hair. An intimate identifying procedure includes photographing a person's private parts, taking a dental impression, taking of pubic hair and a blood sample. Of course, the legislation safeguards those people by putting in place fairly significant procedures to ensure that can be done only by an authorised person, and only a magistrate can issue a warrant allowing the procedures to be done.

The Bill also goes to considerable lengths to protect the privacy of people who undergo such procedures. In other words, intimate procedures must not involve the removal of more clothing than is necessary and must be done in private. The Bill also specifies the types and gender of persons who can perform those procedures. For example, only a doctor or dentist may take a dental impression. The minister's second reading speech mentioned that the gender composition of the Police Force is such that there are more men than women. However, in the case of the non-intimate situation either gender can take fingerprints from a person in custody. Under this Bill the practice will continue to apply for the taking of non-intimate samples. Importantly only a doctor, dentist, nurse or qualified person can perform an intimate procedure.

The Bill refers to the types of people that this legislation applies to in the examination and collection of samples. They include volunteers, protected people, deceased people, involved persons, persons who are suspects for an offence, persons who have been charged with an offence and, lastly, persons who are within the prison system as a result of a conviction of a serious offence. A volunteer is a person who is not a suspect or a witness to an offence. That volunteer must consent before any procedure can take place. Protected people include children or people who have mental disability who are unable to consent to the procedure because they are unable to understand the request for consent. In that case permission must be gained from a parent or guardian.

I have some concern about those people who, because of a disability or certain behaviour, are offenders. They need somebody to advocate on their behalf. Many of these people do not have normal powers of comprehension and could be disadvantaged by this Bill. I would like the minister to address that issue during the consideration in detail stage. I want to ensure that people in the protected category, which could include people with autism, attention deficient disorder, a physical or mental disability as a result of an accident or drug overdose, or whatever, are protected under our law, particularly those who do not have the power to completely comprehend what the officer is trying to do in relation to a crime.

The State Coroner must authorise the taking of identifiable particulars from deceased people either on his own initiative or on the application of a person's proper interest. Information taken from a deceased person must be used and destroyed in accordance with the coroner's direction.

The Bill also provides for police officers to undergo an identifying procedure. However, this will be used for the limited purpose of exclusion. That was a matter of great debate in the Police Service. There was a school of thought that all police officers should have DNA taken to exclude them from any investigation of any crime. However, as has been discussed in our briefings, police officers are people too and they have their personal and private rights. However, it is my personal view that it would be good if every police officer voluntarily allowed his or her DNA to be taken for the purpose of exclusion. I know that happened in a whole community in

Queensland at one stage. If it is all right for a whole community to volunteer, it would be a measure of goodwill if the Police Service agreed to do such a thing.

The legislation refers to involved people. Involved people are people who are not suspects but can be reasonably expected to be involved in an offence either as a victim or as a witness. An officer must request the consent of an involved person to a non-identifying procedure. If involved persons refuse a request by a responsible officer to undergo a procedure or if an officer forms a reasonable suspicion about that person, a magistrate may authorise the procedure. Information obtained from an involved person may be compared with samples on a limited or unlimited basis as provided for in the Bill. The information must be destroyed after two years if proceedings have not been proved against that person and the involved person requests the destruction of that information.

Another important section in the Act refers to an uncharged suspect. An uncharged suspect is a person who is reasonably suspected as having committed a serious offence but who has not been charged with an offence. A serious offence is an offence for which the statutory penalty is strict security life imprisonment, life imprisonment or imprisonment for 12 months or more. An officer may request a suspect to willingly undergo an identifying procedure in either an intimate or non-intimate procedure as the case dictates. A senior officer who is not involved in the investigation must approve the performance of a procedure if an adult suspect does not consent to the non-intimate procedure. The intimate procedure can be done only on the adult who is suspected under a warrant issued by a justice of the peace.

Another section of the Bill includes a charged suspect. A charged suspect is a person who has been charged with a serious offence that has not been dealt with by a court. An officer may ask a charged suspect for consent to provide identifying particulars. If the charged suspect does not consent, the officer may order the charged suspect to undergo an identifying procedure. If the officer reasonably suspects the person, as defined in the legislation, those identifying particulars are to be held by the Western Australian Police Service or may be needed to verify the person's identity with particulars already held by the service.

Hopefully, more crimes will be resolved as a result of this measure and by crossmatching the DNA of prisoners who are already in custody and are serving a prison sentence that exceeds a penalty of 12 months. Although a prisoner may be jailed for less than 12 months, if the penalty for the crime is more than 12 months, procedures would automatically be taken to identify their DNA. The Minister for Justice and Legal Affairs said that 90 per cent of crimes are committed by 10 per cent of the people. A London criminologist expert claims that 95 per cent of crimes are committed by five per cent of the people. This legislation will enable the sampling of prisoners or back-capture. A lot of DNA data could be crosschecked with the CrimTrac national database, which would result in the resolution of a number of crimes. I suspect that a lot of people already in our justice system would stay in it a lot longer than they thought they would. The Government would have to provide more secure prisons for more people who may be snared by this legislation. The Minister for Justice and Legal Affairs will be able to authorise the operation of the state DNA database. Provision has already been made in the budget to create the database, which will be linked to the CrimTrac forensic database as well as databases in other States and Territories.

The improper disclosure of information attracts a penalty of two years imprisonment. In the consideration in detail stage I will scrutinise those issues closely. Improperly identifying information attracts a two-year penalty and the use of unauthorised databases attracts a $250 000 fine. I will discuss the fines and penalties with my colleague the spokesperson for justice and the shadow Attorney General to discover whether the penalties are appropriate to protect people when the information has been wrongly used. This is very good legislation that tries to cover all the bases.

However, I wonder whether it is possible for a police officer or an authorised person to plant DNA on somebody whom they wanted to capture for an unresolved crime or whatever. During the committee stages, I want the minister and the ministerial officers to assure us that the possibilities of planting DNA or evidence on a suspect or somebody whom the police would like to imprison is made as difficult as possible. To ensure that does not occur, the penalties to protect innocent people must be sufficient to deter anybody from embarking on that action. I would like to think that would not happen in the Police Service but we know of a number of cases in which people have been wrongfully imprisoned. A case in England involved a set of twins, one of whom was tried for a crime. All of the information including the DNA samples confirmed that the person was at the crime scene. He was convicted and sent to jail. However, later it was discovered that the man's identical twin brother had committed the crime. There are 5 000 sets of twins in Western Australia with identical DNA. I had not considered that the DNA of twins was identical. We want to make sure that the chances of someone being convicted of a crime by the use of a DNA profile, a hair follicle, a swab, a blood sample or any of the other processes provided for in this legislation is virtually nil.

As the minister mentioned in the second reading speech, the benefits of the legislation are many. The legislation on its own will not resolve all the crimes in Western Australia; however, used in conjunction with the Criminal Code and other legislation that is going through this House, it will assist the Police Service. I do not resile from the time it took the previous Government to introduce this legislation; there were very good reasons for that.

The federal Government, led by the federal Attorney General and the federal Minister for Justice, wanted the States to model their Bills as closely as possible to the 1995 federal Bill, which would then automatically have a similar or identical process. It has already been shown that the divergences from the federal Bill by other States means that the federal legislation will not work as effectively in those areas. This Bill and the Criminal Investigation (Exceptional Powers) and Fortification Removal Bill 2001 involve a long process of gaining information and evidence. It is very important that a clever lawyer in the courts cannot undo their effectiveness. That is why I value the assistance from members - such as the members for Nedlands and Kingsley, and Hon Peter Foss - who have some experience in these areas.

I will not refer to my copious notes. The model Bill forms the basis of this legislation. Communications at the model committee level, at the Standing Committee of Attorneys General and the Australasian Police Ministers Council have been invaluable, and it is good to see that exchange of information at not only an officer level but also a ministerial level across the country. That means we shall be able to use this information, with the national database and the CrimTrac process, to ensure criminals crossing state borders will be picked up. I will provide members with an example of how good this legislation can be. This example relates to a car-racketeering group in the United Kingdom, which was stealing a lot of cars. The police were finding it very difficult to pick up any evidence. This group had covered their bodies so that no parts were exposed; they left no fingerprints, hair, skin particles or saliva to indicate their identity. Obviously, they were wearing gloves. When stealing cars they had to trip the wires to start them, and a very clever investigator thought that when they were reaching under the dashboard they might expose some of the arm between the glove and the sleeve. Sure enough, the police found some particles of skin and perspiration under the dashboard and solved that crime. Things like that certainly give me heart.

I congratulate the minister on this legislation. I know she has been critical of the previous Government, and I was about to criticise her for taking so long to introduce this legislation after being in government for nine months. However, having been given access to all the information, I can understand why the gestation period of this legislation has taken so long. We can learn from the mistakes of other States in the use of this technology, and coming in last may be not all bad. It is high time this legislation was introduced into Western Australia. We will scrutinise the legislation clause by clause at the consideration in detail stage, and I am sure the Legislative Council will follow suit. In the end, we shall enact legislation that will strengthen the ability of the Police Service in Western Australia to solve crime. I am looking forward to the debate and to hearing some of the minister's responses.

MR BIRNEY (Kalgoorlie) [5.13 pm]: The DNA issue has been dear to my heart for some time. When I consider all the crimes that have not been solved, it has been a constant source of frustration to me, as an individual, that we have not had a DNA regime. A number of good arguments have been put in favour of introducing DNA testing. One that appears to have been overlooked is the potential for DNA testing to save the Police Force millions of dollars over a long period by cutting short the time required for investigations. It is no secret that police spend many hours and a serious amount of money on individual investigations. In my view, once this legislation goes through, the potential to considerably reduce those man-hours and the money spent on some of those investigations is very real. Based on experience in other parts of the world, this legislation has the potential to double the number of crimes solved in our State. I am sure members will agree that any measure that leads to twice the number of crimes being solved deserves our support. This legislation has the potential to remove criminals from our streets en masse. I am looking forward to reading in *The West Australian* day in, day out about all the criminals who have been caught up in the DNA net, as I am sure they will be.

Members may not be aware that differences in DNA were first discovered in 1980 by a group of British scientists. By 1985, those same scientists had developed a number of tests for DNA, which procedures were then handed to the police in Britain. Those tests were somewhat complicated, but they were well developed.

This DNA legislation is one of the most advanced crime-fighting tools that we can offer our Police Service. It is considerably more advanced than fingerprint technology. I will give members an example of why that might be the case. A smudged fingerprint is not much good to the police, but a DNA sample can be taken from a smudged fingerprint. That being the case, members will agree that DNA testing is head and shoulders above any fingerprint technology. DNA can be taken from a pen that has been in someone's mouth, from semen, saliva, fingernails, hair and skin. It considerably widens the opportunity for police to solve crimes.

One of the major stumbling blocks to the introduction of a DNA-sampling regime has been a somewhat emotive and irrational response from some sections of the community. A lot of hysteria has surrounded the introduction of DNA sampling over a long time, and a lot of that hysteria relates to the potential for somebody to be framed

with DNA evidence. Although I think that potential is low, I accept that there is the potential for somebody to be framed, no matter what. However, DNA legislation will not change the current situation and the potential for somebody to be framed. That is not a good reason for not going down the path of DNA sampling.

A DNA sample is a particularly good way for the police to find a starting point to help solve a crime. It may not be the killer blow that will convict somebody in a court of law, but it can considerably narrow the field. In a police investigation involving a wide range of suspects, the provision of a DNA sample certainly reduces the field. Whether that DNA sample becomes the conclusive evidence that leads to a conviction is not really the issue. The issue is that it enables the police to significantly reduce the number of people on the suspect list.

People tend to forget that although DNA sampling is a very good tool for convicting criminals, it is also a good tool for proving people innocent. The New York innocents project undertaken some time ago involved DNA sampling of a host of people who were on death row, and it resulted in some 40 people being released from jail into the community. What a tragedy it would have been if those 40 people had been put to death. That is a graphic example of positive DNA sampling. It is important for members to remember that although DNA sampling has the potential to convict a guilty person, it also has the potential to prove people innocent. I am sure that the 40 people who were cooling their heels on America's death row are now keen advocates for worldwide DNA sampling.

Crime clearance rates in Australia remain at about 10 to 15 per cent. That means that 10 to 15 per cent of the crimes committed in Australia are solved by police. That is low. The clearance rate in Britain, which has a DNA database, is 30 per cent; more than double that of Australia. After comparing those figures, I can conclude only that the DNA database in Britain plays a significant role in clearing crimes.

Between 1995 and 2000, British police made 64 000 person-to-scene matches as a result of DNA sampling. About 500 crooks were taken off the street every week. That is a significant number. During that time Britain also conducted 144 mass screenings, which is effectively the taking of DNA samples from a large number of people across the country. Those 144 mass screenings resulted in 53 matches. They were very serious matches: twenty of those people were murderers and 33 were rapists. That is an incredible result - the Police Services of the United Kingdom have pulled 20 murderers and 33 rapists off the street as a result of mass DNA screenings. It is an effective tool. In fact, 80 per cent of criminals faced with the prospect of DNA testing confessed. That again demonstrates the potential of DNA sampling to impact significantly on the bottom line of a Government's budget.

A number of DNA sampling regimes are available. The Government has adopted a good model through which convicted criminals, protected persons, volunteers, deceased people and people who are suspected of committing or have been charged with an offence will be sampled. Although that is a good approach, it is also a minimalist approach. It is high time we considered taking DNA samples at birth. My information is that blood samples are taken from all newborn babies and stored in hospitals across the country. It would be very simple to amend the legislation to allow those blood samples to be used as DNA samples in later years. I accept and understand that there is a significant level of hysteria in the community over the issue of taking DNA samples from babies. People feel they should protect their babies. However, there is no downside to taking DNA samples at birth and using them at a later time. I accept and understand that it is a difficult issue, but I hope that we consider it at some stage.

The important thing to remember is that someone who does not break the law has nothing to fear from a DNA sampling regime. That is the cold hard fact of DNA sampling. Hysterical reaction generally surrounds any proposal for DNA sampling. That hysteria can best be dismissed this way: only one thing can be determined from a DNA sample, and that is the gender of a person. The argument that Big Brother will know all about us is simply not true, because the only thing that can be determined from a DNA sample is the gender of a person. Technology can tell how old a sample is, and that goes some way towards appeasing those people who are of the view that a planted DNA sample could be used against someone in court.

My information is that the cost of a DNA sample is between $60 and $100. Members might think that that would represent a significant amount of money if samples were taken from people en masse. However, a significant amount of money is spent on maintaining Police Force investigations. The police are chasing criminals they will never catch. Some of them admit that they have no hope of catching those criminals, but that they must still go through the motions. The introduction of a DNA sampling regime will result in a reduction in the amount of money that must be spent on investigations.

In closing, this legislation can only protect the interests of innocent people. There is no good argument against a DNA sampling regime, but a very good argument in favour of such a regime is that it will positively impact on the Government's bottom line. I am sure all members would be happy to see that.

MR EDWARDS (Greenough) [5.26 pm]: I am aware that people are wishing to go home and get back to their families tonight, so I will keep my comments reasonably brief. I support the Bill. It was an initiative of the previous coalition Government, and came after Hon Bruce Donaldson's standing committee examined DNA legislation in other Australian and overseas jurisdictions. There is no doubt that it will help solve the high percentage of crime that police must currently investigate. I suggest this will untie one hand from behind the Police Service's back. Results from other nations show that such legislation has boosted public confidence in the clearance rates of crime. I am probably ignorant, but I do not think we yet have a world DNA database. However, that is a real possibility.

This legislation will put the State of Western Australia on the national stage, and will enable it to become part of CrimTrac. It would be irresponsible for this Parliament to not give the Police Service the very best tools that can be provided to address what is a difficult job at the best of times. I believe that DNA testing will help the Police Service enormously in the fight against crime. Statistics illustrated by my colleagues this afternoon show that this tool has been extremely successful in other countries.

New identification measures bring with them a necessity for safeguards. That issue seems to have been addressed in this Bill to some degree. I have no doubt that as time goes on, this procedure, which is still reasonably new, will be improved. I support the Bill.

MRS EDWARDES (Kingsley) [5.29 pm]: I also support the Bill. There is no better test for identifying a criminal and exonerating an innocent person. I bring to the attention of the House the report of the Legislative Council's Standing Committee on Legislation in relation to forensic procedures and DNA profiling, which was presented last year. The committee made a number of recommendations. It asked the question "How effective is a DNA database?", and it states in its report -

> The Committee considers that the Western Australian public is entitled to expect that criminals are identified, apprehended and brought before the courts as expeditiously as possible. It is in this context that the Committee recognises the increasingly important role of forensic science in criminal investigation and public safety. Equally it recognises that suitable safeguards must be in place to protect individual rights and civil liberties.

The balancing act that we talked about earlier in respect of the exceptional powers legislation also needs to be met in this legislation. The report states also -

> The Committee finds that a DNA database is an effective tool for resolving criminal investigations and eliminating persons from inquiry. The Committee notes that a DNA database may prevent recidivism by acting as a deterrent to criminals.

The committee found that forensic science means the application of science to produce evidence for use by the justice system; it is no more technical than that. It found that forensic science can eliminate suspects; link incidents; inform inquiries; corroborate suspicions; and, more rarely, identify an "unknown".

The former Commissioner of Police, Mr Robert Falconer, indicated in the 1999-2000 estimates committee hearing that the clearance rate for home burglary in Western Australia at that time was between 12 and 15 per cent. He said also -

> That is the best we can do in the current environment and with the existing legislation. The Brits are getting into low 40 per cent figures for what they call volume crime, such as burglary. In essence it is because of the use of DNA legislation and technology.

It appears that many people do not fully appreciate that we already have DNA testing in Western Australia. Section 236 of the Criminal Code provides for a DNA sample to be taken. However, the difference between section 236 and the use of DNA as an effective tool, as proposed in this Bill, is that this legislation does not restrict a medical examination to any category of offence; does not differentiate between samples that are intimate or non-intimate; does not require informed consent or a court order to compulsorily take samples; allows the taking of samples using reasonable force if necessary; and does not restrict to a senior police officer the determination of reasonable grounds for believing that a sample will afford evidence of the commission of an offence. Therefore, it was recognised fairly early that we needed to put in place legislation to deal with forensic procedures and databases.

I have talked about the meaning of forensic science. People often ask what does DNA mean. It is very difficult to come up with a simple explanation. The explanation in the Standing Committee on Legislation's report does not fully explain it to a lay person. I have come across a legal report that refers to DNA evidence in the courts, and I will share with the House the explanation in that report. It says that our bodies are made up of units called cells. Most cells contain a structure called a nucleus. The nucleus is where DNA is found. DNA is not spread

randomly through the nucleus but is bundled up into discrete cells called chromosomes. Humans have 23 pairs of chromosomes in ordinary cells and 23 single chromosomes in sex cells. All our DNA is inherited from our parents, with one of each pair of chromosomes coming from each parent. The process that splits the pairs in ordinary cells into singles in sex cells ensures that the DNA pack is completely shuffled and thus the parental DNA is passed on in a random fashion. All the DNA in a family of offspring can be traced back to the parents, but none of the offspring will have exactly the same DNA as each other, unless, as the member for Warren-Blackwood indicated, they are identical twins.

The importance of DNA in criminal matters is that DNA is constant during the life of the individual. Also, the DNA in shed body tissues is the same as the DNA in the body and does not change. Therefore, DNA that may be picked up on a person's car will be the same as the DNA in that person's body. Tests are available to detect the DNA with a level of reliability. I ask the minister to tell me at some point whether there have been any challenges in the courts in Australia to the DNA profile. I could not find any such challenges in Australia, but when they have been made in the United States, they have survived. In Australia, attacks have been made on the process and the procedure, and the DNA evidence has not been able to be admitted as evidence in the courts. However, that is different from a challenge to the DNA profile. The issue with regard to the admissibility of DNA evidence in court is standardisation; and the national database is likely to assist in that regard.

A number of key issues surround DNA. One issue is privacy. One of the concerns about privacy is the method by which intimate samples will be obtained from suspects. Another concern is the potential for the material that is stored to be abused. People have expressed concern that because the DNA profile may contain genetic information about disease and other things, that information may be used against the person. Under this legislation, the DNA sample will not be stored but the profile on the database will be. DNA lends itself very well to computer technology. Some people believe that the sample should be retained so long as the permissible uses of such material are defined and adequate rules of access and disclosure are put in place. Having taken part in some of the privacy debates, I support the approach that the minister has taken. Other people disagree with the retention of samples and strongly recommend the use of the database to improve the ability to identify suspects. They believe that the technique should match the DNA extract and form an evidentiary sample, with a suspect's DNA-coded information being stored in the database computer so that only the coded profile from the existing samples will be stored.

Another issue raised is the reliability of the evidence and the question of admissibility; that relates to the continuity between taking the sample and getting it into the court. The member for Nedlands will raise that matter further at the consideration in detail stage. A national database system will assist in ensuring that proper standards are developed and put in place. However, we need to ensure that proper standards and protocols are also operating in the police procedures. The question still remains about who will manage the database and how it will be managed. In her second reading speech, the minister said that to ensure independence, she might appoint a person other than a police officer to that role. The Opposition wants to explore that issue. The other issue concerns practice and procedure. I also acknowledge the kind officers of the Police Service who explained this legislation to opposition members. One issue concerned the rights an individual has when a sample is about to be taken. I would like further information on that practice and procedure and the ability of a person to get legal advice before a sample is taken.

The United Kingdom has been held up as a country in which there has been huge success with the use of DNA testing. I came across a report that focused on the police practices and procedures in the United Kingdom. The report said that the patterns of police use of forensic science in the investigation of crimes should be reviewed in an endeavour to ensure improved value for money. In particular, it wanted to ensure that good practice was used and that a supply of forensic science was available to achieve that. The report identified a couple of issues. The report found that members of the Police Service knew about forensic science and what the forensic tests could do, but that they did not use it in a proactive way. It was often used efficiently in the investigation of major crimes, about which the Police Service was pretty well informed, but its use in volume crimes such as burglary generally appeared to be less well developed. The report also identified that training and communication weaknesses remained. We can learn from those experiences. The report provided a number of points for action, which were listed in a briefing note. I will bring those to the attention of the House. They were to -

- Consider local ways of improving patterns of communication between first officers attending, scenes of crime officers, investigating officers, and forensic science suppliers.
- Examine partnership ways of working between the police, including scientific support units, and forensic science suppliers.
- Increase officer awareness of the potential of forensic science tests.
- Explore the potential of proactive use of forensic science, through demonstration projects.

- Review existing in-force quality assurance/quality control for scene examination and devolved scientific processes.
- Review routine methods for assessing the contribution of forensic science to police investigation.

Two consequences arise: first, it improves the likelihood of admissibility of DNA evidence, and secondly, it points to an increasing use of DNA evidence in an endeavour to resolve crimes.

I am not sure whether the New South Wales Standing Committee on Law and Justice has completed its inquiry, but it is currently looking into the operations of the NSW Act. We were advised by the minister's staff that it was too difficult to get DNA testing done in New South Wales and Victoria. Therefore, that practice has fallen into disrepute and those States are looking at their legislation. They also looked at our legislation. Dr Jeremy Gans, who was interviewed by the committee, said that the Western Australian Bill showed what could be achieved in terms of simplicity. He was referring to the 2000 Bill. The 2001 Bill is different to the 2000 Bill, but those differences are limited. The second reading speeches of the two Bills do not vary greatly. The introductions and conclusions were changed a bit, but the substance of the speeches was pretty much the same. The changes included the 12-month penalty of imprisonment for prisoners to be tested, the removal of the Traffic Act clauses, and the increased number in the list of advice to go to suspects or others to be tested. To some extent that has narrowed the people to be investigated by the use of DNA.

The 2001 Bill also reflects the diversity and size of this State. There is very little difference between the Bill of the Model Criminal Code Officers Committee and the 2001 Bill. The minister might point out any other differences as we go through the legislation in the consideration in detail stage. The significant difference between the Western Australian Bill and the MCCOC Bill, which is something the federal body always fails to recognise, is that Western Australia is the largest State in Australia and that it has many regional and remote areas. It will not always be possible to get to a magistrate in order to authorise some of the actions required under the Bill. The use of justices of the peace and senior officers in the Western Australian legislation differs from the MCCOC Bill, but importantly, it recognises the size of this State and the practicality, reality and challenges that remote regions present.

The Opposition supports the legislation. We believe that the forensic use of DNA profiling will be a valuable tool for the police in this State. It can lead to the clearing of innocent people, which has been proved over the years. It shows that our justice system is not always perfect. This is one tool. It will also produce a greater clearance rate. It was mentioned that with the ability to test prisoners, it was amazing how many more offences could be picked up as having been committed by those prisoners. The minister referred to 10 per cent of the population carrying out a large percentage of crime - I do not remember the exact figure. The UK experience has shown that the proportion reduces to three per cent of the population. A whole lot of outstanding criminal investigations could be finalised if the prison population were tested.

I believe that safeguards are provided in the Bill. I do not believe that the privacy concerns that were originally raised in terms of dealing with the DNA profiling and database remain. The Opposition looks forward to the implementation of this legislation as soon as possible. That is perhaps another question: how long will it be before the legislation can be proclaimed?

MRS ROBERTS (Midland - Minister for Police and Emergency Services) [5.48 pm]: I thank members of the Opposition for their support for this legislation. I particularly thank the members for Warren-Blackwood, Kalgoorlie, Greenough and Kingsley for their positive remarks about this Bill. I also take the opportunity to table the mouth swab sampling kit used for DNA.

[Item tabled for the information of members.]

Mr Omodei: You are not taking mine!

Mrs ROBERTS: The member for Warren-Blackwood had intended to table that package while he was speaking. Given the hour and that we are past the time members expected to be leaving this place, I seek leave to continue my remarks at a later date.

[Leave granted.]

Debate thus adjourned.

House adjourned at 5.49 pm