

CRIMINAL INVESTIGATION (IDENTIFYING PEOPLE) BILL 2001

Council's Amendments

Amendments made by the Council now considered.

Consideration in Detail

The amendments made by the Council were as follows -

No. 1

Clause 17, page 18, line 5 - To insert after "Part" -

"identifying information", in relation to a person, means -

- (a) any identifying particular obtained as a result of doing any 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.

No. 2

Clause 22, page 23, line 3 - To delete "may" and substitute "shall".

No. 3

Clause 22, page 23, line 4 - To delete "Part I, III or IIIA of".

No. 4

Clause 23, page 24, line 11 - To insert before "including" the words "but not".

No. 5

Clause 33, page 33, after line 24 - To insert -

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

No. 6

Clause 34, page 35, line 18 - To delete "for the offence".

No. 7

Clause 45, page 43, line 8 - To delete "serious".

No. 8

Clause 46, page 44, line 19 - To insert after "will" -

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

No. 9

Clause 67, page 58, line 27 - To delete "particulars" and substitute -

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

No. 10

Clause 69, page 60, lines 3, 5, 8 and 11 - To insert before "identifying information" the words "identifying particulars and".

No. 11

Clause 70, page 60, lines 16, 20, 21, 22, 23, 24 and 26 - To insert before "identifying information" the words "identifying particulars and".

No. 12

Clause 72, page 61, lines 13 and 21 - To insert before "identifying information" the words "identifying particulars and".

No. 13

Clause 73, page 63, line 2 - To insert after "information" the words "obtained under this Act".

No. 14

Clause 80, page 70, line 16 - To delete “may” and substitute “shall”.

No. 15

Clause 88, page 77, line 1 - To insert before “any” the word “prescribe”.

No. 16

Clause 93, page 79, lines 18 to 22 - To delete subclause (2).

Mrs ROBERTS: I move -

That amendment No 1 made by the Council be not agreed to.

The Government is opposed to this amendment. The Police Service and parliamentary counsel advice is that this amendment is unnecessary because clause 3 makes the identical definition of “identifying information” applicable to the whole Bill, not just schedule 1. Its inclusion may lead to concerns that when it is not similarly specifically defined it is not intended that the generic definition in clause 3 apply. The amendment is opposed.

Question put and passed; the Council’s amendment not agreed to.

Mrs ROBERTS: I move -

That amendment No 2 made by the Council be not agreed to.

The Police Service and parliamentary counsel advice is that this amendment is inappropriate. By replacing “may” with “shall” the provision loses its sense in relation to “at the appointed time”. It could be read to mean that the commissioner can require the identifying particular only at the time of a person’s appointment under the Police Act. It should be noted that it is the modern drafting standard to use the word “must” as opposed to “shall”. The cost of testing all police officers is significant. It would cost approximately \$500 000 to profile all officers, some of whom may never attend a crime scene. Hon Derrick Tomlinson argued in the other place that he had been involved in unofficial talks with the Police Union (WA), and in particular, the president and the executive of that union, and that they supported all members being profiled. This is not correct. The union supports relevant officers being profiled for exclusionary purposes. The Government disagrees with the amendment. The sum of \$500 000 would allow the Police Service to place samples from 2 000 burglaries or 500 rapes onto the national database.

Mrs EDWARDES: Hon Derrick Tomlinson was successful in moving this amendment in the other place. I accept the explanation by the minister. The amendment was made on the basis of ensuring that obtaining DNA from police officers was a real commitment under the legislation. As the minister has pointed out, many police officers sit at a desk and are not involved with crime scenes. As such, it may well be a waste of resources. That was not the intention of the Opposition.

Question put and passed; the Council’s amendment not agreed to.

Mrs ROBERTS: I move -

That amendment No 3 made by the Council be not agreed to.

The amendment may cause confusion. The Act was never intended to capture anyone other than police officers, cadets and Aboriginal aides. It is important that the subclause include references to parts I, III and IIIA. As amended, it would capture other persons such as the secretary of the police appeal board under section 33D of the Police Act.

Question put and passed; the Council’s amendment not agreed to.

Mrs ROBERTS: I move -

That amendments Nos 4 to 9 made by the Council be agreed to.

Question put and passed; the Council’s amendments agreed to.

Mrs ROBERTS: I move -

That amendment No 10 made by the Council be not agreed to.

The amendment would insert references to “identifying particulars”. The Police Service and parliamentary counsel advice is that this amendment will cause interpretation difficulties with other references to “identifying information” in the Bill and cause inconsistency and confusion regarding the intent of the Act. The definition of “identifying information” in clause 61 expressly includes “any identifying particular obtained as a result of doing an identifying procedure”. If the clause remains as amended the interpretation of other references in the Bill to “identifying information” may become uncertain. The amendment is inappropriate and will create confusion and uncertainty. The amendment also creates a grammatical error in the opening paragraph. The Government disagrees with the amendment.

Question put and passed; the Council's amendment not agreed to.

Mrs ROBERTS: I move -

That amendment No 11 made by the Council be not agreed to.

I have concerns about this amendment similar to amendment No 10. The Police Service and parliamentary counsel consider that this amendment will cause interpretation difficulties with other references to "identifying information" within the Bill causing inconsistency and confusion as to the intent of the Act. Clause 70(1) now begins -

If this Part requires identifying particulars and identifying information to be destroyed . . .

It can be argued that the condition can never be satisfied as the provisions of part 9 that require the destruction - for example, clauses 63, 64, 65 and 66 - refer only to identifying information which, because of the proposed amendments, may or may not be properly interpreted as including identifying particulars. The amendment also creates a grammatical error at subclause (3). Parliamentary counsel comments that the amendment of clause 70(3) has created a grammatical error and a piece of nonsense in saying "identifying particulars" and "identifying information" that consists of a DNA profile. A DNA profile is an identifying particular, so in this regard the amendment is nonsensical. The amendment is therefore disagreed with.

Question put and passed; the Council's amendment not agreed to.

Mrs ROBERTS: I move -

That amendment No 12 made by the Council be not agreed to.

I have similar concerns to those that I raised regarding amendments 10 and 11. The Police Service and parliamentary counsel consider this amendment a cause of interpretational difficulties, with other references to identifying information within the Bill causing inconsistency and confusion as to the intent of the Act. The amendment also creates a grammatical error at subclause (3).

Question put and passed; the Council's amendment not agreed to.

Mrs ROBERTS: I move -

That amendment No 13 made by the Council be agreed to.

Question put and passed; the Council's amendment agreed to.

Mrs ROBERTS: I move -

That amendment No 14 made by the Council be not agreed to.

Both the Police Service and parliamentary counsel advise that this amendment is unnecessary. The database for DNA under the Act could not be created until the minister authorises it, with or without the amendment. A police officer could not be appointed to manage the DNA database. The concern about the appointment of a police officer to manage the database appears to have been the main purpose of the amendment. It is also advised that the modern drafting standard is to use the word "must" as opposed to the word "shall". However, parliamentary counsel advise that even if changed to "must", the amendment would continue to be misconceived and unnecessary.

Mrs EDWARDES: I note the minister's comment but we do not accept the interpretation. The concern expressed by Hon Derrick Tomlinson in the other place is that the way the legislation has been drafted with the word "may" allows a police officer to manage the DNA database. I know that is not the Government's intention. The Government's intention is that it should not be a police officer who can be appointed to manage a DNA database. As such, the word "may" leaves it open for a police officer to be the person with that power. Clause 80 (1) states -

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

If parliamentary counsel does not like the word "shall", we are happy to run with "must", which would mean -

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

The suggestion that that will also be misconceived is nowhere near as strong as the misconception that currently exists with the word "may". The word "may" leaves it open to the minister, if she does not appoint a person other than a police officer, to appoint a person who is a police officer to conduct a DNA database. The Opposition will be supporting this amendment.

Mrs ROBERTS: This is a matter of interpretation. I have advised members of parliamentary counsel's interpretation. I put on record that it would not be the Government's intention to appoint a police officer, although I can see the member's argument that it may be possible to appoint a police officer to that position. I can therefore understand her view.

I am keen to see the Bill expedited. I am happy to give an undertaking to the House that it is our intention, as well as the advice from parliamentary counsel, that the minister will appoint somebody other than a police officer. It is certainly my intention and that of the Government to appoint someone other than a police officer. I can appreciate the concerns of the member for Kingsley. I do not know whether that satisfies the member, but I am not keen on pursuing a line that would cause any delay in getting this DNA legislation in place.

Question put and passed; the Council's amendment not agreed to.

Mrs ROBERTS: I move -

That amendment No 15 made by the Council be agreed to.

Question put and passed; the Council's amendment agreed to.

Mrs ROBERTS: I move -

That amendment No 16 made by the Council be not agreed to.

This amendment reduces the possible penalty for offences created in regulations in accordance with section 43, part VI of the Interpretation Act to \$1 000. It also reduces the ability of regulations to control procedures to be followed when doing identifying procedures. That reduced penalty replaces the \$5 000 penalty that was in the legislation when it went to the Legislative Council.

Mrs EDWARDES: This amendment was proposed by Hon Simon O'Brien, who was a member of the Standing Committee on Delegated Legislation, which committee noted an increasing trend for agencies to impose substantial penalties by way of regulation as against by way of substantive legislation. That committee was firmly of the belief that penalties of this order - that is, \$5 000, which is a substantial penalty - should be imposed by substantive legislation and that we should not allow agencies simply to include such offences and penalties in regulation. The amendment deleted clause 93(2)(b). It was certainly not our intention to reduce the monetary penalty that would be attached to such an offence, and as such we will not support the amendment. I put on record that regulations imposing penalties of this order are penalties that many members in both Houses believe should be included in substantive legislation.

Mrs ROBERTS: The member for Kingsley makes a very good general point, in that substantial penalties are better placed in legislation rather than in regulation. I will take that on board for future legislation, and I appreciate that the member is prepared to disagree with the amendment to ensure that we do have a \$5 000 penalty in place. I thank the member for Kingsley for her cooperation.

Question put and passed; the Council's amendment not agreed to.

The Council acquainted accordingly.