

**CRIMINAL INVESTIGATION (IDENTIFYING PEOPLE) BILL 2001**

*Committee*

Resumed from 9 April. The Chairman of Committees (Hon George Cash) in the Chair; Hon N.D. Griffiths (Minister for Racing and Gaming) in charge of the Bill.

Progress was reported after clause 17 had been agreed to.

**Clauses 18 to 21 put and passed.**

**Clause 22: Identifying particulars of police officers -**

Hon DERRICK TOMLINSON: I had not indicated earlier in this committee stage that I required further information on this clause. Since then, however, some discussion has taken place in the Committee about the DNA profiles of police officers and the desirability of a separate database of the DNA profiles of serving police officers, to protect them and to protect criminal investigations. Clause 22(1) reads -

The Commissioner of Police may require a person who at the time is appointed under Part I, III or IIIA of the *Police Act 1892* to undergo an identifying procedure for or in connection with the forensic purposes prescribed by the regulations for the purposes of this subsection.

The forensic procedure can involve taking a sample of blood and the analysis of that sample to generate a DNA profile. I am concerned about the phrase "may require". It is an option available to the Commissioner of Police to require a police officer, on appointment, to undergo that forensic procedure. It should not be optional for a police officer to be required to undergo such a procedure, but rather it should be mandatory. A DNA profile of every police officer must be available on a database separate from that to be established by this legislation, for the simple purpose of identifying DNA material, detected at a crime scene, which may have been inadvertently left by a police officer. This was stressed to the Standing Committee on Legislation, in its discussions, particularly with the London Metropolitan Police Service. It was also impressed upon the committee by forensic services in London, and by a forensic analysis laboratory in Oxfordshire.

The first person at a crime scene, other than the criminal or witnesses, is most often a constable on duty in the vicinity. If that person is not adequately aware of what he or she is doing, he or she may inadvertently leave at the crime scene a sample of tissue. It may even be unavoidable. It could be hair, flakes of skin, or a sample of saliva on a glass from which he or she drinks. That tissue, gathered by forensic officers and analysed, identifies the DNA profile. If there is a DNA database of all police officers, it is possible to very quickly match the DNA profile from the crime scene sample with that database and eliminate that profile from the investigation. Perhaps it may even be used to include that police officer with those under suspicion? Most often, however, the data would be used to eliminate that profile from the investigation, because it is from a sample of tissue left at the crime scene by the police officer. The avoidance of unnecessary investigation is possible only if every police officer's DNA profile is stored on a database. It should be mandatory, not optional, for the Commissioner of Police to require officers to undergo the forensic procedure on appointment, so that a current database of all serving police officers can be maintained for the purposes of eliminating those profiles from investigations.

Hon N.D. GRIFFITHS: The objective Hon Derrick Tomlinson is attempting to achieve is a proper one, but the cost of carrying out such profiling across the board would be great. It would be more efficient to deal with these matters as necessary. I am advised that the expense lies in analysing, rather than simply collecting the samples. Clause 22 applies not just to serving police officers. Part II of the Police Act 1892 deals with police cadets, among others, while part III deals with the appointment and regulation of special constables. That is not a very common occurrence, but the capacity to appoint special constables should not be inhibited. Part IIIA deals with Aboriginal police aides. It is intended to collect samples in the course of training, and when necessary analysis will be done. I infer from what the honourable member has said, and the advice that I have been given, that it will often be necessary for the DNA of an investigating officer, or a team of investigating officers to be excluded, but the taking of samples and their analysis can occur at that time, rather than taking and analysing samples for several thousand police officers.

Hon DERRICK TOMLINSON: I accept that this will be an expensive exercise. In my second reading speech, I made the point that setting up a DNA database for criminal investigation will not be a cheap exercise. I made the point in that speech that information obtained from PathCentre indicated that the estimated cost of each DNA procedure was \$136.

*Sitting suspended from 6.00 to 7.30 pm*

Hon Derrick Tomlinson; Hon Nick Griffiths; Hon Bruce Donaldson; Hon Giz Watson; Chairman; Hon Bill Stretch; Hon Simon O'Brien

---

Hon DERRICK TOMLINSON: I was pleased to hear the minister say the other night in debate that the PathCentre will have the contract for forensic procedures for criminal investigation. I hope that is correct. If it is not correct, it will be interesting to see which agency has the contract for forensic analysis.

Let us assume that the PathCentre is able to reduce its costs per procedure to \$100 for the analysis of DNA. At 4 700 police officers, which I think is in round figures the current complement of the Western Australia Police Service, it would cost \$470 000 to take the DNA profile of every serving police officer in Western Australia - let us say in round figures \$500 000. If those persons whom the minister has already identified, including special constables, who from time to time are sworn into the Police Service, every investigation officer of the Anti-Corruption Commission, every investigator for the office of the Ombudsman, every investigator for the Public Sector Standards Commission, every investigator for the Department of Conservation and Land Management and every investigator for the Department of Fisheries are added, the figure will rapidly exceed \$500 000. If the Government is not prepared to invest that amount of money in the DNA profiling of its investigators, my suggestion is that it should not go ahead with the DNA database.

Let us look at that apparently alarming sum in comparison with real costs. Let us assume the cost is \$100 for every person recruited to the Police Service. I ask the minister to ask his advisers how much their shirts cost. I suggest that they cost approximately \$50 each. Let us assume that they cost \$25. One DNA analysis would cost the equivalent of four shirts for every police officer. How much is the cost of their uniform? I would suggest that one DNA analysis would cost less than the cost of one uniform for each police officer. The minister's response is that DNA analysis is very expensive. Of course it is expensive. If the Government is to proceed with DNA databases, it will be expensive.

Let us say that it costs \$500 000 for the forensic analysis of a blood sample to get every police officer's DNA profile. What will it cost for the back-catching of every prisoner in Western Australia caught by those offences with penalties of more than a year in prison? It will be more than \$500 000. I am not quite sure how many persons are in prison at present for offences with penalties of more than one year. Let us estimate that there are 5 000 at \$100 each.

Hon Ken Travers: That is a bit high.

Hon DERRICK TOMLINSON: It might be a bit high. Let us make it 3 000. There are 1 300 people in Bandyup Women's Prison, and how many in Casuarina Prison and Acacia Prison? I suggest that we would very quickly get to the figure of 3 000 and very quickly to 5 000. Let us say there are 3 000 at \$100 each. That would cost \$300 000. Every felon convicted of an offence would be profiled. That figure is for the cost of the procedure alone.

Let us now turn to the laboratory. Let us assume that it is the PathCentre. The minister has said it is to be the PathCentre, and his advisers seem to think otherwise. The PathCentre laboratory at the Queen Elizabeth II Medical Centre is inadequate for this purpose. Therefore, a purpose-built laboratory will have to be built. The intention is that the laboratory would be collocated with the police facility at Midland. It would have to meet the exacting standards of DNA analysis for the purposes of criminal prosecution. It would have to have the capacity for a volume throughput of DNA analysis even for the back-capture, let alone an opportunity, for example, of DNA sampling every taxi driver in Perth for the purposes of the Claremont serial killer case, which was done on a voluntary basis.

The Government is talking about the cost of \$500 000 to set up a police DNA databank. If the Government is going to balk at \$500 000 for a police databank, let us not even consider progressing this Bill. This is an expensive procedure to establish. This point was made to the Legislation Committee in London and in Wiesbaden. In London, the British Government made the commitment to the expenditure to establish the databank, recognising that it needed a critical mass, and there was a political commitment of several hundred million dollars to that database. The federal police service in Germany said that it could do the same criminal investigation with fingerprinting. DNA is very effective for crimes against the person and, therefore, we restrict DNA as an investigative instrument to crimes of violence against persons, because it then becomes a cost-effective instrument. Those are the two arguments.

If the Government is to go for a DNA databank, it must commit the expense. If it is going to go for DNA profiling for a limited set of crimes, it can forget this legislation. Let us also remember this: this legislation is a result of an initiative of the federal Government, which I think has committed \$50 million of which the State will get 10 per cent, which is \$5 million.

Hon Bruce Donaldson interjected.

Hon DERRICK TOMLINSON: Probably nothing, says Hon Bruce Donaldson. Even if Western Australia receives its entitlement of 10 per cent - \$5 million - let us not kid ourselves: if we set up the databank with the

essential infrastructure and necessary procedures, it will only function if the Government commits a substantial amount of money. Half a million dollars for the police databank is small change in the total cost of the project. It is two shirts, or at most, one police officer's uniform for the lifetime of that police officer's work in the Western Australia Police Service. We can compare that with the cost of eliminating the DNA profile of one police officer, or multiple police officers, at every crime scene. In addition to the cost of each investigation, there is the cost of eliminating the police officers' DNA profile from the list of suspects. In up-front dollar terms, a police DNA databank will be a substantial cost. In the long-term scheme of a DNA databank, the cost will be relatively small. If we are to have an effective instrument for forensic criminal investigations, it is not an option to allow the Commissioner of Police to make the decision whether a police officer should provide his or her DNA profile to a databank - it should be mandatory. As the minister stated, up-front costs will be substantial. The long-term cost effectiveness will be insubstantial. Costs aside, it should be mandatory that, upon appointment, police officers' DNA profile should be registered on a police databank.

Hon N.D. GRIFFITHS: I remind the Committee that clause 22 deals with the capacity of the Commissioner of Police to authorise the taking of identifying particulars of police officers and others. I do not want to dwell on the particular peculiar circumstances of special constables who may be sworn in from time to time. However, the Committee should be aware that a number of police officers do not attend crime scenes.

Hon Derrick Tomlinson: How do you know that?

Hon N.D. GRIFFITHS: I am assured that that is the case. Some police officers, usually senior members, carry out a purely administrative function and do not attend crime scenes. Clause 11 deals with identifying procedures, which relates to identifying particulars, and that includes the taking of fingerprints and the like. Identifying the particulars of a police officer is a common practice. Therefore, to make mandatory that which already occurs seems somewhat pointless. Hon Derrick Tomlinson suggested that DNA samples be taken on a mandatory basis. That is not what clause 22 deals with, although it can deal with DNA. Let us leave that in the hands of the Commissioner of Police. The Government has allocated significant resources to this program.

Hon DERRICK TOMLINSON: Let us deal with that specious defence. This Bill deals with three aspects. Firstly, it replaces section 50 of the Police Act 1982. Secondly, it replaces section 50AA of the Police Act; in other words, it replaces the section of the Police Act that enables a police officer to require from a person who is reasonably suspected of an offence, his or her name, address, place of usual residence and, in this instance, their date of birth. Section 126 of the Criminal Code provides for the taking of forensic samples - by force if necessary - from a person who is charged with an indictable offence. It also establishes a database that is consistent with the CrimTrac agreement for a national database. The first two aspects are incidental to the primary function of this Bill.

This Bill is commonly and popularly referred to as the DNA Bill. It establishes a databank and allows for Western Australia to be a part of the national databank. It enables the forensic procedures for DNA profiling to establish that databank. This Bill is about a national databank. By saying that police officers already have their fingerprints recorded and that we should leave the decision to the discretion of the Commissioner of Police to decide whether to include DNA, is avoiding the issue. We are establishing a databank to expedite criminal investigation. If we are to have a criminal investigation that uses a DNA databank, one of the essential components of that is a police databank that will eliminate police officers' DNA profiles from the investigatory process. The specious argument that the procedures that have existed throughout the twentieth century of having police officers fingerprints on a databank obviates the necessity for a DNA databank, suggests that we will progress to the twenty-first century in the area of criminal investigation but will leave the Police Service back in the twentieth century. If that is the case, I suggest that it be left back in the nineteenth century.

The Government should enact this legislation properly or not at all. The minister should not offer specious arguments that a fingerprint databank will substitute for a DNA databank. They are chalk and cheese. If we proceed with chalk forensic procedures, we should proceed with chalk forensic procedures and stop pretending that we will progress to cheese.

Hon BRUCE DONALDSON: Hon Derrick Tomlinson has raised some valid points. I understand that after a police officer has been trained at the academy, it is mandatory for his or her fingerprints to be placed on file. Even at the Maylands academy, PathCentre has been instructing the police officers who attend major crime scenes about the forensic procedures that are carried out. They are taught about the recovery of crime scene stains and the like. Clive Cooke from the PathCentre informed us of that. Also, when we were taking their evidence they informed us that this would be very much a part of the new curriculum at the new police academy at Joondalup. There would be greater emphasis during training on teaching this process. However, I am not too sure whether that is occurring at the moment.

**Extract from *Hansard***  
[COUNCIL - Wednesday, 10 April 2002]  
p9300d-9314a

Hon Derrick Tomlinson; Hon Nick Griffiths; Hon Bruce Donaldson; Hon Giz Watson; Chairman; Hon Bill Stretch; Hon Simon O'Brien

---

Hon N.D. Griffiths: All of what Hon Bruce Donaldson has said is consistent with what I said before the tea break. I did not want to repeat myself because I do not want to filibuster, and I am sure the member does not want to either.

Hon BRUCE DONALDSON: I do not want to filibuster either. The point that Hon Derrick Tomlinson made was that in the United Kingdom where there was a shortage of money, there was a backlog of some 360 000 DNA samples at one stage; a massive amount. The Government then realised that it had to inject more money into the process to get the real benefits out of DNA testing.

I had some unofficial talks with the Police Union that could not be included in the committee's report because it was not evidence that was given to the committee, and our staff could not rely on my hearsay with the Police Union. However, it was interesting to hear from the Police Union, including the executive and the president, that it did not have a problem with DNA profiles being obtained from all police officers, which was very encouraging. The then Commissioner of Police, Bob Falconer, also stated that he saw no problems with the procedure and believed that the majority of police would agree to its happening.

That is important because it provides the procedure with credibility and integrity and the police will be happy to have their fingerprints taken - a mandatory procedure - and to have their DNA profile done. It sets the standard and to me that is very important. They may not be done in one hit, but I do not believe that it is a "may require" option. One would like to think that there will be more certainty than that and that the Commissioner of Police will set the priority for those who should be profiled first. Anybody who is profiled in the first 12 months should go onto that database. I am sure most police officers would be happy to be eliminated from a criminal investigation by that procedure. We are not asking too much.

It is good that Hon Derrick Tomlinson raised this issue. It is not an attack on the police. However, at the end of day it shows that the police are dinkum about wanting to have DNA profile procedures carried out and are dinkum about having their profiles put on a database for elimination purposes - not on the criminal database but on a separate function. That is why we are raising this issue.

Hon DERRICK TOMLINSON: By way of interjection, the minister accused the Opposition of filibustering. To avoid the accusation of filibustering, I move -

That further consideration of clause 22 be postponed until a later stage.

Question put and a division taken with the following result -

Ayes (18)

|                    |                  |                     |                                       |
|--------------------|------------------|---------------------|---------------------------------------|
| Hon Alan Cadby     | Hon John Fischer | Hon Norman Moore    | Hon Derrick Tomlinson                 |
| Hon George Cash    | Hon Ray Halligan | Hon Simon O'Brien   | Hon Giz Watson                        |
| Hon Robin Chapple  | Hon Frank Hough  | Hon J.A. Scott      | Hon Bruce Donaldson ( <i>Teller</i> ) |
| Hon Murray Criddle | Hon Barry House  | Hon Christine Sharp |                                       |
| Hon Paddy Embry    | Hon Dee Margetts | Hon Bill Stretch    |                                       |

Noes (9)

|                  |                      |                  |                                  |
|------------------|----------------------|------------------|----------------------------------|
| Hon Kim Chance   | Hon N.D. Griffiths   | Hon Tom Stephens | Hon Kate Doust ( <i>Teller</i> ) |
| Hon Sue Ellery   | Hon Louise Pratt     | Hon Ken Travers  |                                  |
| Hon Adele Farina | Hon Ljiljana Ravlich |                  |                                  |

---

Pairs

|                     |                    |
|---------------------|--------------------|
| Hon Barbara Scott   | Hon E.R.J Dermer   |
| Hon Peter Foss      | Hon Jon Ford       |
| Hon Robyn McSweeney | Hon Graham Giffard |

**Question thus passed; clause postponed.**

**Clause 23: Definitions -**

Hon N.D. GRIFFITHS: I move -

Page 24, line 11 - To insert before "including" the words "but not".

Hon Derrick Tomlinson; Hon Nick Griffiths; Hon Bruce Donaldson; Hon Giz Watson; Chairman; Hon Bill Stretch; Hon Simon O'Brien

---

I am advised that the amendment is required due to an oversight. Part 5 of the Bill originally incorporated both intimate and non-intimate sampling. When intimate sampling was removed, dental impressions should have been excluded as it was defined as an intimate procedure.

Hon BRUCE DONALDSON: When dealing with clause 17, the Chamber accepted Hon Derrick Tomlinson's amendment that the words "identifying particular" be changed to "identifying information", in relation to a person. I thought the idea behind that was to streamline it through the rest of the legislation. However, I am not sure why we amended clause 17 because clause 23 refers to the words "identifying particular".

Hon N.D. GRIFFITHS: It is true that the Government accepted the amendment moved by Hon Derrick Tomlinson last night, just prior to his suggesting that we deal with the Bill holus bolus. I pointed out that I had a number of amendments that I wished to move. That amendment related to part 4, which deals with identifying particulars of volunteers. This relates to part 5, which deals with identifying particulars of victims and witnesses. It is inappropriate that the dental impression be included in this part of the Bill.

Hon BRUCE DONALDSON: I still have a problem. I am not referring to the body of the part. The first part refers to identifying particulars. What is the difference between an identifying particular in clause 23 and an identifying particular in clause 17? I do not think the minister understands.

Hon N.D. GRIFFITHS: I refer the member to the amendment passed last night. We are dealing with an identifying particular. I have drawn the distinction between intimate and non-intimate. A dental impression is deemed to be intimate.

**Amendment put and passed.**

**Clause, as amended, put and passed.**

**Clauses 24 to 32 put and passed.**

**Clause 33: Issue and effect of IP warrant (involved protected person) -**

Hon N.D. GRIFFITHS: I move -

Page 33, after line 24 - To insert -

(6) An IP warrant (involved protected person) must be in the prescribed form.

The amendment is required for consistency with clause 46(4) so the regulations are able to prescribe the form for the IP warrant (involved protected person) as well as for the IP warrant (suspect).

**Amendment put and passed.**

**Clause, as amended, put and passed.**

**Clause 34: Definitions -**

Hon N.D. GRIFFITHS: I move -

Page 35, line 18 - To delete "for the offence".

The amendment is required due to an oversight. The amendment was originally incorporated in a Bill which has been hanging around for a long time but which has not been progressed. That Bill contains a provision empowering the police to arrest on suspicion with suitable safeguards. This amendment will provide that any person who is in police custody relating to another matter will still be able to be dealt with as an uncharged suspect under this legislation. According to current practice, the definition of "suspect" as it appears in the Bill is incorrect because it contradicts the intent of this part; that is, if a suspect were in custody for committing an offence, he would have been charged with the offence and could not be an uncharged suspect.

**Amendment put and passed.**

Hon GIZ WATSON: This clause deals with requiring DNA samples to be taken from uncharged suspects. The Greens (WA) do not support this clause. The Bill does not deal with how we will require an uncharged suspect to provide a sample. If an uncharged suspect is unwilling to provide a sample, an application can be made to a justice of the peace to require the sample to be collected. How is it intended to obtain a sample from a person who is reasonably suspected of having committed an offence but who has not been charged with an offence? This relates to previous comments I have made that the Police Act does not make it clear at what point a person is in custody or on a charge. This relates to someone who is reasonably suspected but who is not in custody. How is it proposed that this person will be detained? If he has not been charged, under what provisions can the police detain him?

Hon N.D. GRIFFITHS: I note the issues raised. The procedure is referred to in clause 46(5), which states -

An IP warrant (suspect) authorises -

- (a) an officer authorised by subsection (6)
  - (i) to arrest the suspect to whom it relates; and
  - (ii) to detain him or her for a reasonable period in order to do the identifying procedure specified in it;
- and
- (b) the doing of the identifying procedure on the suspect against his or her will.

Clause 44(5) also applies.

Hon GIZ WATSON: I thank the minister for clarification. However, I reiterate that the Greens do not support the notion that people who are detained as reasonably being suspected of committing an offence should be required to provide a DNA sample.

**Clause, as amended, put and passed.**

**Clauses 35 to 44 put and passed.**

**Clause 45: Application for IP warrant (suspect) -**

Hon N.D. GRIFFITHS: I move -

Page 43, line 8 - To delete "serious".

This is similar to a number of amendments I have moved so far and will continue to move. A number of errors have come to light during development of the Bill. This amendment will rectify a typographical error and allay confusion. The whole of part 6 deals with serious offences. Clause 35 restricts the obtaining of identifying particulars under part 6 to those of suspects reasonably suspected of committing a serious offence. To maintain consistency with other clauses in part 6, this clause should refer to "the offence".

**Amendment put and passed.**

**Clause, as amended, put and passed.**

**Clause 46: Issue and effect of IP warrant (suspect) -**

Hon N.D. GRIFFITHS: I move -

Page 44, line 19 - To insert after "will" -

or against the responsible person's will, as the case requires

This amendment reflects the fact that when an "IP warrant (suspect)" is issued by a magistrate in relation to an uncharged suspect who is a protected person, it enables an identifying procedure to be carried out against the will of the relevant responsible person who withdrew consent to the procedure being carried out on the suspect.

**Amendment put and passed.**

**Clause, as amended, put and passed.**

**Clauses 47 to 66 put and passed.**

**Clause 67: Identifying information of charged suspects -**

Hon N.D. GRIFFITHS: I move -

Page 58, line 27 - To delete "particulars" and insert -

information of a charged suspect (within the meaning of Part 7)

The amendment seeks to clarify clause 67(1), which enables comparisons to be made of identifying information of charged suspects that was lawfully obtained before the commencement of the Act.

**Amendment put and passed.**

**Clause, as amended, put and passed.**

**Clause 68 put and passed.**

**Clause 69: Request for destruction of identifying information -**

Hon DERRICK TOMLINSON: At various stages of this Bill requests may be made for the destruction of information, kept in whatever form, which identifies a person whether that person be a criminal, a volunteer or of some other category caught by the definitions in the various sections of the Bill. However, the request is for the destruction of only identifying information. Identifying information is defined in clause 61 and earlier by amendment as -

“**identifying information**”, in relation to a person, means -

- (a) any identifying particular obtained as a result of doing an identifying procedure on the person;
- (b) anything used in obtaining the identifying particular such as an impression, negative, sample or swab; or
- (c) the personal details of the person obtained when the identifying particular was obtained,

and, for the purposes of this definition, it does not matter in what form the information is kept.

The reference is to only identifying information. However, under clause 17 -

“**identifying particular**”, in relation to a person, means -

- (a) a print of the person's hands (including fingers), feet (including toes) or ears;
- (b) a photograph of the person (including of an identifying feature of the person);
- (c) an impression of an identifying feature of the person (including a dental impression);
- (d) a sample of the person's hair taken for purposes other than obtaining the person's DNA profile;

The request is for the destruction of only identifying information in whatever form that might be; for example, it might be a fingerprint record kept on a fingerprint data file or a DNA profile kept on a DNA database. It is information; it is not the thing. Even though implicit in the definition of identifying information in clause 61 is the sample, the impression, the print, the tissue, the hair, the blood sample or whatever it might be that has been used to create identifying information such as a DNA profile, when a person such as a volunteer gives a sample of tissue for the purposes of DNA profiling, not only the profile may be kept on an electronic record but also the tissue, which will be retained if the Police Service of Western Australia is as intelligent as I believe it is. There will be no point in destroying the electronic record of the identifying information if at the same time the identifying particular is not destroyed; that is, the sample from which the identifying information was taken. That is implicit in the definition contained in clause 61. I suggest that it is necessary to make it explicit. There is no doubt that when a person such as a volunteer requests at any time in the procedure that the identifying information be destroyed, the sample from which that information was generated should also be destroyed. If necessary I will move for a deferment so that an amendment can be considered, and the intention of the Parliament that identifying information be destroyed at the request of the person involved can be made quite explicit in the Bill.

Hon N.D. GRIFFITHS: I thank the member for raising this very important issue. The Committee is dealing with clause 69, which is in part 9 of the Bill. Part 9 commences with clause 61, which the Committee has already dealt with. As the member quite correctly points out, clause 69 refers to identifying information. Clause 61 contains a definition of identifying information, which reads, in part -

“**identifying information**”, in relation to a person, means -

- (a) any identifying particular obtained as a result of doing an identifying procedure on the person;

On page 53 of the Bill, these words are set out -

“**identifying particular**” has the same meaning as it has in section 11(1).

I refer the Committee to the wording of clause 11(1), which will become the section 11(1) referred to, if the Bill becomes law. That about which Hon Derrick Tomlinson quite properly expresses concern is dealt with in that clause, which gives a definition of identifying particular, and deals with the matters that the honourable member has raised.

Hon DERRICK TOMLINSON: I thank the minister for repeating exactly what I said. I made it quite clear that the definition in clause 61 includes reference to the identifying particular in the definition of identifying

Hon Derrick Tomlinson; Hon Nick Griffiths; Hon Bruce Donaldson; Hon Giz Watson; Chairman; Hon Bill Stretch; Hon Simon O'Brien

---

information. I made it clear that that was implicit in clause 61, but I wanted it made explicit. To make it explicit, it is essential to repeat the words that are already contained in clause 61. It could be claimed that such repetition is unnecessary in a Bill once, as stated, it becomes a fact of law. The minister has made the point that the Committee has dealt with and agreed to clause 61. The Committee agreed to an amendment to clause 17 last night, which repeated the definition contained in clause 61. The definition in clause 61 was not deleted. Clause 45 was amended to include a definition contained in another clause. There has been repetition for the purpose of clarity, to make explicit in the Bill that which is implicit under previous clauses. If this can be done elsewhere, I suggest that in clause 69, that which is implicit in clause 61 needs to be made explicit. I move -

Page 60, line 2 - After the second occurrence of the word "of" to insert "identifying particulars and".

The clause would then read, in part -

If another provision of this Act refers to the destruction of identifying particulars and identifying information being requested under this section, the request may be made -

I am simply requesting that what is implicit be made explicit, repeating the pattern established in the format of this Bill.

Hon N.D. GRIFFITHS: I like to be very cooperative with the Opposition, particularly when it seeks to raise matters of elegance. I have no objection to this amendment.

**Amendment put and passed.**

Hon N.D. GRIFFITHS: After considering the effect of that amendment on the balance of clause 69, I do not propose to say anything further on this clause.

The CHAIRMAN: I must raise with the Committee the fact that the words "identifying information" also appear in paragraphs (a) (b) and (c). I suspect that there may be a need for consequential amendments, and I would like the Committee to consider that.

Hon N.D. GRIFFITHS: I was happy to concede the amendment because it made no difference. The honourable member wanted it. If a further amendment is needed, it can simply be dealt with as a Clerk's amendment. If the honourable member wants to move to insert "identifying particular and", so be it. I think that if it is necessary, it can be dealt with as a Clerk's amendment.

The CHAIRMAN: In my view, it is not a Clerk's amendment. It will be necessary for Hon Derrick Tomlinson to seek the leave of the Committee to move to insert the words "identifying particular and" prior to the words "identifying information" in lines 5, 8 and 11.

Hon DERRICK TOMLINSON: The place of the conjunction is not pertinent. I am happy to seek leave to move -

Page 60, lines 5, 8 and 11 - To insert before "identifying information" -  
identifying particular and

**Amendment, by leave, put and passed.**

**Clause, as amended, put and passed.**

**Clauses 70 to 72 put and passed.**

**Clause 73: Disclosure of identifying information -**

Hon N.D. GRIFFITHS: I move -

Page 63, line 2 - To insert after "information" -  
obtained under this Act

This will ensure that the requirements of the clause and the offence it creates do not inadvertently capture information that was obtained for a purpose other than that specified by the Act or before the existence of the Act.

**Amendment put and passed.**

**Clause, as amended, put and passed.**

**Clauses 74 to 79 put and passed.**

**Clause 80: Operators of DNA databases to be authorised -**

Hon GIZ WATSON: This clause raises an issue that was discussed during the second reading debate about who will be empowered to create, keep, operate, control or manage a DNA database. In his response to the second



reading debate, the minister said that the intention was that PathCentre will be the authorised body. This clause simply says that the minister “may authorise a person”. As I read it, there is nothing to stop the minister authorising the Police Service to have this authority. The minister indicates that that is not correct. I would like that clarified. All the members who were involved in the Standing Committee on Legislation that looked into this issue were very clear in stating that it is necessary, for a range of reasons, for the legislation to require that the creation, keeping, operation, control and management of the database be entirely independent of the Police Service. I seek the minister’s response. It does not seem that clause 80 makes that position clear. It simply empowers the minister to, in writing, “authorise a person, other than a police officer, to create, keep, operate, control or manage a DNA database”. It also empowers the minister at any time to cancel that authorisation and states that any person who is not authorised to keep a DNA database but who does so is subject to a penalty. Nothing in the clause prevents the police from managing that DNA database.

Hon N.D. GRIFFITHS: The clause states -

The Minister, in writing, may authorise a person, other than a police officer, . . .

Is the honourable member alluding to a scenario in which someone who is not a police officer but who is under the direction of the Police Service operates the database?

Hon Giz Watson: I am suggesting that the Police Service could run the database. There is nothing in the clause to prevent that.

Hon N.D. GRIFFITHS: The words are -

The Minister, in writing, may authorise a person, . . .

Hon Giz Watson: She is empowered to authorise a person other than a police officer. That implies that a police officer can operate the database.

Hon N.D. GRIFFITHS: It must be a person.

Hon Derrick Tomlinson: Yes; but it is implicit that a police officer may operate the database. The clause refers to a “person, other than a police officer”.

Hon N.D. GRIFFITHS: I would have thought that the clause means that the minister may authorise the creation, keeping, operation, control or management of a DNA database, that such authorisation must be in writing and apply to a person, and that the person cannot be a police officer. The minister has the discretion to authorise a person, whoever that person may be, to carry out the functions set out in the clause. However, the clause states that a category of persons may not carry out that function. That category of persons is police officers.

Hon DERRICK TOMLINSON: It is necessary to be clear about the procedures for establishing a database. The first stage is to collect personal information about criminals, persons suspected of a crime, deceased persons, incapable persons and children. The second stage is to gather identifying particulars. That can include crime scene samples of tissue, whether that tissue is hair, blood, skin or any other form that can be used to generate identifying information. The first stage is the gathering of identifying information. The second stage is the gathering of identifying samples; that is, ostensibly human tissue of one kind or another. The third stage is the forensic processing of the identifying particular; that is, human tissue to generate identifying information such as a DNA database or a fingerprint database. The fourth stage is the storage of the identifying information in a database of some kind. The fifth stage is the retrieval of information from the database for the purpose of identifying crime scene information with suspect or criminal record information from the database. Those are the five stages.

Clause 80 refers to the minister authorising a person other than a police officer to “create, keep, operate, control or manage a DNA database”. That means persons other than the persons authorised to create or manage the database will undertake the processes of gathering personal information and identifying particulars, analysing the identifying particulars to create the identifying information and transmitting the identifying information to the persons authorised to maintain the database. Under clause 80 an authorised person may be someone other than the police officer who takes the identifying personal information or the investigating officer who gathers the identifying particulars or the agency - whether that is the PathCentre or some other forensic laboratory such as the police forensic laboratory. An authorised person may also be someone other than the person or body who has legal responsibility for analysis. The tasks are quite separate and are carried out in sequence, but not necessarily by the same person.

Hon Giz Watson is saying that clause 80 authorises a person other than a police officer to maintain the database, which is stage four of the procedure I have described. If a person other than a police officer is authorised to create or maintain a database, does that exclude the Police Service or a police officer as a legal entity from creating or maintaining a database? The retrieval of information from the database might be carried out by the

Hon Derrick Tomlinson; Hon Nick Griffiths; Hon Bruce Donaldson; Hon Giz Watson; Chairman; Hon Bill Stretch; Hon Simon O'Brien

---

investigating officer provided that the information is anonymous until such time as a match is made. The person maintaining the database must be kept separate from the person gathering and processing the identifying particulars to create the information that is stored on the database. The reason for the separation is to avoid the accusation or the perception - justified or otherwise - that the criminal investigator who gathers the identifying information can tamper with the database to create his own case for prosecution. That is the principle for the separation of the authorised person who maintains the database from the authorised person who undertakes the investigation. It is essential. This is the point that Hon Giz Watson is making, and I support her in this: police officers and the Police Service should not maintain the database.

It is my understanding that the agreement between Attorneys General is that a national database will be kept by an agency appointed by the Commonwealth Government. The Police Service in this State will not maintain a DNA database. If that is not the intention, I suggest the minister make the Government's intentions clear. That is the purpose of the question by Hon Giz Watson. Does the authorisation of a person other than a police officer mean that a police officer may maintain a database or is it intended that a person authorised to create, manage or control a database will not be a police officer?

Hon GIZ WATSON: In listening to Hon Derrick Tomlinson, another issue was clarified for me. As well as the operational control of the database being independent of the Police Service, it is essential that the processing of the samples be kept separate. In visiting pathology centres in other States, the Standing Committee on Legislation was impressed by the rigour with which evidence provided for analysis was kept totally separate from any identifying information that could link it to a particular investigation. It is that separation on which I am seeking clarification. This clause deals with this aspect. It is more than the issue of the database itself; it is the procedures that create information on the database.

Hon N.D. GRIFFITHS: I thought that I had given a patent definition of the meaning of the words; however, I will try again. The Government intends not to involve police officers in the creation, keeping, operation, control or management of a DNA database. That is what the words clearly say.

Hon GIZ WATSON: Does the creation of a database involve the processes involved in the analysis of samples?

Hon N.D. GRIFFITHS: It is a separate procedure to the creation of a database. The Bill as it has progressed through the Committee indicates that police officers can take samples and there is nothing in the Bill to prevent them from analysing the samples. In terms of the database, they are excluded. The Government does not intend to allow police officers to analyse the samples. Others will analyse the samples. Dealing with particular samples separate from the database is a separate thing entirely. There is no point in having a sample without a database. Police are excluded from the database.

Hon DERRICK TOMLINSON: What the minister has said is correct, in part. The creation, keeping, operation, control and management of a database is something different from the gathering of identifying particulars and the forensic analysis; it is the process of storage of identifying information that is the database. The collection of information for storage on the database, as distinct from the collection and forensic processing of identifying particulars to create information, is separate from the process of gathering and storing. A third process is the retrieval of information from the database, which is part of the management of the database. It may be retrieval by the investigating officer, but the management of that retrieval - in other words, the authorisation of access to information on the database - shall be the responsibility of the person authorised for the creation, keeping, operation and control of the database. Let us be clear that the management, keeping and operation of the database is a separate procedure. I hope I am reflecting the minister's eloquent words correctly, even though I am much more loquacious.

Hon N.D. Griffiths: You are reflecting them very eloquently, so far.

Hon DERRICK TOMLINSON: However, let us now engage in semantics. The operative word is "may" -

The Minister, in writing, may authorise a person, other than a police officer . . .

If it is not to be a police officer as the minister implied, or stated, the word should be "shall" -

The Minister, in writing, shall authorise a person, other than a police officer . . .

In other words, it is explicit that a police officer will not - not, may not: he shall not create, keep, operate, control or manage a DNA database, because the authorisation shall be to a person other than a police officer. That point needs to be made. If necessary I will put the words in writing and move an amendment. I move -

Page 70, line 16 - To delete the word "may" and substitute the word "shall".

The CHAIRMAN: Will the member provide that amendment in writing.

Hon Derrick Tomlinson; Hon Nick Griffiths; Hon Bruce Donaldson; Hon Giz Watson; Chairman; Hon Bill Stretch; Hon Simon O'Brien

---

Hon BILL STRETCH: Is there any other reference in the legislation to ensure that the police do not control the database, or is the minister relying entirely on the wording of clause 80?

Hon N.D. GRIFFITHS: I had better go back to school, because I thought these words were pretty obvious.

Hon Bill Stretch: I am asking whether that is the only reference.

Hon N.D. GRIFFITHS: I would like the member to relax for a moment. This is the relevant clause.

Hon Bill Stretch: Is this the only clause?

Hon N.D. GRIFFITHS: It states -

The Minister, in writing, may authorise a person, other than a police officer, to create, keep, operate, control or manage a DNA database.

That person cannot be a police officer. Reference was made to semantics. I would have thought the meaning was patent. I am not in any way arguing that it is not appropriate for amendments to be moved on the floor of the House; that is very worthwhile, and from time to time some good amendments are moved, but this is an amendment on the run. The English is clear. I do not understand why members are having difficulty with it. With respect, I get the impression that some amendments are being moved for the sake of moving amendments; particularly in the light of an observation made late last night when the lead speaker for the Opposition indicated that he wanted to get rid of the Bill that night. We did not do so because, firstly, as I quickly pointed out, I had some amendments on the Notice Paper for some tidying up to be done and, secondly, the passage of time prevented that from occurring.

Hon DERRICK TOMLINSON: In support of my amendment, let me go back to the English classroom, because the minister has challenged me by saying that the words are clear. The minister says that the minister, in writing, may authorise a person, other than a police officer. A person, other than a police officer, is a person other than a police officer; but it is a person comma other than a police officer comma. This is a subordinate clause. If we delete the subordinate clause, what do we get? We get this statement: the minister may in writing authorise a person to create, keep, operate, control or manage a DNA database. By eliminating the subordinate clause, which is enclosed in commas - the court will look at not only the language of the clause but also the construction of the clause - it is separated from the principal clause, and the principal clause is the explicit statement that the minister may authorise a person to do those things to a database. If the minister wants a lesson in the English language, I am happy to give it to him. I did it for a long, long time before I came into this place. Therefore, to make it clear what the language and construction, the syntax, of the clause means, I have moved to delete the word "may" and substitute the word "shall".

Hon GIZ WATSON: The Greens (WA) will support the amendment moved by Hon Derrick Tomlinson, because it will make the subclause a lot clearer. The fact that I read the subclause about 10 times and it still remained ambiguous indicates that other people might also find it ambiguous. I am not a lawyer, but I think the proposed amendment will put that question beyond doubt.

Amendment (word to be deleted) put and a division taken with the following result -

**Extract from *Hansard***  
[COUNCIL - Wednesday, 10 April 2002]  
p9300d-9314a

Hon Derrick Tomlinson; Hon Nick Griffiths; Hon Bruce Donaldson; Hon Giz Watson; Chairman; Hon Bill Stretch; Hon Simon O'Brien

---

Ayes (18)

|                    |                  |                     |                                       |
|--------------------|------------------|---------------------|---------------------------------------|
| Hon Alan Cadby     | Hon John Fischer | Hon Norman Moore    | Hon Derrick Tomlinson                 |
| Hon George Cash    | Hon Ray Halligan | Hon Simon O'Brien   | Hon Giz Watson                        |
| Hon Robin Chapple  | Hon Frank Hough  | Hon J.A. Scott      | Hon Bruce Donaldson ( <i>Teller</i> ) |
| Hon Murray Criddle | Hon Barry House  | Hon Christine Sharp |                                       |
| Hon Paddy Embry    | Hon Dee Margetts | Hon Bill Stretch    |                                       |

Noes (9)

|                  |                      |                  |                                  |
|------------------|----------------------|------------------|----------------------------------|
| Hon Kim Chance   | Hon N.D. Griffiths   | Hon Tom Stephens | Hon Kate Doust ( <i>Teller</i> ) |
| Hon Sue Ellery   | Hon Louise Pratt     | Hon Ken Travers  |                                  |
| Hon Adele Farina | Hon Ljiljana Ravlich |                  |                                  |

---

Pairs

|                     |                    |
|---------------------|--------------------|
| Hon Robyn McSweeney | Hon E.R.J. Dermer  |
| Hon Barbara Scott   | Hon Jon Ford       |
| Hon Peter Foss      | Hon Graham Giffard |

**Amendment thus passed.**

**Amendment (word to be inserted) put and passed.**

**Clause, as amended, put and passed.**

**Clauses 81 to 87 put and passed.**

**Clause 88: Prescribing corresponding laws etc. -**

Hon N.D. GRIFFITHS: I move -

Page 77, line 1 - To insert before "any" the word "prescribe".

Subclauses (a), (b) and (c) commence with the word "prescribe". Subclause (d) begins with the words "any matters". For subclause (d) to be properly constructed it should begin with the word "prescribe". The amendment seeks to insert that word.

**Amendment put and passed.**

**Clause, as amended, put and passed.**

**Clauses 89 to 92 put and passed.**

**Clause 93: Regulations -**

Hon DERRICK TOMLINSON: I move -

Page 79, lines 18 to 22 - To delete the lines.

This matter has been raised many times in the House by members of the Joint Standing Committee on Delegated Legislation, to bring to the attention of the House the convenience resorted to by ministers and parliamentary draftspersons to allow subordinate legislation to be drafted as regulations to impose statutory penalties. In this case, the statutory penalty that may be created does not exceed \$5 000. That would be regarded as a substantial penalty. The point frequently made by members of the joint standing committee is that if it is the intention of Parliament to impose penalties of that magnitude, it should clearly be a statutory responsibility and not a subordinate responsibility granted to an agency that is responsible for drafting regulations. Given the nature of the regulations and the anticipated penalty, and given the arguments presented many times in this House by members of the Joint Standing Committee on Delegated Legislation, I recommend that subclause (2) be deleted. If it is intended that penalties of that magnitude be provided for offences against any aspect of this Bill when it becomes law, that should be the explicit responsibility of the Parliament, not a subordinate agency.

Hon N.D. GRIFFITHS: I very much regret that the Opposition has engaged in the procedure of proposing the series of amendments it has proposed tonight, particularly because last night it foreshadowed signing off on the Bill. The Opposition has adopted a fascinating procedure. Frankly, I can do no more at this stage than note that the Government regrets that the Opposition is going down this path. We oppose the amendment.

Hon SIMON O'BRIEN: I remind the minister of my contribution to the second reading debate when I raised a question about clause 93(2), which Hon Derrick Tomlinson has again referred to. Over time, provisions have

Hon Derrick Tomlinson; Hon Nick Griffiths; Hon Bruce Donaldson; Hon Giz Watson; Chairman; Hon Bill Stretch; Hon Simon O'Brien

---

crept into the body of Western Australian statutes for offences to be prescribed by regulation. That has become apparent because from time to time the Joint Standing Committee on Delegated Legislation reviews new regulations that amend previous regulations. Often penalties are altered by regulation for an offence, or new offences are prescribed. At various times, the committee has considered regulations like the ones contemplated under clause 93(2). In each case, the committee has had to consider whether the matter is within the power of the legislation. Upon reference to the principal Act, which has given rise to the regulations being considered at the time, invariably the committee has found that it contains a provision like this one that authorises regulations to be made to create offences and/or to prescribe penalties. Without any dissent that I have noticed, although other members may not concur, the general attitude of the committee, which has considered these matters dispassionately, is that it is not desirable to create offences by subsidiary legislation. They should be created by and in Parliament through a principal Act.

My attention was drawn to this provision when this Bill was introduced to the Parliament, which is why I raised it during the second reading debate. We are about to give birth to a provision that has caused disquiet for a number of members. Do we strangle this provision at birth? Do we draw a line in the sand and say that this should not happen or, having noted that it is undesirable, do we allow it to proceed for the sake of convenience? The fact of the matter is that the question before the Chair is not entirely satisfactory either. The question before the Chair is that clause 93(2) be deleted. That removes from the Bill the capacity for regulations, firstly, to provide for the procedure to be followed in and in relation to an identifying procedure and, secondly, to create offences with statutory penalties not exceeding \$5 000. I think we must kick this around a bit now. The reason that the amendment may not be satisfactory is that the subclause has two parts. The first is the provision for a procedure to be followed in and in relation to an identifying procedure. It may well be that on taking a fresh glance at this part, Hon Derrick Tomlinson will take the view that the part that really offends is not this part, but paragraph (b) on its own. I am sure he will comment on that in a moment. He may even wish to vary his amendment with the leave of the House.

The second reason that makes this a problem is that if we delete clause 93(2)(b), which gives the capacity to create offences by regulation, I believe we shall not have a provision in this Bill to create offences. The minister may be able to correct me but, on my reading of the Bill, I do not believe that provision is contained elsewhere in the Bill.

Hon N.D. Griffiths: There are penalties elsewhere in the Bill, but I think you are right about the capacity to create offences. In my second reading response I referred to the example of the road traffic code. Again, I regret the Opposition's view of the world. If you want to make the Bill unworkable, that is fine.

Hon SIMON O'BRIEN: I thank the minister for that clarification, which does ease my reflection on the consequences.

We are coming to the end of the consideration in detail of a very long Bill. I am not sure where such offences are elsewhere prescribed. The minister assures me that there are some littered throughout the Bill in connection with specific provisions. For example, clause 80, which we have just dealt with, provides a significant penalty for creating a database without written authority. These are serious offences, so we are probably talking about summary or minor offences. Nonetheless, I strongly offer the view that such powers for creating offences should be in the principal Act and that their creation, variation or repeal should be the direct result of action of the Parliament itself. I offer the view also that the way to do that, especially for a large number of offences of a comparatively minor nature that the Parliament might intend to be dealt with in a summary way, would be to include such provisions by way of a schedule attached to the principal Act. I am disappointed that the Government did not see fit to follow that up between the second reading debate and now.

Hon N.D. Griffiths: I responded to your speech yesterday.

Hon SIMON O'BRIEN: I was away from the Chamber on urgent parliamentary business yesterday, but when I say that the Government failed to respond, I mean that the Government failed to respond by providing the amendment suggested. We are providing the power to create offences without specifying what they might be.

Hon DERRICK TOMLINSON: Hon Simon O'Brien invited me to consider altering my amendment to delete subclause (2) by restricting the deletion to paragraph (b). If that were done, the amendment would simply delete the regulations creating offences with statutory penalties not exceeding \$5 000. Subclause (1) allows the Government to make regulations prescribing all matters that are required or permitted by this Act to be prescribed, which includes the proceedings to be followed in relation to doing an identifying procedure. In other words, regulations will be able to be made for the agency or the person authorised to carry out the forensic procedure - that is, the forensic analysis or sample that will create the identifying information for storage on the

**Extract from *Hansard***  
[COUNCIL - Wednesday, 10 April 2002]  
p9300d-9314a

Hon Derrick Tomlinson; Hon Nick Griffiths; Hon Bruce Donaldson; Hon Giz Watson; Chairman; Hon Bill Stretch; Hon Simon O'Brien

---

database. However, regulations may be made for that purpose as part of all matters that are required or permitted by the legislation. If we delete paragraph (b) and retain paragraph (a), it will be an unnecessary restatement of what is in subclause (1). All matters that are required or permitted by this Act are subsumed into subclause (2)(a). Paragraph (a) assumes significance only if read with paragraph (b); it is sequential. Although I accept what Hon Simon O'Brien has intended as a reasonable argument, it is unnecessary and I stand by my proposal to amend all of subclause (2).

Amendment put and a division taken with the following result -

Ayes (18)

|                               |                  |                     |                       |
|-------------------------------|------------------|---------------------|-----------------------|
| Hon Alan Cadby                | Hon John Fischer | Hon Norman Moore    | Hon Derrick Tomlinson |
| Hon George Cash               | Hon Ray Halligan | Hon Simon O'Brien   | Hon Giz Watson        |
| Hon Robin Chapple<br>(Teller) | Hon Frank Hough  | Hon J.A. Scott      | Hon Bruce Donaldson   |
| Hon Murray Criddle            | Hon Barry House  | Hon Christine Sharp |                       |
| Hon Paddy Embry               | Hon Dee Margetts | Hon Bill Stretch    |                       |

Noes (9)

|                  |                      |                  |                         |
|------------------|----------------------|------------------|-------------------------|
| Hon Kim Chance   | Hon N.D. Griffiths   | Hon Tom Stephens | Hon Kate Doust (Teller) |
| Hon Sue Ellery   | Hon Louise Pratt     | Hon Ken Travers  |                         |
| Hon Adele Farina | Hon Ljiljana Ravlich |                  |                         |

---

Pairs

|                     |                    |
|---------------------|--------------------|
| Hon Robyn McSweeney | Hon E.R.J. Dermer  |
| Hon Barbara Scott   | Hon Jon Ford       |
| Hon Peter Foss      | Hon Graham Giffard |

**Amendment thus passed.**

**Clause, as amended, put and passed.**

**Clauses 94 to 96 put and passed.**

**Postponed clause 22: Identifying particulars of police officers -**

Hon DERRICK TOMLINSON: I move -

Page 23, line 3 - To delete the word "may" and substitute the word "shall".

Page 23, line 4 - To delete the words "Part I, III or IIIA of".

The amended subclause will read as follows -

The Commissioner of Police shall require a person who at the time is appointed under the *Police Act 1892* to undergo an identifying procedure . . . .

Amendments put and a division taken with the following result -

**Extract from *Hansard***  
[COUNCIL - Wednesday, 10 April 2002]  
p9300d-9314a

Hon Derrick Tomlinson; Hon Nick Griffiths; Hon Bruce Donaldson; Hon Giz Watson; Chairman; Hon Bill Stretch; Hon Simon O'Brien

---

Ayes (18)

|                    |                  |                     |                                       |
|--------------------|------------------|---------------------|---------------------------------------|
| Hon Alan Cadby     | Hon John Fischer | Hon Norman Moore    | Hon Derrick Tomlinson                 |
| Hon George Cash    | Hon Ray Halligan | Hon Simon O'Brien   | Hon Giz Watson                        |
| Hon Robin Chapple  | Hon Frank Hough  | Hon J.A. Scott      | Hon Bruce Donaldson ( <i>Teller</i> ) |
| Hon Murray Criddle | Hon Barry House  | Hon Christine Sharp |                                       |
| Hon Paddy Embry    | Hon Dee Margetts | Hon Bill Stretch    |                                       |

Noes (9)

|                  |                      |                  |                                  |
|------------------|----------------------|------------------|----------------------------------|
| Hon Kim Chance   | Hon N.D. Griffiths   | Hon Tom Stephens | Hon Kate Doust ( <i>Teller</i> ) |
| Hon Sue Ellery   | Hon Louise Pratt     | Hon Ken Travers  |                                  |
| Hon Adele Farina | Hon Ljiljana Ravlich |                  |                                  |

---

Pairs

|                     |                    |
|---------------------|--------------------|
| Hon Robyn McSweeney | Hon Jon Ford       |
| Hon Barbara Scott   | Hon E.R.J. Dermer  |
| Hon Peter Foss      | Hon Graham Giffard |

**Amendments thus passed.**

**Postponed clause, as amended, put and passed.**

**Schedules 1 and 2 put and passed.**

**Title put and passed.**

*Point of Order*

Hon DERRICK TOMLINSON: The Committee of the Whole agreed to an amendment that I moved at clause 69 to include the words “identifying particulars and”, so that clause 69 makes explicit that which is implicit in the definition of “identifying information” in clause 61. The consequence of the Committee’s agreeing to that amendment is that subsequent references to “identifying information” in clauses 70, 71 and 72 should be made explicit. That would require an amendment to each of those clauses. I seek your guidance, Mr Chairman. To amend those clauses, is the procedure that I move that we report the Bill to the House and then recommit the Bill for the purpose of reconsidering clauses 70, 71 and 72?

The CHAIRMAN: If the member believes that additional amendments to those clauses are necessary, the minister will move that I report the Bill to the House. When that question is put, the member will be in a position to move that whichever clauses he believes need to be amended be recommitted for the purpose that he intends. The Committee agreed to those clauses as printed. Without wishing to enter the debate, clause 69 now has an additional burden greater than that in the other clauses that the member has mentioned. That may or may not have been the intention of the Committee. The minister signified his agreement to amend clause 69, and I assume that was the intention of the Government. We do not have a question before the Chair, so I call on the minister to comment by way of explanation.

Hon N.D. GRIFFITHS: I appreciate that, Mr Chairman. My understanding is that the Opposition and other parties wished to deal with the legislation expeditiously. Last night I was given indications that we would proceed through all stages of the Bill tonight, and I wish to do that. If that is still the case as far as the Opposition and other parties are concerned, and if standing orders permit, I would be interested in Hon Derrick Tomlinson seeking the leave of the Committee to do that, or can he not do that?

The CHAIRMAN: If the minister asks me to report the Bill to the House, I will put the question. After the question is put, a member can move that certain clauses be recommitted. Then we can do whatever the Committee wishes. However, we must dispose of this committee report first.

*Report*

Hon N.D. GRIFFITHS: I have made my point about what members said about dealing with the Bill expeditiously. I move -

That the Chairman report the Bill to the House.

Hon DERRICK TOMLINSON: I sought your guidance, Mr Chairman, and I was under the impression that once the motion was put, I could not further respond. However, I may further respond?

Hon Derrick Tomlinson; Hon Nick Griffiths; Hon Bruce Donaldson; Hon Giz Watson; Chairman; Hon Bill Stretch; Hon Simon O'Brien

---

The CHAIRMAN: On the question that I report the Bill to the House.

Hon DERRICK TOMLINSON: Last night when I said that it was my clear intention as the lead speaker for the Opposition to deal expeditiously with the Bill, I was sincere. I saw no reason that the Bill could not have been dealt with expeditiously last night. The minister will recall that, at the last moment I suggested incorrectly to the Deputy Chairman that we could proceed to clause 94, but I overlooked the fact that the minister had on the supplementary notice paper a series of foreshadowed amendments to clauses along the way. It was my expectation that we would deal expeditiously with the remaining clauses tonight. There are only two clauses of interest to me: clause 95, about which I had foreshadowed interest, and clause 22, which has been brought to my attention in the interim. It was brought to my attention by the then chairman of the Standing Committee on Legislation that that committee was concerned to make it clear that there should be a discrete database containing identifying information about all police officers, for the purposes that I explained. Both of those could have been dealt with expeditiously.

The Opposition was accused of filibustering, and it did. If the minister does not wish to accept the challenge, he should not throw down the gauntlet. The minister threw down the gauntlet, and I accepted the challenge. The consequence of that sort of theatre in this place is that legislation is amended on the run, which is always a hazardous procedure. Legislation goes through a meticulous process before it reaches this place. Even in that meticulous process, mistakes can sometimes occur. The minister has identified errors of drafting, and has moved procedural amendments to correct those errors. Occasionally in debate, differences of interpretation or ideological position occur, and lead to the moving of amendments. Whether the differences are of interpretation or of ideological position, amendments are drafted in advance. These amendments are usually drafted with care, looking at their consequences for all other clauses in the Bill. When we engage in theatre in this place, as we have done tonight - I make no apologies for referring to it as theatre - and amend legislation on the run, principally for the purpose of frustrating the intentions of the Government, those amendments most often have unintended consequences. Consequential amendments have been made necessary as a consequence of amending on the run. For that reason, when the motion is put, I will be moving for the Bill to be recommitted for the reconsideration of clauses 70, 71 and 72.

Question put and passed.

Bill reported, with amendments.

*Recommittal*

On motion by Hon Derrick Tomlinson, resolved -

That the Bill be recommitted for the further consideration of clauses 70, 71 and 72.

*Committee*

The Chairman of Committees (Hon George Cash) in the Chair; Hon N.D. Griffiths (Minister for Racing and Gaming) in charge of the Bill.

**Clause 70: Destroying identifying information -**

Hon DERRICK TOMLINSON: As a consequence of the amendment to clause 69 that inserted the words "identifying particular and" to make the intention of the Committee of the Whole explicit, it is necessary to repeat that amendment in further clauses. I move -

Page 60, lines 16, 20, 21, 22, 23, 24 and 26 - To insert before "identifying information" -  
identifying particular and

**Amendment put and passed.**

**Clause, as amended, put and passed.**

**Clause 71: Responsibility for destroying identifying information -**

Hon DERRICK TOMLINSON: I do not believe we need to make any amendments to this clause.

**Clause put and passed.**

**Clause 72: Supreme Court may order information not to be destroyed -**

Hon DERRICK TOMLINSON: I move -

Page 61, lines 13 and 21 - To insert before "identifying information" -  
identifying particular and



Hon Derrick Tomlinson; Hon Nick Griffiths; Hon Bruce Donaldson; Hon Giz Watson; Chairman; Hon Bill Stretch; Hon Simon O'Brien

---

**Amendment put and passed.**

**Clause, as amended, put and passed.**

**Bill again reported, with further amendments, and the report adopted.**

*Third Reading*

Bill read a third time, on motion by Hon N.D. Griffiths (Minister for Racing and Gaming), and passed.