CRIMINAL INVESTIGATION (IDENTIFYING PEOPLE) BILL 2001

Second Reading

Resumed from 29 November.

MRS ROBERTS (Midland - Minister for Police and Emergency Services) [3.13 pm]: I again thank members of the Opposition for their support of this important legislation. It is especially pleasing when there is overwhelming consensus about the merits of particular legislation. It is fair to say that members of this House are united in recognising the potential positive effect this legislation will have on the ability of the Police Service to deter and solve crime.

I turn to comments made about this Bill by various members on the other side, particularly the members for Warren-Blackwood and Kingsley. In so doing, I will provide more detailed clarification of some of the provisions of the Bill. I turn first to the comments made by the member for Warren-Blackwood. The member drew the attention of the House to a statement in my second reading speech about a letter from the federal Attorney General, which led to the revision of some elements of the draft Bill. I must apologise because I have found an error in my second reading speech. The correspondence I received was from the federal Minister for Justice and Customs.

Mr Omodei interjected.

Mrs ROBERTS: No, it was from Chris Ellison.

Mr Omodei: Are you sure?

Mrs ROBERTS: Yes. I will table a copy of the letter. The minister also sent the same correspondence to our Attorney General, who in turn forwarded a copy to me. However, in the editing of my second reading speech, those two ministers became one. To assist members, I will table a copy of the correspondence from the Minister for Justice and Customs dated 18 May.

The member also commented on the provisions of section 236 of the Criminal Code. The most important point about this Bill is that section 236 has been read to relate to charged suspects only, whereas this Bill provides for the taking of identifying particulars from a greater range of persons, including volunteers, witnesses, victims and uncharged suspects. In addition, section 236 does not allow for the samples or profiles of those persons to be based on a database for cross-matching purposes. Thus although police have had a limited ability to take DNA samples under section 236, the Bill greatly expands and modernises that ability.

The member also raised concerns about the safeguards extended to protected persons who are offenders. I share the member's concerns about charged suspects who may fit into the broader category of protected persons under the Bill. My concerns centred around charged suspects, as other categories of the Bill that relate to protected persons, including uncharged suspects, provide for consent by a responsible person or the issue of a warrant by a magistrate to take a sample. I have been advised by the Western Australia Police Service that protections are extended to children who are charged suspects by means of the Young Offenders Act. For example, section 20 of the Young Offenders Act provides for a responsible adult to be notified before a police officer can ask a young person anything about an offence. Police must also give notice to a responsible person when a young person is charged with an offence, including the details of the charge, the young person's whereabouts, the process that the young person is to undergo, and details of when and where any hearing is to take place. I also noted the member's concerns about involved persons. I clarify that a magistrate can issue a warrant only for an involved person who is a protected person. Other involved persons cannot be forced to supply a sample.

The member also drew the attention of the House to the concerns about police interference with evidence. Section 135 of the Criminal Code, which is headed "Conspiring to defeat justice", provides -

> Any person who conspires with another to obstruct, prevent, pervert, or defeat the course of justice is guilty of a crime, and is liable to imprisonment for 7 years.

Furthermore, section 143 of the Criminal Code, which is headed "Attempting to pervert justice", provides -

> Any person who attempts to obstruct, prevent, pervert, or defeat the course of justice is guilty of a crime, and is liable to imprisonment for 7 years.

These offences would apply to the planting of any evidence and would not be restricted to DNA. In addition, the disciplinary provisions of the Police Act would apply, including removal from office.

I was also interested in the member's comments about identical twins. As such, I sought further information from the Police Service on the specific case mentioned by the member. I am advised that the member's account of the story of the twins is somewhat incorrect. As I understand it, the twin whom the police had taken into

custody had a criminal history; consequently, his DNA was on record. The other twin was unknown to the police. When other evidence contradicted the possibility that the first twin had committed the crime - it was proved he was somewhere else - the DNA evidence showed that it could have come only from him or an identical twin, thus leading to the second twin. Importantly, it should be noted that DNA is only one piece of evidence, just like a fingerprint, and the police will still need to complete normal inquiries to ensure that they prove their case beyond a reasonable doubt, as has always been the situation.

The member for Kingsley asked me to advise whether there had been any challenges in the courts in Australia to the admittance of DNA profiles as evidence in court. I have been advised by the Western Australia Police Service that it, too, is unaware of any cases that have challenged the DNA profile. All Australian challenges of which the Police Service is aware relate to the process and continuity. Invariably the challenges have resulted in the evidence being admissible.

The member for Kingsley also highlighted concerns about privacy and the continuity between the taking of the sample and its admittance into court as evidence. The member foreshadowed that her colleague the member for Nedlands might raise matters of interest and concern during the consideration in detail stage. I do not deter the member for Nedlands from doing so; however, she and other members may be interested to know that participation in the CrimTrac National Criminal Investigation DNA DataBase is dependant upon compliance with established standards and protocols.

Mrs Edwardes interjected.

Mrs ROBERTS: It gets worse!

Each laboratory submitting material to NCIDD must be accredited with the standards of the National Association of Testing Authorities, Australia. Presently, PathCentre is NATA accredited for forensic biology techniques; that is, DNA analysis, hair analysis, and species determination, and it operates under the Australian Standard SO/IEC 17025:1999 general requirement for the competence of testing and calibration laboratories as well as supplementary requirements for accreditation in the field of forensic science.

I am assured that by the time this legislation is proclaimed, the Police Service will have in place strict guidelines, policies and procedures to ensure that all DNA-related material is handled in a manner that is acceptable to the standards adopted by PathCentre or like institutions. Compliance with strict criteria pertaining to the continuity and security of all DNA samples will be a requirement before PathCentre, or a like accredited institution, receives evidence from the police. For example, each DNA sample taken from a person will, in his or her presence, be placed in a tamper-proof envelope that will be opened only by a scientist at the laboratory. Non-compliance with accepted operating procedures will prohibit the placement of the sample in question with NCIDD. In addition, normal rules of evidence will apply to the collection and court presentation of DNA material. Further, the State Ombudsman will have responsibility for overseeing the operation of the DNA database in Western Australia.

All indications are that PathCentre, or a like accredited organisation, will run the database, and it should be noted that the legislation requires that the Minister for Police and Emergency Services authorise the running of the database to a person other than a police officer. That is outlined in clause 80 of the Bill.

The member for Kingsley was also interested to know about the rights, practice and procedure regarding a person's ability to obtain legal advice before the sample is taken. The Bill requires that police advise volunteers of their right to obtain legal advice before deciding whether to consent to the procedure. That is outlined in clause 19(2)(i). Although this provision is not extended to other categories, the Police Service intends to inform prisoners and other persons about the procedure prior to carrying out the back capture. This will include a notation that they may seek any other advice that they require prior to the police attending.

I was also interested in the member's comments about the utilisation of DNA testing in the United Kingdom. I also see the potential for DNA testing to be used for volume crime and not just major or serious crime. Like police in the United Kingdom, the Western Australia Police Service is committed to intelligence-led policing. Consequently, the Police Service is developing new and improved means of recording information and ensuring that the intelligence obtained from this information is used appropriately. New systems are being developed to ensure that forensic material is linked to all available intelligence and expediently communicated to investigating officers.

The Police Service has commenced a comprehensive review of its forensic training procedures. This review will concentrate on the forensic awareness of all police officers and ensure that the Police Service obtains optimum value from the collection of evidence at crime scenes. In addition, the Western Australian police are using the creation of a DNA database to review the existing exhibit handling procedures and to implement revised procedures that will maximise opportunities provided in the field of forensic science.

The member for Kingsley also indicated an interest in identifying the differences between the 2000 and 2001 Bills. The member noted the definition of "serious offences" as one change. Others changes include that the 2001 Bill allows for a responsible person to consent on behalf of an incapable person whereas the 2000 Bill did not. The 2000 Bill allowed a warrant to be obtained enabling an identifying procedure to be done on an adult victim or witness against their consent. The 2001 Bill will require an adult victim or witness to consent to a procedure. The 2000 Bill did not allow a victim or witness to limit his or her sampling, but the 2001 Bill will allow for a limitation. The 2000 Bill allowed a justice of the peace to issue a warrant enabling an identifying procedure to be performed on a child suspect. The authority to issue a warrant will be a magistrate in the 2001 Bill. The 2000 Bill did not include a provision enabling a person from whom a sample is taken - enabling a DNA profile to be obtained - to request a portion of the sample, but the 2001 Bill does. The 2000 Bill did not require all classes of persons to be informed of their right to request destruction of the information obtained from the sample; however, the 2001 Bill requires all classes of persons to be informed of those rights. The 2000 Bill did not afford charged suspects and prisoners the opportunity to consent to undergoing a procedure, but the 2001 Bill does.

I welcome the support for this Bill that has been demonstrated in this Chamber. Fundamentally, members have recognised the benefits of this legislation to deter and solve crime within our community. I trust that the information provided has clarified the matters of interest and concern raised during debate. I table the correspondence that I received on 30 May from the Minister for Justice and Customs, Senator Christopher Ellison, which was dated 18 May.

[See paper No 983.]

Consideration in Detail

Clause 1 put and passed.

Clause 2: Commencement -

Mr OMODEI: I accept the explanation of having different days on which the proclamation of the Bill will occur. However, when will the Bill be proclaimed and will certain sections take longer to be proclaimed?

Mrs ROBERTS: I am not anticipating any delays in the proclamation, but training will take approximately two to three months. There is no point training officers on the contents of this legislation before it has gone through Parliament. Many of the officers are aware of the content, but with the potential for amendments or changes there is no point commencing a training procedure. We will require two or three months to train officers on the contents of the Bill and the requirements under the law.

Mr Omodei: Does that mean two or three months after it has gone through the other place?

Mrs ROBERTS: That is right.

Mrs EDWARDES: The explanation under the clause notes indicates that some sections are likely to be brought into play at different times. There is reference to the establishment of infrastructure as well as the training needs of police officers, to which the minister has just referred. Which sections does the minister have in mind to proclaim first, what infrastructure is she looking at, and what is the staging for the training of the police officers?

Mrs ROBERTS: The first priority is to proclaim the clauses that will enable us to do the back capture of prisoners. We will look for the first available opportunity to proceed with those clauses. As to the infrastructure, some tendering matters need to be attended to, which may cause some delay. When the clause notes were written we had a greater expectation of delays for the proclamation of some areas, but we are now not anticipating delays to the same extent.

Mrs EDWARDES: First, I know the community is anxious that some of the outstanding and old crimes be resolved, but there may also be crimes for which there is no prisoner. We are all keen to see the top 100 list put in place. Secondly, how long does it take today - this is probably the most appropriate clause for me to ask this question - to get a result back from PathCentre for a DNA test, and will the $22 million reduce the time that it currently takes?

Mrs ROBERTS: The injection of the $22 million will certainly make for a much faster turnaround. The time it takes to analyse a sample varies markedly. When I went to PathCentre I was advised that on average it might take three or four weeks or so; for something that is non-urgent, it might take longer. However, I was assured that an urgent matter could be turned around very quickly; that is, in a couple of days.

Mrs Edwardes: The first part of my question referred to the top 100 list.

Mrs ROBERTS: One of the things that has been found in other jurisdictions is that back capture is the most significant part. Most of the people the police are chasing are already in jail.

Mrs Edwardes: We are really looking at the Claremont serial killer.

Mrs ROBERTS: As to back capture, it is my understanding that police will give priority to those prisoners who are more likely to be released from prison sooner rather than later. While we have a large prison population, those who are to be released shortly will be captured before they leave the system, and we will then move through to the ones who have longer jail terms. I think there is a lot of potential with the top 100. In this State we know we have some serious unsolved murders and other cases. The first step is to go through the prison population and make those comparisons, comparing that with evidence collected at crime scenes, and then move to the next stage when solving the serious crimes will be a priority. I do not think I can add more than that.

We are keen to see the system up and running as soon as possible. There have inevitably been delays, even in the States in which the legislation is already in place. Last week I had an interesting conversation with the Commissioner of Police in Victoria about some of these issues. We think our estimation of $22 million is a good one; the Victorians are talking about $30 million over a period of four or five years.

Mrs Edwardes: It has a larger prison population.

Mrs ROBERTS: It has a larger prison population and a larger general population. That made me feel more comfortable about the amount we have allocated.

Mrs Edwardes: Don't tell the Treasurer.

Mrs ROBERTS: This is very important legislation; it will be an invaluable tool to the police, but it is in its very early stages in every State as the national database gets up and running. The potential is enormous. We want to run with it as fast as we can. When there is the opportunity to proclaim the legislation, we will proclaim it on the earliest possible timetable, and we are not anticipating any difficulties because of the funds we have allocated. We have allocated an amount that we think will enable us to proceed posthaste.

Clause put and passed.

Clause 3: Interpretation -

Mr OMODEI: It would have been a good idea to take the paragraphs under this clause in order, but my main concern is about the interpretation of a responsible person in relation to an incapable person. Can the minister distinguish between a person who is disabled and at risk and the many who are in the justice system now or are between the justice system and the community, and indicate whether they have been requested to provide information? I notice that under paragraphs (d), (e) and (f), the Public Advocate or a guardian of the incapable person appointed under the Guardianship and Administration Act, another person who has responsibility for the day-to-day care of the incapable person, or, if no person mentioned in another paragraph of this definition is available, a person, or a person in a class of persons, prescribed by the regulations is able to represent the incapable person. What kind of persons would be prescribed by the regulations? I am concerned that somebody who is the carer of a disabled person or incapable person is not covered by either the Public Advocate or a guardian or another person with that responsibility, and that somebody may not be represented on a matter that could seriously damage the person's future.

Mrs ROBERTS: Paragraph (e) on page 6 covers that point and states -

> another person who has responsibility for the day-to-day care of the incapable person; . . .

It is an area about which I have a great deal of concern. We are all aware of instances in which a person who is caring for someone has committed a crime, such as sexual abuse or assault on an incapable person. It is important that there is not sole discretion about whether a DNA sample is taken. The member referred to paragraph (f), which deals with a person in a class of persons prescribed by the regulations. My advice is that that could include the Department for Community Development.

Mrs EDWARDES: Members of this House would have loved to have had a police officer in the House when the Criminal Investigation (Exceptional Powers) and Fortification Removal Bill was being considered last week. On this occasion, the minister would love to have a parliamentary draftsman in the House. Clause 3 deals with definitions and interpretation. I find the definitions used in this Bill confusing and, in some respects, unnecessary. For example, the definition of "corresponding law" has the meaning given by proposed section 87. The definition at clause 87 states that corresponding law is a law prescribed under clause 88. Why could the original definition not say that corresponding law has the meaning given at clause 88? I cannot understand the drafting. The definition of "identifying particular" in clause 3 is included in a number of clauses including clause 61. Clause 61 states -

"identifying particular" has the same meaning as it has in section 11(1).

One then has to go to clause 11(1). Each of the parts of the Bill has its own peculiar definitions, some of which have been copied. Why is the Bill drafted in this way? Is there a rationale? The legislation is quite complex. The Criminal Code was originally brilliant. Later draftsman incorporated a new part dealing with sexual offences that included new definitions in that part instead of incorporating them with the other definitions. It makes it hard to find particular definitions in the legislation.

Mrs ROBERTS: The member has raised some excellent points. This sort of thing with legislation puzzles me all the time. I do not know why it needs to be so complicated and why the reader is referred to clauses and sections that, in turn, refer to other clauses and sections. The member for Kingsley is a lawyer and I am not. She has been the Attorney General and she should be in a better position to second-guess why Crown Law does what it does and why draftsmen do what they do. The question is whether there is a reason for this or whether they are just being difficult. Their answer would be that there is a reason, but I do not know what it is. This Bill is largely modelled on the forensic Bill and is closely aligned to the Bill introduced last year by the previous Government. Both pieces of legislation have similar definitions. I suspect this Bill is constructed in this way because the model Bill was.

Mr OMODEI: The Opposition supports this legislation but, as with the Criminal Investigation (Exceptional Powers) and Fortification Removal Bill, it is a question of the process that the Police Service has to go through to collect evidence. The process must be workable. Both pieces of legislation are more about process. The Opposition does not have many concerns about the content of the legislation. The member for Kingsley said that having a paper chase or running the gauntlet of the legislation is unnecessary. The Opposition wanted to know whether there were specific reasons for the construction of the legislation. The minister does not have to respond.

Mrs EDWARDES: I refer to the "non-intimate identifying procedure" defined at page 4 of the Bill. Many arguments have taken place about whether a buccal swab was intimate. The clause is great; it will resolve the argument. A number of clauses in the Bill identify what the police want in legislation to assist them. It is great to see the definition in the Bill.

Mrs ROBERTS: I attended the Australasian Police Ministers Council last week and the general comment from other ministers and Commissioners of Police was that our legislation is better than that of other States. The way we pitch our legislation to deal with buccal swabs is one of the key differences. This legislation is far more practical for the police and will be less expensive to administer. It will allow for the capture of more DNA samples, which will allow us to have a more effective system in place in Western Australia.

Mrs EDWARDES: What the minister has just said is a very good reason we should not always follow model Bills. Another definition is "reasonably suspects" and it has the meaning given by "section 4". It restates the law as we know it from George v Rockett. I referred to it last week in a quote from Lord Devlin. It relates to his comments on reasonable suspicion. It is great to see it in the legislation.

Clause put and passed.

Clause 4: Meaning of "reasonably suspects" -

Mrs EDWARDES: Clause 3(2) states -

> For the purposes of this Act a person is charged with an offence when the officer investigating the offence . . .

Whether a person has been charged has always been a grey area. For example, a person may be told that he is about to be charged with an offence but the paperwork has not been done. Whether a person has been charged has often been the bane of police officers' lives. The subclause is a restatement of the position and is good to see. Clause 4 restates the law in George v Rockett. The judgment in that case was that reasonable suspicion of guilt is not to be equated with a prima facie proof of guilt and it need not be based on the type of material that would be admissible in evidence, even if the grounds for suspecting were found to be false or non-existent. Reasonableness must exist at the time an application is made. It is good to see that provision included as it will assist the police.

Clause put and passed.

Clause 5: Public officers may be authorised to exercise powers -

Mrs EDWARDES: This clause allows public officers to be authorised to exercise powers prescribed under this Bill. Public officers are referred to at a number of points in this Bill, and I seek clarification. Who is referred to in this clause as a public officer for the purposes of carrying out the functions of this Bill?

Mrs ROBERTS: Public officers can be other law enforcement officers, such as fisheries inspectors, or officers of the Department of Conservation and Land Management.

Clause put and passed.

Clause 6: Officer's duty to identify himself or herself -

Mrs EDWARDES: This clause requires an officer to identify himself or herself, and that includes a police officer or any public officer. In case law - I could not lay my hand on the particular case - I believe it is sufficient for a police officer to say that he or she is a police officer, and the officer is not required to do or say anything more than that. Under this clause the officer is required to supply official details. The definition of "official details" in clause 3 states -

> (a) in respect of a police officer - the officer's surname and rank and includes, in relation to an application by the officer under this Act for a warrant, the officer's registered number;

The number is not required, even though it is shown on the officer' shirt, in this particular instance.

Mrs Roberts: Sometimes the officers are detectives who are not in uniform, so there is no number visible.

Mrs EDWARDES: I understand that, but the part I quoted refers only to the requirement for an application for a warrant. In other cases, only the officer's surname and rank is required to constitute official details. Clause 6(1)(a)(ii) reads -

> if the officer is not in uniform, show the person evidence that the officer is a police officer;

This would be the case if the officer were a detective. Obviously, he would be carrying identification, but that would have been covered under subparagraph (i), which does not necessarily require the officer to have identification on his or her person, although all police officers carry this identification. I could not, therefore, understand the justification for subparagraph (ii). What, under this subparagraph, is deemed to be the evidence for a police officer?

As regards a public officer, clause 3 lists the requirements for official details as the officer's full name and official title, but, again, clause 6(1)(b) reads -

> if the officer is a public officer -
>
> (i) give the person the officer's official details; and
>
> (ii) show the person evidence that the officer is a public officer.

What is the evidence presumed in both those instances?

Mrs ROBERTS: The evidence required to be produced in those instances would be the identification as a police officer or the identification provided by another department. Officers carry that identification with them, and it should not be too onerous for them to produce it. It is important from the point of the view of the person they are dealing with that the officers have that security. Cases may occur of people pretending to be police officers, or asking people to undergo procedures without showing evidence that he or she is a police officer. Not everyone in uniform is a police officer.

Clause put and passed.

Clause 7: Non-consent to be assumed in some cases -

Mrs EDWARDES: This is another valuable clause. Arguments have often taken place about when consent has been given. In this instance, non-consent is to be assumed in those cases in which the person who has been requested to undergo an identifying procedure does not reply, or, having consented, resists the carrying out of the procedure. Later, the House will consider the procedure for giving the consent. Even if the person has given written consent, and then resists, that consent is deemed to have been withdrawn. There is no link between those later clauses and this one, except in the fact that the non-consent is deemed to exist under clause 7 if the person resists the procedure.

Mrs Roberts: It is a protection.

Mrs EDWARDES: It is a protection, but in the later clauses, withdrawal of consent does not seem to link back to clause 7. I suppose it can be assumed that clause 7 applies when dealing with those other procedures. Maybe that can be explored further when consideration reaches that point. There does not appear to be a connection between the two.

Clause put and passed.

Clause 8: Procedures for obtaining material from which to obtain DNA profile -

Mrs EDWARDES: I refer the minister to clause 8(3), which reads -

> A person must not use a procedure in subsection (1) to obtain material from a person unless it is impracticable to use a procedure listed before that procedure.

Clause 8(1), referred to in this subclause, refers to various procedures, such as taking a buccal swab or obtaining a hair sample. Clause 8(3) almost gets my plain English clause award, but I take it that -

Mrs Roberts: The member can imagine how frustrated I am. I am the former English teacher and she is the lawyer.

Mrs EDWARDES: I take it that this clause means that the hair cannot be taken unless the buccal swab has been tried. Under the earlier definitions, a buccal swab is regarded as a non-intimate identifying procedure. I am bemused by the drafting of this.

Mrs Roberts: We are equally bemused.

Mr DAY: The member for Kingsley has raised an important issue, which in one sense goes to the heart of the legislation, in determining how a sample will be obtained. This is of great interest to members of the community. I would like a bit more explanation to be given about how the issue will be approached. If a suspect is not cooperative, and refuses to allow access to the inside of his or her mouth for the purpose of obtaining a buccal swab, what will then be the procedure? Will the suspect need to be restrained while a sample of hair is removed, or will some other procedure be used? I would like a bit more explanation from the minister about those procedures, if possible.

Mrs EDWARDES: A later clause in the Bill states also that the method that causes the least pain must be used. Will the minister link this to her response to the member for Darling Range?

Mrs ROBERTS: Obviously, the sponge inside the mouth is less painful than having hair pulled out.

Mrs Edwardes: What about the more intimate procedures allowed for under clause 8(1)(b)?

Mrs ROBERTS: The taking of blood in this case is just done using a thumb prick, so it is not anticipated that that will be overly painful. Despite the fact that this clause is not written in English as eloquently as we would like, I understand that, for legal purposes, it sets out the requirements clearly enough. It lists the procedures available, in the order they may be used. The member for Darling Range wanted to know what would happen if, for example, someone opted not to submit to a buccal swab, and then resisted the taking of a hair sample. Reasonable force is provided for under this legislation.

Mr DAY: Will the minister provide information about how a sample would be obtained if the suspect has a large mouth ulcer or something of that nature? I will not go into more detail unless the minister would like me to.

Mrs Edwardes: What else could be in one's mouth?

Mr DAY: A great deal; for example, the suspect may have a partial denture that is loose.

Mr Omodei: He may have bad breath.

Mr DAY: The member for Warren-Blackwood raised an important point. As a matter of duty, police officers are expected to undergo a great deal of difficulty to obtain samples. The police would have to bear with a case of halitosis, for example. Perhaps the minister could elaborate further about how the procedure would be approached in those circumstances.

Mrs ROBERTS: The buccal swab is self-administered; therefore, it does not require anyone else to put his or her hand into or near a suspect's mouth. The suspect would be handed the swab in the same way I was when I went to PathCentre. The swab is self-administered by pressing it onto the inside of the mouth and the swab is then handed back.

Clause put and passed.

Clause 9: Samples of material to be provided on request -

Mrs EDWARDES: This clause falls under the category of clauses the minister referred to when she mentioned the differences between the 2000 Bill and the 2001 Bill. This section permits a portion of a sample of material that has been taken from a person to be returned to that person if he so chooses. For example, more than one sample of hair would be taken so that a portion of the sample could be given back to that person. Clause 9(3) states -

> (b) reasonable care is taken to ensure that the person's part of the sample is protected and preserved until the person is given it; and

(c) reasonable assistance is given to the person to ensure that the sample is protected and preserved until it is analysed.

I am trying to imagine the procedure. A sample is taken and it is then divided so that there are two bags of samples for identification. One bag would go to PathCentre and the person who provided the sample would keep a sample until such time as the results of the analysis were known. People's samples would not be analysed; they would be retained for their own purposes so that in the event they questioned the result of the analysis, they would have their own sample. Is that the reason behind this amendment? Obviously requests for this must have been made for this clause to be included. Is that the case?

Mrs ROBERTS: Members refer to the buccal swab as being like a cotton bud; however, it is a small circle of padding. A sponge swab is pressed into the side of a person's mouth and is then pressed down onto the small, padded circle. I was amazed by what is then done. PathCentre has a machine that punches out a portion of the sample about one millimetre in diameter for analysis. Potentially thousands of samples could be analysed from the two circles of padding.

Mrs Edwardes: That might be the case for the buccal swab. However, what would happen to the samples of hair, which includes the roots?

Mrs ROBERTS: The samples of hair would be placed in an envelope. The member will recall that last year's Bill did not have this provision. We are accommodating the federal Government and its model procedures Bill. I cannot understand why it is necessary to protect and preserve a person's sample. If someone gives a sample of hair, the person still has the rest of his hair. I do not know why one would need a sample of one's own hair or saliva. One could always take a sample of one's saliva, hair or any other material that the police have and get it independently analysed.

Mrs Edwardes: Was this provision included only in response to the federal Government's CrimTrac process, or is it in response to issues raised in the community to last year's Bill?

Mrs ROBERTS: The attachment to a tabled letter from Hon Christopher Ellison states -

> an important safeguard under the Model Bill is that, wherever possible, a portion of the DNA sample taken from a person must be provided to the relevant person. This enables independent analysis of the sample to be undertaken. Also, copies of the results of DNA analysis must be provided. In both cases, the police have 4 weeks to provide the sample or copy. These safeguards are not replicated in the draft WA Bill.

I will also put on record what the senator wrote in his letter to me dated 18 May. He stated -

> I believe the draft WA Bill could be improved by adopting the approach taken in the Model Bill to the issues outlined in the Attachment.
>
> Most jurisdictions will soon be preparing regulations that prescribe 'participating jurisdictions' for the purposes of their legislation. I believe the discrepancies between the draft WA Bill and the Commonwealth, will make it difficult for me to justify prescribing the WA laws. Indeed, it is possible that the regulations prescribing such WA laws would be disallowed in the Senate.

Mrs Edwardes: Must our Bill get approval from the federal Parliament?

Mrs ROBERTS: I gather that the regulations need its approval because the Bill takes advantage of the national CrimTrac system.

Mr Omodei: Is the senator saying that the previous Government's Bill was deficient or was of a nature that was not acceptable to the Commonwealth?

Mrs ROBERTS: The senator fell short of saying that he would not prescribe the Western Australian laws. However, he said that it was possible that the regulations prescribing such Western Australian laws would be disallowed in the Senate. He fell short of saying that if the Bill were proceeded with without amendment, we would have a major problem or that he would take any particular action. In his letter, he further stated -

> I am sending a similar letter to the Attorney-General and the Police Minister of each jurisdiction addressing the specific issues that arise in that particular jurisdiction.

I asked Assistant Commissioner Tim Atherton whether the legislation introduced in the Western Australian Parliament last year was similar to legislation that has already been passed in Queensland. I was told that Senator Ellison wrote to other jurisdictions asking them to amend their legislation.

Mr DAY: I was interested in the minister's demonstration of how the swab is used. Is it expected that the obtaining of a sample will be successful in all cases, or is there is an accepted failure rate in obtaining an

adequate sample from the inside of the cheek, for example? If the latter were the case, how would it be known whether the attempt to obtain a sample of cells has been successful?

Mrs ROBERTS: I have been advised that it is an extremely successful way to obtain samples and that the success rate exceeds 99 per cent. The member for Warren-Blackwood referred to skin cell samples being obtained from someone who had reached under a dashboard. In the case of a missing woman, a lady's skin cells can be obtained from lipsticks and used for analysis of DNA. The DNA of the tiniest cell, which to us is almost invisible, can be analysed.

Mr OMODEI: I pursue further the minister's explanation about Senator Ellison's letter. I want to ascertain what are the deficiencies. The minister's criticism of the previous legislation has at times been a little unfair. It was modelled on the 1995 model forensic law that the Model Criminal Code Officers Committee prepared for all the States. Therefore, any deficiencies in the 2000 legislation would have been similar to those in the legislation of other States. I understand from briefings that the Victorian and New South Wales legislation is not working. Which areas of those Acts are not working, and how has the Government amended this legislation to ensure it will work?

Mrs ROBERTS: I urge the member to get a copy of the document I tabled.

Mr Omodei: I have the letter from Amanda Vanstone.

Mrs ROBERTS: I will explain it. The tabled document comprises a letter from Senator Ellison and an attachment, which lists 11 areas of our legislation that the senator thought we should reconsider because they diverged from provisions in the model Bill. He wanted us to amend those areas so that the legislation would have greater conformity to the model Bill. We conceded to some, but not all, of those suggestions. Some of the suggestions were more than reasonable. I am not entirely critical of the move by Senator Ellison to send that letter. However, it seems passing strange that although the former Minister for Police introduced the previous legislation in November or December 2000, Senator Ellison wrote about the discrepancies in May 2001. It took the federal Government some time to say that it saw a problem with our legislation.

Mr Omodei: I think there was an earlier letter.

Mrs ROBERTS: The member may not have been in the Chamber during my response to the second reading debate, but I replied in detail to the comments of the member for Kingsley, and explained the key differences between the 2000 Bill and the 2001 Bill. I am confident that the changes we have made to progress towards the model Bill by and large improve this Bill. I think this clause, which relates to the provision of a sample, is redundant and will possibly be a waste of police officers' time and effort. However, the Commonwealth Government has a strong view that this is an important and worthwhile provision to include in the legislation. On balance, we do not think it is so onerous that we cannot include it so that our Bill more closely reflects the model Bill.

Mrs Edwardes: The minister demonstrated how the sample to be tested will be gathered. What will happen to the sample that will be given to the individual? Is that what the other little circle on the card is for, or will another pack be used?

Mr Omodei: The police will keep one sample for forensic examination and give another to the person from whom the sample is taken. Will the sample that the person owns stay with him, or will both samples go away to be tested, after which one will be returned to the individual?

Mrs ROBERTS: It is proposed that a sample will not be given in every instance. That would be too onerous. However, people may request that part of the sample be returned to them. The police would prefer that request to be in writing. The sample would then be sent to those people.

Mrs Edwardes: Will the person get the sample not at the time it is taken, but at a later stage?

Mrs ROBERTS: It would be too difficult to provide samples at the time they were taken. However, the police are happy to provide a sample upon request, within a reasonable time.

As I pointed out in some earlier comments, there are very stringent national requirements for the maintenance and integrity of DNA samples. While visiting PathCentre, I had a brief look at the procedures for keeping DNA samples. It may interest members to learn that the records are kept in a database, which is accessed when a series of numbers is keyed in. That is checked and rechecked through a separate procedure. The people at PathCentre are highly confident of the integrity of the database. As another protection, people's names are not included in the database. That is another check. Other States accessing our database will not immediately find a person's name as it will not be attached to the DNA data. That information can be accessed only through a separate procedure.

Ms SUE WALKER: I understand that a rigid procedure must be followed when a blood sample is taken. That procedure is prescribed in either the Police Act or regulations.

Mrs Roberts: I think you are referring to the Road Traffic Act, which we are in the process of amending.

Ms SUE WALKER: A procedure must be followed whereby the sample that is taken must be certified by the doctor who took it. It is signed off, taken to the police station and put in a fridge.

Mrs Roberts: That is correct, but that will not happen with DNA samples.

Ms SUE WALKER: What happens to blood samples when they are taken by police?

Mrs ROBERTS: The procedure the member outlined relates to police taking a blood sample to detect alcohol. The DNA procedure is different. It will involve a pinprick on the thumb. The procedure to which the member referred is specified under the Road Traffic Act. That procedure will not be followed under this legislation.

Ms SUE WALKER: What will happen after the pinprick is made?

Mrs ROBERTS: The sample will be put on a card and analysed in the same way that saliva is analysed.

Ms SUE WALKER: I have worked on cases in which the procedure has been challenged. It is possible that samples taken from different people will be stored before they are taken to laboratory for testing. What would be the procedure in that instance?

Mrs Edwardes: Will the number on the sample pack be the same as the number on the database?

Mrs ROBERTS: The sample will be put on FTA paper, which contains a chemical that will dry and neutralise the sample. The process the member described will not apply to the DNA forensic procedure.

Ms SUE WALKER: What will happen to that piece of paper?

Mrs Roberts: Was the member out of the Chamber when I explained what happens with saliva samples?

Ms SUE WALKER: Yes. Is that the same process?

Mrs Roberts: Yes.

Ms SUE WALKER: What is that?

Mrs ROBERTS: Not long ago, I explained to the other members that a sample about or less than a millimetre in diameter will be punched out from the card and put into some testing equipment, which will do the DNA analysis.

Mr OMODEI: As a conspiracy theorist, I ask how the person will know that the sample he gets back from the system is his sample, and what will be the penalties for falsifying that information.

Mrs ROBERTS: I believe I answered those points in my detailed response to the second reading debate. I said that each DNA sample would be placed in a tamper-proof envelope in the presence of the person from whom it was taken and would be opened only by a scientist at the laboratory. Non-compliance with accepted operating procedures would prohibit placement of the sample in question on the CrimTrac National Criminal Investigation DNA Database. I also outlined that people who attempted to obstruct, pervert, prevent or defeat the course of justice and so forth faced a penalty of seven years imprisonment under the Criminal Code.

Ms SUE WALKER: What happens to the sample once it is placed in the tamper-proof envelope? It does not just go to a laboratory. What happens to the envelope? The process often comes under attack in criminal cases. That is why I am asking the minister to explain, in some detail, what happens when the sample is put into the envelope. How is the envelope made tamper proof, who has authority to handle it and what is the continuity of evidence or process between then and when a case gets to court?

Mrs ROBERTS: The envelope goes to the police DNA unit for quality assurance. In the United Kingdom, the sample is placed straight into an envelope and sent to the laboratory through the postal system. That is how the system works in the UK. It has worked in a fairly foolproof way.

Mrs Edwardes: They have obviously never lost a cheque in the mail.

Mrs ROBERTS: That is right. We are not proposing to adopt the British system of posting the samples.

The samples will be taken to the police DNA unit for quality assurance - an assessment of the integrity of the tamper-proof envelope and so forth - before the material is analysed. I note the member's comments about the continuity of evidence and so forth. That is certainly relevant in some criminal cases. That will not be an area of concern with the back capture of DNA samples that will be done.

The other point that is hard to get one's head around is that the samples will be kept on computers in the form of the most cryptic numbers that members can imagine, so that what becomes more important than the sample itself is the long number that represents a person's DNA. That is the main information kept on the database. Before the member for Nedlands came into the Chamber, I explained that a person concerned about his material being used should remember that the material is with him all the time. A person can take his own sample of saliva, hair or whatever bodily produce, fluid or skin cell that he wants to use as a DNA sample and have it analysed for comparative purposes.

Mrs EDWARDES: If I wanted one of those double-digit figures, I could do that.

The sample pack that members were given has a barcode on it with a number. Is that number put on the database system the minister spoke about or is the sample given another number which reflects the DNA profile or print? Will the minister explain that a little more?

Mrs ROBERTS: The number the member referred to, which coincides with the barcode on the pack, is not a significant number in terms of what is kept on the database. In answer to the second part of the member's question, CrimTrac has not yet told us what sort of identifying number it wants used.

Ms SUE WALKER: Who can handle the tamper-proof envelope? Is that outlined in the Bill or in police regulations?

Mrs ROBERTS: I do not think that there is any limitation on who can handle the tamper-proof envelope; just that it needs to be brought to the DNA unit. It will go directly from there to the laboratory.

Ms Sue Walker: There should be.

Mrs ROBERTS: The police are required, by legislation, to show continuity for evidentiary purposes. If they cannot show continuity, the case will not stand up and the DNA profile will not be lodged on the national database.

Ms SUE WALKER: That is why I raised that point. What is the point of going through this whole procedure and then saying that there is no continuity and that the regulations are not set down? It will be attacked. I have seen that happen. That is why I am asking why no continuity procedures are provided in this Bill. Will they be put in the regulations? That is why I originally raised the issue of the blood samples taken under regulations and the level of continuity required in that situation. It will be a waste if all this public money is to be spent on getting these samples and a continuity line is not put in place, and it is able to be weakened in that way.

Mrs ROBERTS: This comes back to the argument about the chicken and the egg: which comes first? It could also come under the analogy of putting the cart before the horse, or a number of others. The police do not have the legislation in place at this time. They have not put procedures in place ahead of the legislation. In my response to the member for Kingsley earlier, I said that by the time the legislation is proclaimed, the Police Service will have strict guidelines, policies and procedures in place to ensure that all DNA-related material is handled in a manner acceptable to the standards adopted by PathCentre. Compliance with strict criteria pertaining to the continuity and security of all DNA samples will be a requirement before PathCentre or a similar accredited institution receives evidence from the police.

Mr DAY: The minister earlier raised a point about how a blood sample would be obtained. She said that it would be by way of a finger prick or something to that effect. Who will be qualified and authorised to take such a sample? Will it be necessary for it to be somebody with a medical background, such as a trained nurse, or could it be undertaken by any police officer? If that is the case, what form of training will police officers need before they are authorised to undertake these procedures? Will the minister also provide the same information on the taking of a sample of hair?

Mrs ROBERTS: Doctors and nurses are among those people who would be accredited to do a blood test by way of a pinprick of a person's thumb. Trained police officers could also be included. I understand that the Australian Red Cross trained police officers in New South Wales to do that procedure. Those who will be able to carry out the test are doctors, nurses, medical personnel and other accredited persons. A police officer could become an accredited person by doing a course. I refer the member to clause 56 of the Bill, titled "Who may do an identifying procedure". A table lists those people who can undertake that procedure. The terms used are doctor, nurse, dentist or a qualified person. A qualified person could include a police officer who has been trained to perform a blood test by way of a pinprick or whatever.

Mr DAY: That would seem appropriate, particularly in some of the more remote parts of the State, in which it might be difficult to find at short notice a nurse, a doctor or a dentist with specific expertise; therefore, the police officers would need to obtain the sample. What resources will be made available to ensure that police officers throughout the State are provided with the necessary training to obtain samples?

Mrs ROBERTS: We have allocated $22 million towards the implementation of the DNA legislation; and training will form a large part of that. That training will include educating police officers about the legal requirements of administering this legislation. The Australian Red Cross (Western Australia), or a similar organisation, may be used to train police officers to do these things. Until the police officers have undertaken training, other medical personnel will need to conduct these tests, and in remote and country areas, that will be more expensive. It is appropriate that our officers be trained, but because this legislation is in the process of going through the House, that training has not been finalised. As I said to the member for Kingsley, we will need to go out to tender for the training of our police officers in a range of procedures.

Mr Day: Is that $1 million this financial year?

Mrs ROBERTS: It is $22 million over four years. The forward estimates list $1 million for this year. That $1 million covers only the current cost of the Police Service for that testing, because, as I have said, the police already conduct DNA analysis at some crime scenes. Last week, when I talked to the Victorian Commissioner of Police, she said that their best estimate of costs at this time is about $30 million over the next four or five years. Given Victoria's comparatively larger prison and general population, we have probably got it about right. Most of the jurisdictions do not have this legislation up and running to the extent that they know what the training and administrative costs will be.

Mrs EDWARDES: I want to return to the number that is no longer relevant; namely, the one on the pack. I have opened the pack, I have taken the swab, and I will now put it in an envelope; and I have a white slip that will go with the swab. How will the swab that will be sent to the database be given a super-duper number so that the person's name cannot be identified? I am raising the issue of continuity, because the police will need to attest in court that the sample that was taken at a certain time corresponds with the number that is highlighted on the database. What will be the link between the sample and the number?

Mrs ROBERTS: The sample will be given a number. However, we do not know at this time from PathCentre whether that will be the number on the pack or some other number.

Mrs Edwardes: Will the number on the pack relate to the sample that is put on the database?

Mrs ROBERTS: It may be a special label, or something similar. Those procedures have not been finalised by PathCentre and CrimTrac.

Mrs Edwardes: The issue is whether the number that is on the database will be the number that is on the pack. Will there be a clear link between those two identifying numbers?

Mrs ROBERTS: That is correct. As the member for Nedlands said, there is no point in having the process unless we can ensure its integrity and continuity. That must be paramount. Enormous time, effort and expense has been put into this at the national level through CrimTrac. If we think we have spent money on it, we have spent nothing compared with what has been spent nationally through the various bodies to which I referred, such as the National Association of Testing Authorities and the CrimTrac National Criminal Investigation DNA Database. If we cannot demonstrate the integrity and continuity of the process, we will not be able to be part of CrimTrac, and we will not be able to use the DNA evidence in court.

Clause put and passed.

Clause 10 put and passed.

Clause 11: Application of this Act -

Ms SUE WALKER: It is a common occurrence in the court for the Director of Public Prosecutions to decide not to continue with a charge and file a nolle prosequi. The member for Kingsley would be aware of this from her former role as Attorney General. Is there any reason that clause 10 does not mention a nolle prosequi?

Mrs ROBERTS: We have discussed this point previously. The advice we have been given is that it is covered by clause 10(a); namely, that the charge is withdrawn. That would include a nolle prosequi.

Ms SUE WALKER: There has been some dispute about whether when the charge is withdrawn it is permanent. Does paragraph (a) cover a nolle prosequi?

Mrs ROBERTS: Our legal advice is that it does.

Mrs EDWARDES: Clause (1) states that "identifying particular" in relation to a person means a photograph of the person, including of an identifying feature of the person. It is not plural; that is, photographs. The current procedure is to take just a head shot. A person may have a tattoo on the arm or in another location. Will this clause permit the taking of two or more photographs? Paragraph (c) states -

> an impression of an identifying feature of the person (including a dental impression);

The definition of "impression" is "cast". Of what else may a cast be taken, apart from a dental impression?

Mrs ROBERTS: A cast may be taken of a person's ear, mouth or foot. There is no limit to it. I assume that it will be possible to take more than one photograph of various parts of the person's body.

Mrs Edwardes: There is no limitation or restriction?

Mrs ROBERTS: It will not be limited at all.

Mrs EDWARDES: Clause 11(2) states -

> This Act does not apply -
>
> (a) to a person who, not being a law enforcement officer acting in the course of duty, obtains an identifying particular from, or a personal detail of, another person;
>
> or
>
> (b) to an identifying particular, or a personal detail, obtained by such a person.

To whom does this part of the clause refer?

Mrs ROBERTS: An example of to whom this clause refers is the Perth City Council and its video cameras. Another example is taxi cameras. Neither of those examples involves police officers.

Mrs EDWARDES: I am trying to understand why this provision is in the Bill, because clause 11(3) states -

> This Act does not apply to or in respect of an identifying particular, or a personal detail, obtained in accordance with another written law.

Obviously, that subclause would apply in the examples given by the minister. The DNA part of the identification process does not apply to a person who obtains an identifying particular from another person but who is not a police officer acting in the course of duty .

Mrs ROBERTS: The only legislation that covers the Perth City Council's camera security system is the Surveillance Devices Act 1998. There is no other law in which clause 11(2) would not fit. It is a similar situation with taxi drivers. This clause ensures that this area is fully covered so that we do not have any unforeseen circumstances.

Ms SUE WALKER: What is the procedure for ensuring that the identity of the person from whom the imprint is taken is in fact the person who appears in court - if it comes to that? If an imprint is taken of a person's feet, what is the procedure for ensuring that that person is the one who appears in the dock?

Mrs ROBERTS: Presumably we will use the same procedure as is used for fingerprints or any other piece of evidence that is commonly used.

Ms SUE WALKER: The point I am trying to make is that that procedure cannot be used. No two fingerprints are the same. However, if a photograph is taken of a person's feet and he or she comes before court, how will we know that the feet in the photograph belong to the person appearing before the court? What will be the procedure? Will a police officer take a photograph of the person and swear that he or she is the person whose feet were photographed? How will it be done?

Mrs ROBERTS: Obviously the police officer who -

Ms Sue Walker: It is not obvious.

Mrs ROBERTS: It is obvious that the police officer who takes the identifying particulars is the person who will lead the evidence in court in the same way as an officer leads other evidence in court when he or she has been responsible for the taking of that evidence. The same procedure will apply.

Ms SUE WALKER: The problem I am talking about is that a sample may be taken from a person, such as from his feet, and that person might go before the court 10 years later. Police officers deal with thousands of cases, and they cannot remember one from the other. Is there a procedure in which police officers will be able to state that they were present on a particular date when an imprint was made of a certain person's feet and that those feet belonged to the person in the dock?

Mrs ROBERTS: I am advised that the usual procedure is that evidence is marked for identification. For example, if a cast were taken of a person's foot, it would be engraved to certify when it was taken and to whom the cast of the foot belonged. That cast would be kept for evidence and used, if needed, at a later date, and the officer who had taken that evidence would be able to look at the way he or she had inscribed the cast.

Ms SUE WALKER: The minister has not mentioned a photograph. Will provision be made to take a photograph of a person and not just his or her foot? How will the two be related in court? If we have a photograph of a person's feet and it is claimed that the photograph was taken on a particular day, how will it be proved that those feet belong to the person appearing before the court?

Mrs ROBERTS: I am advised that an officer is likely to photograph the whole person from head to toe and then take a photograph of that person's feet.

Ms SUE WALKER: If this information is required 10 years later, will the police officer be required to prove in any way that he or she was the police officer who took the identifying particulars at the time?

Mrs ROBERTS: Yes.

Ms SUE WALKER: Will the same procedure apply when a person has been photographed, when an impression has been made of an identifying feature or when a sample has been taken of a person's hair?

Mrs ROBERTS: The taking of different identifying particulars may involve slight differences, but, as I outlined previously, these procedures are in the process of being developed. Naturally, there is no point embarking upon the process of taking photographs, prints and the like unless we can authenticate the integrity of that process. That is certainly the intention of the Police Service.

Clause put and passed.

Clause 12: Information and forensic material from another State, a Territory or the Commonwealth -

Mrs EDWARDES: This clause is subject to clause 91(2) which states -

> Information that is transmitted under an arrangement made under this section must not be recorded or maintained in any database of information that may be used to discover the identify of a person,

Therefore, the information cannot be used in any other database other than the DNA database that will apply across Australia. Clause 91(2) continues -

> or to obtain information about an identifiable person, at any time after this Act or a corresponding law requires the information or the forensic material to which it relates to be destroyed.

The explanation under the clause notes states that other than in accordance with the requirement to destroy forensic material or information, this section will allow for lawfully obtained forensic material from other States and Territories to be used lawfully.

However, under clause 12, we can use it for -

> investigative, statistical or evidentiary purposes even if its retention or use would, but for this section, constitute a breach of, or failure to comply with, any provision of this Act relating to the carrying out of identifying procedures.

Given that the minister is an English teacher, can she clarify that?

Mrs ROBERTS: I keep telling the member for Kingsley that she is the lawyer! This clause is largely there for protection, and it specifically allows material that is collected under this legislation to be used -

Mrs Edwardes: It refers to the collection of material under other legislation, not ours.

Mrs ROBERTS: That is right.

Mrs Edwardes: The collection of such material might breach our legislation.

Mrs ROBERTS: Similar clauses exist in other States' legislation. This clause will enable the CrimTrac system to work effectively and not be hampered by laws that exist in other States. Other States will be able to access our information and we will be able to access theirs. Although this clause refers to material taken in accordance with the laws of another State of Territory, that State or Territory has similar provisions in its legislation so that the legislation works both ways.

Mrs EDWARDES: This clause states -

> . . . constitute a breach of, or failure to comply with, any provision of this Act

We can use this provision; however, it may constitute a breach of this Act. What situation is anticipated by this provision?

Mrs ROBERTS: There are differences in legislation from State to State. Legislation in other States might be different from our legislation, and, under this provision, we will not be precluded from utilising this material or information for evidence or the other purposes that are listed in the clause.

Mrs Edwardes: How does clause 91(2) fit into it?

Mrs ROBERTS: It refers to whether some other agreement has been reached. For example, in certain conditions under our legislation, people could request to have evidence destroyed. Once that has occurred, that material could not be used.

Mrs Edwardes: Therefore, if evidence is held for some other reason etc, it allows identification evidence to be given. However, if the agreement says that that evidence must be destroyed, then that evidence cannot be used.

Mrs ROBERTS: That is right.

Mr DAY: Can the minister give us more information on how the CrimTrac system will work? Will it be a computer database that is seamlessly linked to all States and Territories? Will there be any barriers between the States and Territories in the exchange of information and, if so, what are those barriers? When does the minister expect this system to be fully established and is there a target date as a result of an agreement between all States and Territories?

Mrs ROBERTS: Some data exists on the CrimTrac database now. There is no target date for having all States online and being able to share data. The CrimTrac system will have secure lines to each State for the input of and access to information. We will be receiving more advice from Senator Ellison, or the CrimTrac people, on whether there will be any barriers to the exchange of information. At this stage, I am not aware of any barriers.

Mr Day: Will the database be a central computer system for Australia or will each jurisdiction have its own database that other jurisdictions can access without restriction?

Mrs ROBERTS: A centralised database will exist in Canberra and each State will have its own database. A secure link will be provided into that national database.

Mr DAY: This issue raises the question of exchange of information with jurisdictions external to Australia. Sometimes it is desirable that information be exchanged between Australia and other countries. Can the minister tell us whether this Bill impacts on the exchange of information between Australia and other jurisdictions, in particular New Zealand, which has a close relationship to Australia? As the member for Kingsley has just indicated, there would be a desire to exchange information with many other countries including the United Kingdom and the United States of America, as well as with just about every other country in the world. Can the minister give us more information about what will happen in that regard?

Mrs ROBERTS: This legislation does not yet cover that potentiality. I am advised that Interpol is considering protocols that would apply from one country to another when exchanging DNA information. Developments will occur on that front sooner, rather than later, as we come on stream. This legislation does not provide for an information exchange at the moment and Interpol is still drawing up protocols.

Mrs Edwardes: Will we wait for Interpol to come up with its protocols before we make an agreement with New Zealand?

Mrs ROBERTS: That is a worthwhile point. At the Australasian Police Ministers Council meetings the commissioner and/or minister from New Zealand has been present. We have a very good working relationship with New Zealand and it is possible we will advance the sharing of information before Interpol comes up with its protocols. However, we are 12 months away from the States having such a system up and running and organised. Australia needs to get its act together before considering the exchange of information with New Zealand. I am also not aware of where New Zealand is at with its own DNA database.

Clause put and passed.

Clause 13: Assistance when exercising powers -

Mrs EDWARDES: Subclause (1) states that -

> A person who may exercise a power in this Act

That is, a person who is authorised and referred to -

> may authorise as many other persons to assist in exercising the power as are reasonably necessary in the circumstances.

However, subclause (2) goes one step further. Not only can that person be authorised to assist, but also he may be authorised to exercise the power, or to assist any other person in exercising the power. Therefore, the authorised person can authorise another person to assist, and that other person can exercise the power and assist the authorised person in exercising the power as the case requires. Under subclause (3), if the authorised person

only appears to be the person authorised, the assisting person may, if he believes on reasonable grounds that the person is lawfully entitled to exercise the power, obey any lawful and reasonable directions.

In ordinary circumstances, the police do not readily ask for assistance unless it is absolutely necessary because of the potential for liability, for example, in a street fight or something similar. However, when a person has been detained and another person is escaping, unless that person is likely to be a danger to himself or to somebody else, the detained person would be looked after first and foremost by the police officer. If the person escaping may be a danger to himself or some other person, then it is likely that another person will be grabbed and asked to watch the detainee and not to do anything else unless absolutely necessary, and the police officer will take off after the other person. I am trying to imagine circumstances in which an authorised person may not only assist but also would also carry out the function authorised under this legislation.

Mrs ROBERTS: The key words are "reasonably necessary" in subclause (1), "on reasonable grounds" in subclause (3), and "any lawful and reasonable directions" in subclause (4). Obviously, at any subsequent court case, the police officer would have to demonstrate that these things were reasonably necessary, that there were reasonable grounds, and that these were lawful and reasonable directions. Those phrases are the safeguards. If police officers are by themselves or without the assistance of another police officer, they might have proper and reasonable grounds for taking a hair sample. The police officer might restrain the person while the postmaster or someone else takes a strand of hair.

Mrs EDWARDES: I recognise and understand the safeguards, but we then have clause 14, the use of force when exercising powers. That clause authorises any person who is not so authorised under this legislation to carry out the act or assist in the carrying out of the act, but then when exercising a power in this Act, that person may then legitimately - linking clauses 13 and 14 - also use reasonable force. Those persons are not trained to do so, whereas a police officer is.

Mrs ROBERTS: The only further explanation I can provide is that this is a direct lift from the model Bill.

Mrs Edwardes: We have already discussed that. It is not necessarily good news.

Clause put and passed.

Clause 14: Use of force when exercising powers -

Mrs EDWARDES: It is always important to ensure that any of the safeguards that are put into legislation dealing with police powers are spelt out. What is being spelt out here is the use of force when exercising those powers, and/or to overcome any resistance to exercising that power. We spoke earlier about consent and when consent is deemed to be withdrawn if a person resists. Obviously these are instances when a warrant is either given for a protected person or in such instances when police are dealing with a prisoner and/or a charged suspect. I just highlight that for the attention of the minister.

Clause put and passed.

Clause 15: Applying for warrants -

Mrs EDWARDES: This is an important clause which allows for the application of warrants. The application needs to be in writing, it must be given on oath, and all the rest of it; this is pretty standard in any warrant. Subclause (6) - if an application for a warrant is made to a judicial officer by remote communication - allows for that application to occur and allows for urgency. If it is not practicable to send the written application to the judicial officer, the applicant may make the application orally - I take it, by telephone.

Mrs Roberts: Yes.

Mrs EDWARDES: And at that stage in an unsworn form. Subclause (7) states that if the application is made orally, in the prescribed form of application, it must be completed within the appropriate time. I cannot find when that is and how long after that needs to occur. Application normally occurs within three days, but it is not referred to. Subclause (10) states that if the application is made by remote communication and the judicial officer issues the warrant, the judicial officer must immediately send a copy of the warrant to the applicant if it is practicable. The judicial officer can also let the police officer know verbally who is making the application that the warrant is in the mail, and hopefully does not get lost. Sufficient documentation exists between both of them to ensure that there is no miscommunication. Will the minister highlight the time frames in some of the instances that I have raised? Obviously a judicial officer is a justice of the peace or a magistrate, or whatever the legislation requires, and it depends where he or she is. I suppose the other instance is in a remote region - we will refer to this further on when dealing with charged suspects - when the person has to be transported to wherever he or she will be held and then wait for the next appropriate date when the JP or magistrate will be in town, and then at that first hearing make application for a warrant to take the test. I suppose that is the other alternative if all of this fails.

Mrs ROBERTS: The phrase that is probably the most relevant is "as soon as is practicable". I gather that the courts would make some interpretation of when is "as soon as is practicable", and I would hope that that would be in a very short time frame. If there were any delays, I would have thought that the officer in question would need to explain why it was not practical to do something in a shorter time frame. As the member has suggested, there is always the option of looking at a remote warrant if someone is in a situation of waiting for a JP for an unacceptable length of time.

Mr Omodei: Could that be by fax?

Mrs ROBERTS: By telephone, or I suppose it could be by fax.

Mrs EDWARDES: I understand that clause 15 is one of the differences in the model Bill, and was one of the original concerns raised by the federal Minister for Justice when we in Western Australia wished to use a justice of the peace. Federally, they keep forgetting that this is a very large State with extreme remote regions in which instances do occur. Justices of the peace perform an admirable service in the carrying out of justice in those remote regions. While remote warrants can be put in place by fax or phone, the ability to have a JP there in place of a magistrate is absolutely essential in a State like ours. Magistrates will often be based in some of the regional locations and will only go on circuit from time to time; it could be many months before some towns see a magistrate.

Obviously, in some of those instances, it is not suitable or practicable to wait to seek a warrant. The use of justices of the peace in Western Australia has occurred for a long time. They perform a fantastic function in respect of justice in this State. This change from the model Bill reflects Western Australia's diversity and size.

Mrs ROBERTS: The member for Kingsley made some excellent points that highlight differences between Western Australia and some other state jurisdictions. For the benefit of the member for Warren-Blackwood, I clarify that remote warrants can be given by telephone or fax as well as e-mail and radio. While there are differences with the model Bill, we have been very mindful in drafting this. The member for Warren-Blackwood has a background in the portfolio of disability services. All protected persons require the consent of a magistrate, despite the fact that we are using the lower bar of a justice of the peace - that is how people on the east coast see it - for some of the lower areas.

Clause put and passed.

Clause 16: Officer may ask for name, address, etc. -

Mrs EDWARDES: This clause allows police officers to ask for the personal details of people. It is not something new. However, some points are different. Section 50 of the Police Act provides for a penalty of six months imprisonment. In this instance it is 12 months. It is an appropriate penalty for someone who does not divulge his personal details. A person must reveal his full name, date of birth, address of where he is currently living and the address of where he usually lives. If a person gives false information or false identification to a police officer, he commits an offence the penalty for which is imprisonment for 12 months. Subsection (7) states -

> For the purposes of subsection (6), the fact that an officer did not comply with subsection (5) as soon as practicable is a reasonable excuse.

Subsection (5) states that an officer must identify himself to a person when requested. If a police officer does not identify himself to a person, it is a defence for that person if he is charged with not divulging his personal details. Subsections (8) and (9) relate to a person providing false personal details or evidence. Such a person faces imprisonment for 12 months. We are all aware that bikies have a code of silence. What happens when a person is not identified? There must be examples of the police apprehending unknown persons. What do the police do in such instances, particularly if a DNA sample is sought? A person may consent to a sample being taken but not reveal personal details.

Mrs ROBERTS: Maybe we should just keep him in jail until we find out!

Mrs Edwardes: For contempt.

Mrs ROBERTS: Section 50 of the Police Act provides penalties for people who do not provide their details to the police. The penalty is $300 or up to six months imprisonment. There is no particular procedure if a person refuses to give his name and address and is unidentifiable. A security guard was shot in Victoria and the person apprehended cannot be identified. Presumably, that person is in jail awaiting identification.

Mrs Edwardes: Not quite John Doe.

Mrs ROBERTS: No. Such a person would be charged with refusing to provide details and kept in jail for the period specified.

Clause put and passed.

Clause 17: Definitions -

Mr DAY: The clause provides a definition of "volunteer". Subsequent clauses contain further references to the involvement of volunteers. Will the minister provide information about the circumstances in which a volunteer is involved in these procedures?

Mrs ROBERTS: One example is when the great majority of taxi drivers in Perth volunteered to have a buccal swab during the Claremont serial killings investigation. Other people may choose to volunteer. For example, members of a household may volunteer their DNA if a crime has been committed in their home. Their DNA can be eliminated from the crime scene.

Mr DAY: What about the situation in which a person has been convicted of a crime and he says he is not responsible? Is it possible for such a person to request a sample of his DNA to be analysed for the purpose of subsequently exonerating him?

Mrs ROBERTS: A person could make that request. I am interested in the development of what other jurisdictions call an "innocence panel". New South Wales is looking at establishing an innocence panel. It is considering establishing one by regulation. At present, no State has moved very far in establishing a panel. Potential exists for people who have been wrongfully convicted of a crime to be exonerated. It is not something covered by this legislation but it is something the Parliament should look at next year. I am keen to see how other States establish a panel. My priority is to get this legislation through, deal with the people already in our prisons and move forward with DNA testing. It would be worthwhile for us to move forward and examine the feasibility of such a panel.

Clause put and passed.

Clause 18: How identifying procedures are to be done -

Mrs EDWARDES: This clause reads -

> An identifying procedure that under Division 2 or 4 may be done on a person must be done in accordance with Part 8.

Part 8 deals with how the procedures are to be done. It contains the tables setting out who may exercise the power, and so forth. The application of this part means that if under another provision of this legislation identifying procedures are required, they must be done in accordance with clause 18. This clause refers to division 2 and division 4. I am at a loss to understand why this provision is in there. I would have thought that clause 18 would not be needed, because part 8 applies. I am not sure whether the drafting of clause 53 allows for a broader use, because it seems to be limiting itself to where it is referred to elsewhere in the Bill; that is, clause 18. Unless something else is hidden behind these words, I cannot see the value of clause 18 being in there.

Mrs ROBERTS: I think the member for Kingsley and I are speaking the same language. I do not really see the purpose of this clause being in the Bill, other than as a result of its having been recommended by parliamentary counsel when the Bill was drafted. All I can do is go on what has been given to the Government as an appropriate way to have this set out, and that it is compliant with the national model procedures Bill.

Mrs EDWARDES: This brings me back to a few concerns I have raised directly with the Attorney General about the drafting of legislation. It may be that a large amount of legislation has been drafted in a very short period, and shortcuts have been taken, such as lifting provisions from other pieces of legislation and/or model Bills, without questioning what is contained in the clause, and whether or not it applies. The Attorney General agrees that the drafting of some of the examples I put to him needs to be improved. Last week, the House saw penalties lifted from the Royal Commissions Act 1968 which were inconsistent with the Criminal Code, and were of a lesser nature. When applied to bikies and drug traffickers, they were totally inappropriate.

This brings me to the clause notes themselves being inappropriate. Explanations such as "this clause is self-explanatory" have been given. I would not be asking the question if this were the case. In this case, the clause notes merely re-state what the clause says in providing for identifying procedures to be done in accordance with part 8 of the legislation. It does not deal with why this clause is here in the first place, and what its value is. I do not use the clause notes, because they are not at all valuable. It is far easier reading the legislation and going back to the original Acts, and then questioning the value of the clause. The clause notes need to be improved dramatically if they are to be of any value. The Opposition moved some time ago in this House to have clause

notes tabled at the same time as the Bill. Previously, many ministers shared this information with opposition spokespersons. Before the previous Government came to power in 1993, some ministers would share their clause notes. The clause notes at that time were of far greater value, because they were being produced for the minister in case he or she were questioned and placed under pressure about the contents of the clauses. A far greater level of detail was included. In this instance, because it has become a matter of course to table the clause notes, they are now done by rote, and just repeat short standard explanations, which do little more than summarise what is in the clause. In some of the earlier examples in this case, some of the clause notes simply repeated the clause, which is of no value whatsoever.

Drafting should be looked at to determine whether these clauses are of value to Western Australia. If the clause notes are to be of value under standing orders, they need to be improved dramatically.

Mrs ROBERTS: The member for Kingsley has made some good points, and I agree with her on most of them. When I sat in opposition, some ministers provided me with clause notes and other information, and others provided nothing. The clause notes to this legislation are very similar to those that the former Minister for Police provided me with last year.

Mrs Edwardes: You did not like his Bill either, and now you are serving up the same thing.

Mr Barnett: The member for Kingsley is known for her generosity in these matters.

Mrs ROBERTS: That is right; I quite believe that.

I find dealing with people who draft legislation and have a more legalistic interpretation of things, is sometimes like talking to a brick wall because, while the member for Kingsley and I see this clause as redundant, and wonder why it needs to be spelled out, the person who drafted it might see it as clarifying the Bill, and making it simpler. One might well ask how adding more words, or referring people all over the place, makes the Bill simpler. That makes it more complex in my view. If the person drafting the Bill has an alternate view -

Mrs Edwardes: Then it should be put into the clause notes, and the draftsperson should least explain himself or herself.

Mrs ROBERTS: Exactly. While we are surmising about the clause notes, I think the member for Kingsley is probably correct, and the level of explanation that is given clause by clause has deteriorated. That may well be because the notes are now being routinely tabled with the legislation. I suspect it may be a case of lawyers being cautious, and not giving too much out by way of explanation, because it may be used against them at some later point.

Mr Barnett: The information could also be used against the minister in debate, which is the nature of this place. It is natural that that should happen.

Mrs ROBERTS: There is nothing natural about lawyers defending ministers!

Mr Barnett: They are more likely to be setting them up!

Mrs ROBERTS: That is right. The latter is probably more likely. I am confident that the explanation for this clause is that the person drafting it believes that it clarifies matters. It is really a difference of opinion, and I cannot see much point in getting too bogged down in it. As a general guidance, it is perhaps an issue that the Attorney General could take up with Crown Law.

Mr OMODEI: I support the concerns of the member for Kingsley about this part of the Bill. I suggest that the minister explain after the suspension for dinner why that reference to part 8 is in this clause, when clause 53 reads -

> This Part applies if, under another provision of this Act, an identifying procedure must be done in accordance with this Part.

This just seems to be playing with words. Obviously, the parliamentary draftsperson has written it in that way for a specific purpose and there is probably a simple explanation.

Mrs Roberts: I can assure the member for Warren-Blackwood that the parliamentary draftspeople will have gone home, and that their answer will be that this clarifies how it applies.

Mr OMODEI: If that is the case, then the minister can confirm it some time between now and when the legislation is passed. The explanatory notes are so brief because they have been sanitised to extent of being benign for the Opposition.

Mrs Roberts: I will take the word of the member for Warren-Blackwood. He is far more experienced in these matters than I am.

Mr OMODEI: I do not think I am more experienced.

We are all in this place to make laws that work, particularly in cases like this legislation, on which there is general agreement.

I am sure there has been no attempt to withhold any information. If all the cards were laid on the table, whether it be this Bill or the Criminal Investigation (Exceptional Powers) and Fortification Removal Bill 2001 that we debated last week, which was a little more contentious, better law might be made in the future. If somebody in this place chooses to use that to make the minister's life difficult, that probably explains why ministers are paid more than backbenchers.

Mrs ROBERTS: This legislation has lain on the Table for an appropriate period. As the member acknowledged, we provided a briefing. At the briefing I said that I wanted bipartisan support for this legislation and the Opposition offered to give bipartisan support. If some clauses raise particular concerns, members opposite should have raised those concerns before today. The Government intends to progress through all stages of this legislation today.

Mr Omodei: You know that more matters arise during consideration in detail than at the briefing. It is not our intention to make life difficult for the Police Service. We intend to make sure that the two people in front of you end up with legislation that makes their life easier, not harder.

Mrs ROBERTS: I will seek further clarification of this clause, but I would not be happy if it involved any delay of the legislation. I am happy to provide further advice to the member. The Opposition has the opportunity to move amendments in the upper House.

Clause put and passed.

Clause 19: Volunteer for an identifying procedure to be informed -

Mr OMODEI: Have there been any discussions with members of the Police Service to volunteer their DNA for exclusion purposes? Has that occurred in any other jurisdiction in Australia?

Mrs ROBERTS: I refer the member to clause 22 on page 23 of the Bill, which deals with police officers and identifying particulars of police officers. That details the consideration that has been given for the taking of DNA from police officers.

Mr Omodei: I was thinking of the voluntary aspect and whether it has happened in any other State.

Mrs ROBERTS: I do not think that police officers in any State have volunteered to provide DNA samples en masse.

Mrs EDWARDES: This is a very important clause for a number of reasons. It identifies and breaks up into three areas those people who will be classified as volunteers and provision is made for separate and different procedures for each classification. Those classes include adults, protected people who are incapable - as defined in the Bill - and a protected person who is a child. Obviously, it includes the minister's previous concern about who is a responsible person. That sets the scene for what we are dealing with. Subclause (2) states -

> The volunteer and, if the case requires, the responsible person, must be informed of these matters -

This is an important addition to the legislation. By means of the identifying procedure of taking a sample of DNA at the time, a volunteer will automatically be informed of which identifying particulars are sought to be obtained. Will it not be the case that all identifying particulars will be taken? Does that mean that in every instance DNA will be taken? Will at least a photograph of the person's head be taken, which is normally the case?

Mrs Roberts: It does not necessarily mean that DNA would be taken in every case. Some other identifying particular, not including DNA, might be taken.

Mrs EDWARDES: If the purpose of the legislation is to create a DNA database, I would have thought that DNA would be taken in every instance.

Mrs Roberts: One possibility is that a suspect might already be on the database, in which case a sample would not be taken.

Mrs EDWARDES: Clause 19(2)(c) states -

> that subject to his or her decision, the volunteer's identifying information may be compared with or put in a forensic database;

That is an important aspect, because we are dealing with volunteers. Clause 19(2)(d) states -

> that the procedure may provide evidence that could be used in court against the volunteer;

That links very well with clause 19(2)(i), which states -

> that he or she may get legal advice before deciding whether or not to consent to the procedure;

That action may be used against a person; however, people can get legal advice first and foremost. The volunteer can also decide whether to limit the forensic purposes for which the volunteer's identifying information may be used, or to allow it to be used for unlimited forensic purposes. Therefore, it could stay on the database forever and a day. Clause 19(2)(f) states -

> that he or she may decide whether the identifying information can be kept by the WA Police -
>
> (i) for a limited period; or
>
> (ii) indefinitely;

What does that mean? What if an independent body managed the database? Suddenly the legislation introduces the WA Police as the managers of the database for a limited period or indefinitely. Why is paragraph (f) necessary when the Bill contains paragraph (e)(ii)? Clause 19(2)(g) states -

> that, if the procedure is done, he or she may subsequently change the decision on the matters in paragraphs (e) and (f) by notifying the Commissioner of Police;

The volunteers may have consented to provide a forensic sample but may also subsequently change their minds. That means they may change their decision about how long they want the police to keep their identifying information and for what forensic purposes it can be used. The volunteer may have been given legal advice that he is not obliged to undergo the procedure. I have already referred to legal advice. Paragraph (j) states -

> that, if deciding to consent to the procedure, he or she may withdraw consent at any time before the procedure has been completed;

If the procedure is done, he or she may change the decision by notifying the Commissioner of Police. However, if at any time during the procedure, they wish to withdraw the consent, they can do so at any time and they can withdraw consent for any other matters prescribed by way of regulations. Will the minister identify what else is being contemplated by way of regulation affecting matters to be advised to the volunteer prior to the identifying procedure being carried out?

Mrs ROBERTS: The member asked a lot of questions; I hope that I can answer them all. Under clause 19(2)(f), as the member said, the volunteer may decide whether the police can keep the identifying information. The member asked whether another body would keep a database. If PathCentre or another organisation maintained the database, it would be managed as an agent of the police. The Commissioner of Police has responsibility for the destruction of the DNA identifying information. The broader point I make is that I was keen that volunteers in particular were provided with information about their rights and responsibilities in the giving of any identifying particulars.

Although it is all very well to prescribe in the legislation that a person can request that his sample be used for only limited forensic purposes or destroyed after a period, the average person will not necessarily be aware of his rights or responsibilities, or know how to learn of his rights. Therefore, it is important that this legislation specifies that the volunteer must be informed about all these matters.

The member asked about the identifying information that might be put on the database. A volunteer might provide things other than DNA. As I suggested by way of interjection, this could relate to a person whose DNA is already on the database. It may also apply if the identifying information the person is volunteering to give is fingerprints, photos or some other form of identifying information that could not be stored on the DNA database.

Mrs Edwardes: What are the other matters in paragraph (k) on which advice could be given?

Mrs ROBERTS: Paragraph (k) will ensure that the person volunteering to give his DNA is informed of other matters that are included in the regulations. This is aimed at fully informing volunteers of their rights. The matters about which a person must be informed are listed in subclause (2)(a) to (k). Paragraph (k) prescribes that people are informed of further things that are included in regulations.

Mrs EDWARDES: I thank the minister for that. Subclause (3) says that the information may be provided to the volunteer in writing.

Mrs Roberts: That will probably be the most effective way of doing it.

Mrs EDWARDES: The identifying information will belong to the police commissioner. The definition we are using refers to the Police Force. Has that body again become the Police Force and not the Police Service?

Mrs ROBERTS: I think it was while the member for Darling Range was police minister that the name changed from Police Force to Police Service.

Mr Day: It was changed during the time of my predecessor, Bob Wiese.

Mrs ROBERTS: The legislation was never amended to reflect that, and the reference in the Police Act is to the Police Force. One of the lawyers in the upper House always refers to it as the Police Force because he likes to have things correct under the Act. He will handle this Bill in the other place, and I am sure he will not even ask why it is referred to as the Police Force.

Mr Day: Will you bring in a new Police Act soon?

Mrs Roberts: All good things come to those who wait.

Clause put and passed.

Clause 20: Volunteer may consent -

Mrs EDWARDES: We have dealt with how identifying procedures are to be done and the factors about which a volunteer should be informed, and we are now dealing with the volunteer giving consent. The legislation has some form of order - I stress "some". The volunteer may consent to the procedure about which he or she is informed. He or she must then decide the forensic purposes for which the sample may be used, as outlined in clause 19(2)(e) and (f). The volunteer must decide whether he will allow the sample to be used for a limited purpose or kept indefinitely. Safeguards are imposed by requiring that a responsible person makes that decision. The consent to the decisions will be recorded in writing, in a form approved by the Commissioner of Police. I am sure that will be contained in regulations. Subclause (3) is very important, and requires that a copy of the person's signed form must be given to the person.

The legislation contains checks and balances to protect a volunteer consenting to the procedure to be carried out. However, members should not forget that an earlier clause prescribes that if someone who has consented - signed the written form and handed it back - resists in the carrying out of the procedure, it will be deemed that consent has been withdrawn. Is that an umbrella clause that impacts on all the clauses in this part?

Mrs Roberts: That is right. It will also apply if the responsible person withdraws consent on behalf of the incapable person.

Mrs EDWARDES: This clause repeats that the volunteer or responsible person must be advised of certain matters, particularly that the volunteer or the responsible person may change his mind at any time. This clause gives the volunteer the power to consent to the procedure and outlines the protocol for doing so.

Clause put and passed.

Clause 21: Identifying particulars of deceased people -

Mr OMODEI: Subclause (2)(b) refers to a specific class of deceased people or identifying particulars. The issue of classes of people was raised during debate on the Criminal Investigation (Exceptional Powers) and Fortification Removal Bill. The term "class of people" is not included in the definitions at the beginning of the Bill. I am not sure what a class of people means, and I ask the minister to enlighten me.

Mrs ROBERTS: I understand that the classes of people that could be referred to could include all the people who have befallen the particular same fate, such as being killed in an aeroplane crash or burning to death. That would make them a class of people.

Mrs EDWARDES: According to that, the use of this Bill to identify material may not necessarily be for the purposes of resolving a crime; it may be used for identification purposes. Would that not take it outside the purposes for which this Bill is being constructed, and does the coroner not already have that power?

Subclause (3) refers to a person with a proper interest who may ask the coroner to authorise a person to obtain identifying information from a deceased person. It also includes orders relating to the temporary custody of the body of the deceased person. What information will be given to the family members of the deceased person? The Coroners Act contains a requirement for certain activities to be reported to the family members of the deceased person. Will that be included in this legislation so that activities related to obtaining and identifying information must be reported to family members?

Mrs ROBERTS: The member for Kingsley asked why this is necessary, given that the coroner would surely have the power to take a DNA sample in any event and so forth. The fact is that the DNA database referred to is controlled by this legislation. The coroner needs to be specified here so that he can make use of the police database. This gives the coroner control of what is happening in those situations. I am told that this could also be used in situations in which a deceased person is a victim of a crime and the police want some identifying

particular in order to identify that person. For example, the police were unable to identify a deceased lady whose body was found in Kings Park. This clause would allow the coroner to access the DNA and for the police to utilise that sample on the database.

Mrs Edwardes: Who is a "person with a proper interest" referred to in clause 21(3)?

Mrs ROBERTS: I gather that the coroner has total control of those situations. For example, the authorised person might be a relative.

Mrs Edwardes: So they are volunteering the DNA or other identifying information to the police in order to have the deceased person excused or limited?

Mrs ROBERTS: Yes, or for any one of a number of purposes.

Dr WOOLLARD: What would happen if it were identified that a deceased person had a congenital abnormality during the analysis of his DNA sample? Would the family be notified of those findings? If not, and if some health problem later developed in the family, would the State be held responsible for not having notified the family?

Mrs ROBERTS: The simple answer is that no testing will be done for congenital abnormalities. The situation the member described will not occur.

Mrs EDWARDES: The DNA print that is being taken is just for identification purposes. As such, will the test not be broken down?

Mrs Roberts: It is just for the CrimTrac database.

Mrs EDWARDES: I return to the question I asked earlier about the advice to family members about identifying information being taken from a deceased relative. The minister said that whatever happens is under the control of the State Coroner; therefore, the Coroners Act would apply. This legislation will leave it up to the coroner to decide whether to advise family members that a forensic procedure is being carried out on the deceased person. I do not have a copy of the Coroners Act with me. I am not sure if it is covered under that Act.

Mrs ROBERTS: I will just clarify a point raised earlier. The technical term for the DNA taken during these tests is non-coding DNA. It is not possible to detect congenital abnormalities or the like from non-coding DNA. That information is stored for the purposes of the police and is not shared with other organisations that might be interested in congenital abnormalities or other genetic information.

I am not sure whether the coroner would be required to inform relatives that a DNA procedure had been done. I will find out. I suspect, as does the member for Kingsley, that it is probably covered by the Coroners Act rather than by this legislation. I will get that information for the member and let her know.

Mrs Edwardes: Thank you.

Dr WOOLLARD: Can the minister provide an approximate cost of the non-coding DNA tests and the cost of a fuller, coding DNA test?

Mrs ROBERTS: I am advised that the kind of test that the Police Service will be doing under this legislation will cost about $50. I do not know what a more detailed DNA analysis for scientific or medical purposes would cost. The Police Service advises me that it has no interest in that, so it has not bothered to find out the cost of that sort of test. It would presumably be a significantly higher cost.

Clause put and passed.

Clause 22: Identifying particulars of police officers -

Mrs EDWARDES: Clause 22 allows for the Commissioner of Police to require a person who was appointed under the Police Act -

> . . . to undergo an identifying procedure for or in connection with the forensic purposes prescribed by the regulations for the purposes of this subsection.
>
> . . . may be exercised as often as the Commissioner of Police thinks is necessary.

Who is covered under parts I, III and IIIA of the Police Act? I take it that this clause means that the Commissioner of Police would require police officers to undergo that procedure if the officers needed to be excluded from a crime scene. It would hardly require the Commissioner of Police to do that. Will it be done in situations in which it is believed police officers might be involved in an offence? How, when and who are we talking about? What is the position of the Police Union (WA) on this clause of the Bill? There is probably some difference of opinion. Some police officers would be only too happy to be excluded at an early stage of an investigation, while others might ask why they have been asked to be tested. In the case of a bank robbery or a

serious crime, one of the first things to do would be to eliminate the bank officers by taking DNA samples or fingerprints, so that the police could find out what DNA or fingerprints were left behind. Therefore, in terms of the class of persons, police officers are not alone in this matter. Other groups would similarly be caught up in a crime scene. The difference with this clause is that the Commissioner of Police will request individuals to undergo the identifying procedure.

Mrs ROBERTS: I thank the member for those questions. Clause 22(1) states -

> 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. . .

The member is right. It covers more than police officers. It also covers police cadets, Aboriginal police liaison officers and special constables. It does not include, for example, unsworn officers in the Police Service.

Mr Omodei: Does it not refer to some staff?

Mrs ROBERTS: So far as I am aware, it does not refer to the unsworn officers.

Sitting suspended from 6.00 to 7.00 pm

Mrs EDWARDES: Before the dinner suspension we were dealing with the position of the Police Union (WA) on the requirement that police officers undertake an identifying procedure. Can the minister outline that position?

Mrs ROBERTS: The Police Union is comfortable with these provisions, provided the DNA was taken only for the purpose of exclusion and was destroyed when the police officer left the service. A police officer who was a suspect in a crime would be treated in the same way as any other suspect would be treated under the Bill. DNA that was taken from a police officer could be used only for comparative purposes to eliminate that person from a crime scene. It could not be put onto the database and be used for any other purpose, and it could not be compared with other crime scenes at which the police officer was not known to be present or be related to.

Mr Omodei: Will a police officer be treated in the same way as a volunteer?

Mrs ROBERTS: Not quite, because volunteers have a choice, whereas the commissioner will not necessarily give police officers a choice. Police officers will not necessarily be able to say they want -

Mrs Edwardes: To get legal advice.

Mrs ROBERTS: Yes, or they want their permission to last for only a specific time.

Mrs EDWARDES: It appears that the concern of some police officers that they will be treated differently from other classes of persons is correct. Could police officers, rather than wait for the Commissioner of Police to require them to give a DNA sample, volunteer to give that sample and thus have available to them all the other provisions that are available to volunteers under division 2?

Mrs ROBERTS: They could volunteer, but whether they would be accepted as a volunteer is another matter. Obviously a cost is involved if people volunteer. We will not necessarily want the DNA of every person who volunteers to give DNA. It seems a bit strange that people will want to volunteer for no particular purpose. We do not want to go to the time and expense of recording the DNA of people if there is no good reason for their DNA to be recorded, regardless of whether they are a suspect, a witness or in some other way involved in a crime scene. Even if police officers did volunteer their DNA and it was accepted, the Commissioner of Police might require them to again give their DNA. The commissioner could certainly choose to bring police officers under this clause of the Bill. If police officers chose to volunteer their DNA, the rules that applied to police officers would still apply to them. They would not be able to pick and choose whether they wanted to be under the volunteers' guidelines or the police officers' guidelines.

Clause put and passed.

Clause 23: Definitions -

Mrs EDWARDES: This clause states that "involved person" means a person who is not a suspect for an offence but who is reasonably suspected to have been the victim of or to have witnessed the commission of the offence. We are dealing with a victim or a witness. Clause 25 states that "involved person" means an involved person who is an adult. I again question the drafting of this Bill.

Mrs ROBERTS: The Bill is sensibly set out, because in clause 23 "involved person" refers to a victim or a witness. However, there are other sub-categories of "involved person". That is why the other clauses are necessary.

Clause put and passed.

Clause 24: How identifying procedures are to be done -

Mrs EDWARDES: During the debate on clause 18, I indicated that there did not appear to be a reason that an identifying procedure that under division 2 or 4 may be done on a person must be done in accordance with part 8. This clause also states that an identifying procedure that under this part may be done on an involved person must be done in accordance with part 8. Perhaps the Bill should state what parts do not need to be done in accordance with part 8. It seems to be superfluous drafting. I cannot understand what clauses of the Bill will not be done under part 8.

Mrs ROBERTS: My understanding is that the only category of persons that will not need to be dealt with in accordance with part 8 is deceased persons.

Clause put and passed.

Clause 25: Request to adult to undergo identifying procedure -

Mrs EDWARDES: This clause again deals with a victim or a witness. Subclause (2) states -

> If an officer reasonably suspects -
>
> (a) that an offence has been committed; and
>
> (b) that an identifying particular of an involved person, obtainable by means of a non-intimate identifying procedure, will afford evidence of the commission of the offence or of who committed the offence,
>
> the officer may request the person to consent to undergoing the non-intimate identifying procedure to obtain the identifying particular.

Subclause (3) states -

> An officer who requests an involved person to consent to an identifying procedure must at the time inform the person of these matters - . . .

It then lists the levels of advice that were previously highlighted in respect of a volunteer. However, the advice that is not covered in this clause is the legal advice. I do not know if any other clauses deal with advice. Only the legal advice is not prescribed under subclause (3).

I have a couple of other issues. The next clause deals with "protected person", and goes through the procedure in the same way, except that the responsible person can decide the important things; that is, whether or not to limit the procedure and what the information can be used for etc. If the responsible person withdraws consent or refuses to consent to the procedure being done, an application can be made against the responsible person's will. That clause does not apply to an adult. However, under this clause, if a victim or a witness who is capable mentally, refuses to consent to a procedure being carried out - last week we talked about victims of or witnesses to a bikie incident, and we all know about the bikies' code of silence - there is no paragraph (k); that is, if an adult does not consent or withdraws consent an application may be made against his will, and a warrant may be issued and the procedure may be carried out against the involved person's will. If someone is mentally incapable and a responsible person is involved, there is no problem. The person can be taken to court, a warrant can be issued and the procedure can be undertaken. There is a huge amount of discrimination in favour of an adult, mentally capable individual, as against a mentally incapable person. First, I find that highly suspect; and, secondly, a subclause (k) needs to be inserted. If a victim or a witness says that he does not want to have the test, one must ask why In the case of the matters to which we referred last week involving a bikie incident, the test ought to be required. We must still go through the proper court process to get the warrant; the judicial oversight is there. However, the provisions covering the test for someone who is mentally incapable, even if a responsible person is acting on his behalf, are highly discriminatory.

Mrs ROBERTS: I certainly have an explanation as to why they are treated differently. The member has indicated that victims or witnesses are treated differently as to their compulsion to have DNA tests. One of the concerns is that someone might be a victim of a sexual assault and he or she may not wish to have a DNA identifying procedure undertaken. I understand that, when consulted about these issues, the sexual assault referral centre and other relevant bodies were strongly of the view that a victim should not be compelled to undergo an identifying procedure should he or she not wish to.

Mrs Edwardes: Unless they are mentally incapable.

Mrs ROBERTS: Where a victim is mentally incapable, the concern is that the responsible person may be a suspect. That is why the two groups of people are catered for differently. Clause 32 outlines what happens with an IP warrant - that is, an involved protected person - and the procedure that has to be undertaken to get that

warrant. We wanted to cater for a situation where someone, who can be described as mentally incapable or whatever -

Mrs Edwardes: A vulnerable person.

Mrs ROBERTS: Yes. We are not affording the responsible person on his or her behalf the same rights as other victims or witnesses, because the concern is that the responsible person could be a suspect for the crime that is being investigated. Procedures are in place for an officer to apply for a warrant, and that is why the two groups are deliberately treated differently. I draw the member's attention to clause 32(4)(b) which contains further provisions relating to children. I have pointed out why these people are treated differently if they are victims or witnesses to a crime. There may be some suspicion about the person who is the responsible person. If that is the case, a mechanism needs to be in place to enable independent adjudication as to whether the protected person must undergo an identifying procedure.

Mrs EDWARDES: I understand the sensitivities of sexual assault victims, but that is only one offence out of many thousands. Given the detailed drafting that has occurred, it would not be very difficult to insert one more exclusion clause, or to in some way recognise the sensitivity of dealing with a victim of sexual assault. I recognise that the responsible person may be a suspect in the crime; however, this discriminates against people who are vulnerable, and that is not acceptable.

Mrs Roberts: In my view we are discriminating in their favour and for their benefit.

Mrs EDWARDES: That may be the case in limited circumstances. Under this legislation, a whole lot of protected persons who are victims and witnesses may have warrants issued against them, and the responsible person may not be a suspect. In how many instances is the responsible person likely to be a suspect? It will vary depending upon the type of crime. We are talking about a victim, but, more importantly, we are talking about a witness to a crime. Therefore, in a large number of incidents or offences a person is being discriminated against - in some instances, in his or her favour - where the responsible person may be considered to be a suspect, but in many incidents that is not the case. In the case of an adult being the involved person who is a victim or a witness, the reason we do not have a subclause (k) is the crime of sexual assault. I do not accept that as an appropriate exclusion. If the minister thinks it is important for the benefit of the individual - and it may well be to the benefit of the involved person - to have his or her DNA taken, even if he or she has refused, there is the opportunity to insert a subclause (k) to allow the court to so determine. I do not accept that the discrimination between those two clauses is appropriate. I understand and accept the minister's explanation, but it is limited to isolated incidents and single crimes, and it does not cover all the legislation or the incidence of crime about which we are talking.

Mrs ROBERTS: The member is quite right in saying that there is no paragraph (k) that refers to any matter prescribed by regulations.

Mrs Edwardes: No, paragraph (k) under clause 26.

Mrs ROBERTS: The member referred to sexual assault being one crime and said that there could be an exclusion for that crime. Child abuse is another crime in which we would not want the responsible person to be the person making a determination on whether DNA evidence was provided. Similarly, the protected person may be a witness to a crime in the home, be it domestic violence or child abuse. It may be useful to eliminate such a person's DNA from the crime scene. The inability to eliminate such DNA may mean that the responsible person could get away with a crime that they would otherwise not get away with. There are very deliberate differences between the ways in which protected people are dealt with. I do not accept that this in any way discriminates unfairly against protected people. It is deliberately there to protect those people so that those responsible for them cannot get away with sexual or child abuse or any other form of maltreatment. The same protection would exist if they were witness to a crime. The responsible person may be a suspect. Alternatively, in the case of child abuse, a natural mother and stepfather may be involved. The natural mother may be the responsible person but she may not consent to identifying procedures in order to protect her de facto partner or husband. It is important that the police can appear before a magistrate and put their case. Clause 32 outlines the procedures for the application for a warrant when it involves a protected person. They are very important protections for protected people, particularly children. The clause closely mirrors the model legislation in respect of adult witnesses and victims.

Mrs EDWARDES: It closely mirrors the model legislation unless we do not like the model legislation. Using it as an excuse does not get the minister anywhere.

Mrs Roberts: I am not using it as an excuse. I have told the member that I support it fully.

Mrs EDWARDES: I refer to clause 25 without comparing it to clause 26. The minister referred to sexual assault and the victim. The police use many support services on a regular, even daily, basis. The ability to obtain identifying information will be with the support of the respective support services and the police unit responsible. We are talking about only one type of crime. The legislation passed last week gives the police exceptional powers to deal with drug traffickers, bikies and people who have committed wilful murder or murder in conjunction with another schedule 1 offence of a serious nature. This legislation supports that. It is well known that a victim or witness involved in any one of those other activities is unlikely to give information. It is highly unlikely that such people will provide identifying information, because under their code they will not offer up anybody who is likely to have commissioned an offence. If a valuable source of information is excluded - being a victim or a witness - why did the Government not consider including a clause that allows the police to go to an independent arbitrator, such as a court, for the authority to carry out the procedure against the individual's will?

Mrs ROBERTS: If this legislation is passed by both Houses of this Parliament and is proclaimed as law, it will be the toughest legislation for DNA identifying procedures in Australia.

Mrs Edwardes: In what way?

Mrs ROBERTS: It will be the toughest in the volume of DNA samples that can be taken. The model Bill provides for DNA to be taken from people sentenced to five or more years imprisonment. This legislation allows for DNA to be taken from people sentenced to one year's imprisonment. A much larger number of people will be captured by the database. This legislation diverts from the model Bill in its use of buccal swabs and warrants. The member is suggesting that it be compulsory for people to provide DNA samples. That is a step too far at present. We should wait to see how this legislation works. It is aligned to the model Bill as far as it can be. If it proves to be a problem, I will be happy to look at it again. I am sure other jurisdictions would as well.

Mr Omodei: Some of the other legislation is not working.

Mrs ROBERTS: I do not think it is true to say that. Other States have legislation but it is not up and running. There are a number of reasons for the delay. Most of the jurisdictions are hopeful that their legislation will work. Victoria is hopeful of making enormous inroads into unsolved crimes. Other Police Services would like to adopt our level of compulsion and sentencing levels for prisoners and charged suspects. It would allow them to capture more people. Other States may move to the prerequisite of lower levels of conviction in order to record more people on a database. To compel people who have not been charged with an offence, as suggested by the member for Kingsley, is a step too far at present.

Mrs EDWARDES: I was not suggesting that there be a clause that requires victims and witnesses to compulsorily provide samples, other than through an application to a court. Clause 32 provides safeguards and checks and balances that can easily be put in place. I was not suggesting a level of compulsion. I raised a point in respect of clause 25, but the minister has not had a chance of coming back to it. Why was the legal advice on this matter excluded? To what extent can a person limit the forensic purposes for which the information derived can be used? How narrow can that limitation be?

Mrs ROBERTS: We shall be able to examine those limitations when considering clause 78, so the last question can be answered then. The clause about legal advice to volunteers was specifically inserted because of concerns about their being afforded every possible protection. The member is right in saying that the possibility of legal advice is not contained in this clause, nor is it contained under any other category of person. The Police Service is happy to look at that, and will consider putting in place procedures that will allow for that to happen. However, it is not specified in the legislation.

Clause put and passed.

Clause 26: Request for protected person to undergo identifying procedure -

Mrs EDWARDES: This is the clause we have just been referring to when dealing with an involved person. A responsible person who is identified, can make the decision under clause 26(3)(g) as to whether the use of the information gained can be limited, and can withdraw consent. We have been talking about clause 26(3)(k), which reads -

> that if the responsible person does not consent or withdraws consent -
>
> (i) an application may be made for authority to do the procedure against the responsible person's will . . .

This is the instance that the minister has been talking about, in which the responsible person may be the suspect, or may be protecting the suspect, and may limit or refuse consent for an involved person to have the information obtained. The clause continues -

(ii) if authority is given the procedure may be done against the responsible person's will.

Essentially, there is a distinction between the involved person who is a protected person and the involved person who is just an adult. This does not deal with the perpetrators, but rather with a victim and/or a witness. I recognise and acknowledge the issue the minister raised that a responsible person, put in place in an endeavour to give the protected person some further protection of his or her rights, is also restricted or discriminated against, compared with any other victim or witness, because he or she can be taken to court for not consenting or withdrawing consent. This will happen not only in those instances when the responsible person is the suspect or is protecting the suspect, but on every single occasion. The opportunity is there, and therefore the protected person will be discriminated against. Although other clauses deal with isolated instances, as was the case with clause 25, in this instance there is no protection as such for the protected person.

Mrs ROBERTS: It is not really the protected person who is being discriminated against in any unfavourable way. The responsible person, not the protected person, will be taken to court if there is some doubt about whether that person is exercising authority in an appropriate way. I refer to a couple of examples, particularly the one in which the responsible person may be the perpetrator of some crime, such as child abuse or sexual assault. The responsible person may also be covering for another person, such as a de facto partner, or another family member. The person may also be protecting someone who is intimidating him or her in some way. There may also be the case, for example, of a 16-year-old child, who may want to cooperate with the police in providing a DNA sample, while the parent or responsible person for some reason does not want that to happen. The motivation for not allowing the person to proceed may be questionable. These are very sensible procedures.

I remember a case in Bunbury some time ago, in which the mother was quite clearly aware that child abuse was going on, but was refusing to cooperate with the police to allow a successful prosecution to proceed. In those circumstances, the interest of the child or the protected person must be placed first. If DNA evidence can be of assistance in solving that crime and bringing the perpetrators to justice, I fully support it.

I referred previously to clause 32 in relation to the application for an involved protected person warrant. Clause 32(4) requires a range of grounds to be satisfied. It reads -

> An application for an IP warrant (involved protected person) must also state the applicant's grounds for suspecting -
>
> (a) if the application is made under section 31(b) - either that it is not reasonably practicable to obtain a responsible person's consent to the involved person undergoing the procedure or -
>
> (i) that a responsible person has refused to or will not consent, or has withdrawn consent, to the involved person undergoing the procedure;
>
> (ii) that the responsible person is a suspect in relation to a serious offence; and
>
> (iii) that the procedure will afford evidence of whether or not the responsible person committed the offence;
>
> and
>
> (b) in the case of a child, that the child -
>
> (i) is willing to undergo the non-intimate identifying procedure; and
>
> (ii) is sufficiently mature and capable of understanding the general nature and effect of, and the reason for and the consequences of, undergoing the procedure.

Clause put and passed.

Clause 27: Request and giving of information to be recorded -

Mrs EDWARDES: This clause has the effect of requiring that requests under clauses 25 and 26, about which we have been talking, be recorded, and that that record be an audiovisual record, or in writing. I take it that, in accordance with normal police procedures, audiovisual recording will be carried out whenever possible.

Mrs Roberts: That is right.

Clause put and passed.

Clauses 28 to 30 put and passed.

Clause 31: Officer may apply for IP warrant (involved protected person) -

Mrs EDWARDES: Clause 31 deals with the clause that we have just dealt with involving a protected person, and states -

> An officer may apply for an IP involved warrant (involved protected person) to do an identifying procedure on an involved person who is a protected person -
>
> (a) if the officer reasonably suspects that, if a request were made under section 26, the investigation of an offence concerned would be prejudiced; or
>
> (b) if under section 28 an IP warrant (involved protected person) is needed in order to do it.

An officer may apply for an IP warrant to carry out an identifying procedure on an involved person who is a protected person if the officer reasonably expects that if a request were made under section 26, the investigation of the offence concerned would be prejudiced. Therefore, a request does not need to be made under section 26; the police can immediately proceed to a warrant. Under section 28, which outlines when an identifying procedure may be done, not necessarily just to a protected person, but even to an involved person, an IP warrant can be used for a protected person only when it is needed in order to do the identifying procedure. Clause 31(b) covers the request if it has either been refused and/or withdrawn.

Mrs ROBERTS: This is an important clause because it will allow police not to alert a suspect in a way that would jeopardise their investigation and successful prosecution of a crime.

Clause put and passed.

Clause 32: Application for IP warrant (involved protected person) -

Mrs EDWARDES: As the Minister for Police indicated in her second reading speech in response to the concerns raised by the member for Warren-Blackwood, applications for warrants must be made before a magistrate. Under other provisions of this Bill, applications for warrants may be made before a senior officer, a justice of the peace or a magistrate. However, in this instance, application for a warrant can be made only before a magistrate. That provision is supposed to afford protection to a protected person. It is often difficult to get hold of a magistrate in Western Australia, because of the size of the State. In some urgent instances it would be nigh on impossible to obtain the services of a magistrate, whereas a JP can always be called out of bed at three o'clock in the morning. It is difficult to do that to a magistrate. Although the provision is included for the protection of the protected person, in some instances that may work against the person if a magistrate cannot be accessed in a timely fashion.

Mrs ROBERTS: I understand that duty magistrates can be called upon and there are opportunities for remote warrants to be issued.

Mr OMODEI: I refer back to clause 28. If a responsible person was eliminated from the procedure because he was a suspect, who would advocate on behalf of a protected person who was disabled? Obviously, the structure of the legislation provides that a warrant be issued by a magistrate. However, who would protect the protected person in the event that the responsible person had been removed from the procedure?

Mrs ROBERTS: In many instances it could be argued that people representing the police and people who represent the responsible persons could be involved, and also a public advocate could become involved.

Mr Omodei: Or somebody from the Department for Community Development.

Mrs ROBERTS: That is right.

Mr OMODEI: I am concerned about that. In a previous parliamentary life as the Minister for Disability Services, I have been involved in and know of the range of disabilities that exist. I know that some of the people who are at risk are suspects within the judicial system, some are in the judicial system and a number of people are in transition between the judicial system and the community. Some of those people have protection under the Guardianship Board or the public advocate; however, many do not. Many people who have a disability and who lack the powers of comprehension could be discriminated against under this legislation. I repeat that if the responsible person were taken out of the equation because he could prejudice the case or could be a suspect, whether that person be a member of the family, a guardian or a carer - in other words, another person as described in earlier clauses of the Bill - the protected person would be quite vulnerable, because under this legislation the police would be able to get a warrant from a magistrate to force the protected person to undergo an investigation. Where is the protection in this legislation for that type of person?

Mrs ROBERTS: In so far as there is protection, it is not provided for under this legislation. I am not familiar enough with other legislation, whether it be the Young Offenders Act or other pieces of legislation. However, I appreciate the point made by the member for Warren-Blackwood. We will provide more information on the issues raised by the member.

Mr OMODEI: It is not as though these types of people are not represented in the system; a number of them are at risk in the community. As the responsible former minister, I had discussions with the former Department of Family and Children's Services and the Ministry of Justice about safe houses or halfway houses to take disabled persons out of the justice system. It was appropriate to take them out of jail because they should not have been there, but it would not have been appropriate to send them back to a mental institution. At the same time, it was a risk to put them straight back into the community. The halfway house provided a place in the middle. I would appreciate it if the minister could do some work on that issue and get back to me.

Mrs ROBERTS: Under this legislation the magistrate is obliged to make a decision that he or she believes to be in the best interest of the protected person. The member has raised some interesting issues. I am not familiar with the Guardianship and Administration Act or other matters that pertain to the categories of people about whom the member has spoken. I will obtain some further information on those matters and will provide that information to the member tomorrow.

Mr OMODEI: I know of an itinerant woman who does not want to stay in a halfway house. The Guardianship Board says it has no powers over that person. That person is in limbo in the community and nobody is taking responsibility for her. A government bureaucrat said that she had her own rights. I believe she is at risk. As the responsible minister, I remember giving directions to the Disability Services Commission to do something about that person because I was concerned about her future wellbeing as she roamed around the community. There are people like that in the community.

Mrs EDWARDES: The public guardian and/or public advocate is defined as a responsible person under the Guardianship and Administration Act. Members may wish to get around the discriminatory aspects of this legislation, particularly clause 31(2) whereby even without a request, a police officer can go to a court to apply for a warrant to take the identifying particulars from the victim and/or witness. If the responsible person is the suspect, or a suspect is being protected, an application can be made for the public advocate and/or guardian to be put in place.

Similarly, there are appropriate provisions for somebody under the age of 18. The protected person will not be left unprotected. The Government is discriminating against these people, but for all the right reasons. I acknowledge that. This provision will not apply in all instances. I accept that under clause 32(4)(a)(ii), the responsible person must be the suspect in relation to the serious offence. The example of someone who is protecting a responsible person falls outside that definition.

Mrs Roberts: The responsible person would also be a suspect, but for a different crime.

Mrs EDWARDES: My view is that although this clause has been included for all the right reasons, it is discriminatory. It probably could have been dealt with in other ways. The member for Warren-Blackwood and the minister have recognised that a public advocate and/or the guardian under the Guardianship and Administration Act could be the appropriate people to include in the legislation to ensure that the safeguards afforded to protected persons are maintained in the event that the responsible person is removed from the picture.

Mrs ROBERTS: As the member is no doubt aware, clause 33 refers to the public advocate and the options that are available to the magistrate. One of the reasons we decided to make sure that cases involving protected persons must go before the magistrate is the option for involvement of the public advocate. That is specified in clause 33.

The only other thought that occurs to me is that in some instances, time will be important. An offence may be ongoing. That would put a lot of responsibility on the shoulders of the magistrate in question. The police would need to put to the magistrate a case for why something should be proceeded with sooner rather than later. The magistrate will have the ability to call in the public advocate, although it will not be compulsory.

The member has raised a number of important issues and I will get further information for her.

Mrs EDWARDES: Picking up on the minister's last point, the concerns I raised about using a magistrate rather than a justice of the peace relate to timeliness. Even if magistrates are on duty, they are not always readily available to give the required authorisation. Again, I feel that for all the right reasons, limiting the ability to issue a warrant to a magistrate will potentially discriminate against a protected person. The rights of the protected person and the rights of other people will be dealt with differently. Presumably, that will be done to

ensure that the rights of the protected person are safeguarded. However, it will also remove some of the benefits, such as timeliness.

Clause put and passed.

Clause 33 put and passed.

Clause 34: Definitions -

Mrs EDWARDES: This part deals with uncharged suspects; that is, people who have been taken in by police and considered to be suspects of a crime. Under this part, the person has not yet been charged, although the police are taking evidence or a statement from him. The police are seeking to get the identifying particular. A suspect is a person who is reasonably suspected of having committed a serious offence, but who has not been charged with that offence. A serious offence is identified as any offence for which the penalty is at least 12 months imprisonment. For the purposes of these definitions, it does not matter whether the person is in lawful custody for the offence; that is, whether he is under arrest. Where is the line drawn at which someone is charged? In the light of the definition, I am not sure when that applies. Where does "under arrest" fit in?

Mrs ROBERTS: Someone who has been arrested would fit within the definition of being reasonably suspected of something. It would be possible to arrest someone solely for the purpose of taking DNA.

Mrs EDWARDES: Arrest could be a tool to obtain a DNA sample. I do not think that is what is intended by this legislation. We are dealing with a part relating to uncharged suspects. I take it that at this point, the person is potentially arrested. He is in custody and a statement has been taken from him. The police want to get further identifying information from the suspect, but they have not yet informed him that he will be charged. What will the police tell the person is the reason for his arrest?

Mrs ROBERTS: If someone were arrested under this legislation for the purpose of taking a DNA sample, he would be informed that that was the purpose for which he was being arrested.

Mrs Edwardes: Where in the Bill is the power to arrest somebody for the purpose of taking a DNA sample?

Mrs ROBERTS: We are talking about a situation in which someone has not given consent. Under clause 44 - senior officer may approve a non-intimate identifying procedure to be done on adult - someone who refused consent could be arrested for the purpose of taking a DNA sample. Clause 44(5)(a)(i) refers to the police arresting the suspect to whom the approval relates. That is where the police officers have gone to a senior officer. The person must satisfy all the criteria under clause 44(2). If the person still refuses to provide a DNA sample, an officer is authorised, under subclause (5)(a)(i) -

> to arrest the suspect to whom it relates;

Mrs EDWARDES: Under the definition of "suspect", is the reference to lawful custody only in those instances in which the arrest is for the purpose of taking DNA?

Mrs ROBERTS: Another instance could be highlighted. The person could be in custody for another offence. The police might wish to take a sample of his DNA, but the offence might not be of a magnitude to trigger the other provisions of this Bill.

Mrs EDWARDES: Is a traffic offence the type of offence that we are talking about? A person must be told why he is being arrested.

Mrs Roberts: It refers to a serious offence. That is defined as carrying a penalty of imprisonment of one year or more.

Mrs EDWARDES: I understand that. However, the minister just said that if the person is in custody for another offence, the police might want to take a sample of his DNA. I do not think that that is what this section is all about.

Mrs ROBERTS: I will provide a scenario. A suspect has been arrested for murder. The person is in lawful custody and charged with that offence. The police might believe that he had also committed a rape and wish to get a DNA sample from the man in relation to that crime.

Mrs Edwardes: If the person is in custody - he has been charged - the DNA sample could be taken in any event and used for anything.

Mrs ROBERTS: You are right.

Mrs Edwardes: Can you give another scenario?

Mrs ROBERTS: Perhaps the person has been charged with a less serious offence. The person could be in custody for drink driving.

Mrs Edwardes: I think you are going to find that this clause will create legal challenges. There is potential for the legislation to be flawed. The other clauses that relate to matters that have been the bane of police officers' lives forever and a day have been strengthened. I think this clause will create legal challenges. The reference to lawful custody needs to be removed.

Mrs ROBERTS: Perhaps we need to go back a bit. Under the definition of suspect in this clause, the last couple of lines state that -

> . . . it does not matter whether or not the person is in lawful custody for the offence.

Mrs Edwardes: Why include it in the legislation if it is not needed? It is irrelevant. By all means seek legal advice before this Bill gets to the other place, but I do not think that that reference is needed in the clause. It will create a real problem and headache for the police.

Mrs ROBERTS: I will seek further advice on that point.

Clause put and passed.

Clause 35: Purpose of identifying procedure -

Mrs EDWARDES: Clause 35 outlines the purpose of the identifying procedure. The clause states -

> This Part does not authorise an identifying procedure to be done on a suspect except for the purpose of obtaining an identifying particular of the suspect that is reasonably suspected will afford evidence of whether or not the suspect committed a serious offence that he or she is reasonably suspected of having committed.

That is a longer clarification of the definition in terms of the authorisation. It strengthens my view that the retention of the last phrase in the definition of "suspect" will cause further problems.

Clause put and passed.

Clause 36 put and passed.

Clause 37: Request to adult to undergo identifying procedure -

Mrs EDWARDES: Clause 37 concerns the request to an adult to undergo an identifying procedure. In this clause, the suspect, the definition of which we have been talking about, is an adult. We are really saying that the reference to reasonable suspicion is in cases in which the offence committed is serious and carries a penalty of imprisonment of 12 months or more. It is an interesting definition. Why is a serious offence not regarded as 12 months imprisonment or more, because that is what it is for wilful murder and murder? There was the potential not to go through that. That was an issue. Under clause 37(2)(b) -

> > . . . an identifying particular of a suspect for the offence will afford evidence of whether or not the suspect committed the offence,
>
> the officer may request the suspect to consent -

It then goes through all the matters for which the suspect must be informed, known as the details of the notification. Clause 37(3) states -

> (e) the circumstances in which destruction may be requested under section 69;
>
> (f) that the procedure may provide evidence that could be used in a court against the suspect;

There is no provision for legal advice under this clause. However, I thought that under police procedures in the normal course of events, if a person was cautioned and had started, did not start or had stopped giving a statement and wanted to seek legal advice, the police were required to allow that. I take it that that would still apply. Even though a suspect is not advised that he can seek legal advice before undertaking the procedures, that is something that the suspect -

Mrs Roberts: You are right. That would still apply.

Mrs EDWARDES: That would still apply. Paragraph (i) states that if the suspect does not consent or withdraws consent, an application could be made. From practice of a long, long time ago, it was often the case, under section 50AA of the Police Act, that the police would hold somebody until such time as they got the information they required. Again, it was always within a reasonable period. It crossed my mind that in these instances that deal with bail, it is essentially before the person is given bail. It could be used as a way to wait for a suspect to consent to giving the identifying information, rather than having to go through the application process required under paragraph (i).

Mrs ROBERTS: The first issue the member for Kingsley raised was the necessity for the reference to serious offence. Parliamentary counsel was questioned on that point and insisted that it was necessary. The member for Kingsley also suggested that police officers might use this as a way to detain a person until he gave consent. That was covered by the earlier clause, which said that a person can withdraw consent at any time, even once the procedure has commenced or is about to commence. Protection is in place.

Clause put and passed.

Clause 38: Request for protected person to undergo identifying procedure -

Mrs EDWARDES: This clause outlines the information that must be made available. Subclause (4) states -

> If the suspect is a child, the making of a request, and the giving of information, under this section must be done in the presence of the suspect.

I question why that provision has been incorporated, because in a situation in which the child is the suspect, the responsible person is present to consent to or withdraw from the application.

Mrs ROBERTS: As the member for Warren-Blackwood pointed out, there are different levels of protected persons and in the case of children, some children are more aware than others. Obviously, children of different ages will have different levels of awareness and knowledge about what is going on.

Clause put and passed.

Clause 39 put and passed.

Clause 40: When identifying procedure may be done -

Mrs EDWARDES: Clause 40(2) states -

> (c) in the case of a non-intimate identifying procedure - a senior officer approves it under section 44; or
>
> (d) in the case of an intimate identifying procedure - a JP issues an IP warrant (suspect) that authorises it.

Therefore, a JP can approve an intimate identifying procedure on an adult but a magistrate is the only person who can approve a non-intimate identifying procedure for a protected person. Ostensibly, this discriminates against a protected person for all the right reasons. However, this protection is misplaced, because it will discriminate against a protected person in a detrimental way.

Mrs ROBERTS: The member for Kingsley is quite right; it is not the Government's intention to discriminate against protected persons, but to protect them. It was felt that magistrates would be in a better position to deal with this situation. The member's point that JPs are more available on a shorter time frame is quite valid. She also stated that she does not believe that duty magistrates are necessarily available. I am advised that duty magistrates have a responsibility to make themselves available, and they should also be available when a remote warrant is sought.

Mrs EDWARDES: If a magistrate is not readily available in some of those remote regions, it might lead to a situation in which the timeliness of taking the information becomes the issue in regard to discriminating against a protected person.

Clause put and passed.

Clauses 41 and 42 put and passed.

Clause 43: Application for approval to do non-intimate identifying procedure on adult -

Mrs EDWARDES: Under clause 43 the application can also be made by remote communication, and what follows is a check and balance with respect to the request that has been made. However, when we look at the more extensive procedure of obtaining a warrant from a magistrate for a protected person, it is easy to receive the information. The issue is that there is judicial supervision; the grounds have to be solid and the procedure still has to be complied with under this Bill. There is no difference in regard to that because judicial supervision is not excluded. Consequentially, the protection that is being put in place is sadly misplaced.

Clause put and passed.

Clause 44: Senior officer may approve non-intimate identifying procedure to be done on adult -

Mrs EDWARDES: This clause lists the criteria with which a senior officer must be satisfied when giving his or her approval for a non-intimate identifying procedure. The first criterion is that a suspect must be an adult.

What happens when a person comes out of a nightclub and he or she is reasonably suspected to be an adult but is actually a juvenile? What happens if the police are given a false name and a false address? A person who has just come out of a nightclub might be presumed to be an adult when the information is given when, in fact, that person is actually underage. What does that do to the approval?

Mrs ROBERTS: The onus is on the police officer to satisfy himself or herself that the suspect is an adult. If an officer cannot properly satisfy himself or herself that the person with whom he or she is dealing is an adult, the non-intimate identifying procedure that was carried out would not stand up too well in court.

Mrs Edwardes: Is that similar to other provisions contained elsewhere?

Mr Kucera: They would simply apply the rules pertaining to a juvenile.

Mrs ROBERTS: If the officer could not satisfy himself or herself that the person was an adult, he or she would have to -

Mrs Edwardes: They would have to err on the side of caution.

Mrs ROBERTS: The member for Kingsley is questioning what will happen if a police officer has mistakenly satisfied himself or herself that a person is an adult when the person is actually a juvenile. The argument becomes one of whether the officer reasonably believed that the person was an adult.

Clause put and passed.

Clause 45: Application for IP warrant (suspect) -

Mrs EDWARDES: Clause 45(2) states -

> An application for an IP warrant (suspect) must be made in accordance with section 15 -
>
> (a) to a JP if the application is in respect of an adult; or
>
> (b) to a magistrate if the application is in respect of a protected person.

I reiterate my previous concerns that this will pose a problem in obtaining identifying particulars in some of our more remote regions.

Clause put and passed.

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

Mrs EDWARDES: I refer the minister to subclause (5), which states -

> An IP warrant (suspect) authorises -
>
> (a) an officer authorised by subsection (6) -
>
> (i) to arrest the person 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;

Subclause (6) states -

> The powers in subsection (5)(a) may be exercised by -
>
> (a) if a police officer applied for the warrant, any police officer; or
>
> (b) if a public officer applied for the warrant, any public officer who has the same functions as the applicant, or any police officer.

We heard previously that the public officer may be a fisheries or CALM person. This Bill will allow a public officer to detain a person for a reasonable period in order to carry out the identifying procedure. What is a "reasonable period" for a suspect to be detained, and to which public officers will this power be given?

Mrs ROBERTS: I understand that the regulations will enable us to define to a greater extent who those public officers will be. We are talking about an IP warrant that may be for DNA or some other identifying procedure, such as a fingerprint or photograph. It may be appropriate that some other public officer be specified. However, the regulations are not in place; therefore, that has not been defined.

Mrs EDWARDES: My concern is that there is no clarification of who will be defined as a public officer and will, therefore, be permitted to arrest and, more importantly, detain a person for a reasonable period.

Mrs ROBERTS: Subclause (6)(b) states -

if a public officer applied for the warrant, any public officer who has the same functions as the applicant, or any police officer.

The public officer will need to apply for the warrant and be given the warrant. That will be a check and balance in the system. The reasonable period is however long it takes. Obviously the police officer would need to demonstrate that the time that it took to undertake the procedure was a reasonable period.

Mrs EDWARDES: One of the issues of concern is that the Bill refers to arresting and detaining a person, and to obtaining identifying particulars. However, the Bill contains no power to convey the suspect to a doctor and/or nurse. Police officers often complain that they cannot get a doctor or nurse to come to the police station to take a blood sample. Will these public officers have the power to convey?

Mrs ROBERTS: My understanding is that police officers have the power to convey people from the place of arrest to the police station. They also have the power to convey a person whom they have arrested to a hospital, for example. I do not think that is a difficulty. I am interested in the member's concern about the length of time for which a person may be detained, because these provisions were in the legislation that was introduced last year by the former Minister for Police in the former Government. There are similar provisions in the graffiti legislation and the Prostitution Act 2000, which the member's Government also introduced. The power to detain people for a reasonable period is contained in many other pieces of legislation. I am not aware of any difficulties with the operation of those pieces of legislation.

Mrs EDWARDES: We are not dealing with the 2000 Bill. We are dealing with the 2001 Bill. What was in the 2000 Bill is irrelevant, because this Parliament is being asked to pass this Bill. If clarification is needed of any of the clauses of this Bill, it is important that that clarification be given, because, as we know, what is said in this Parliament is often reflected upon when a court makes a determination about what is meant by a particular section of an Act. Although a solicitor may be able to refer to the prostitution or graffiti legislation, or other legislation in which similar terms are used, it is critical that this Bill clarify the powers of the police and what is likely to be considered a reasonable period.

Mrs ROBERTS: They are the same questions as the ones I asked time and again when I was sitting on the bench that the member is sitting on. It is pretty clear. The police work with similar definitions in other pieces of legislation, and neither the police nor anyone else appears to have a difficulty in determining what is a reasonable period.

Clause put and passed.

Clause 47: Definitions -

Mrs EDWARDES: This clause contains a definition of the words "charged suspect" and "identifying particular". It states that an "identifying particular", in relation to a person, means a print of the person's hands; a photograph of the person; or the person's DNA profile. The definition of "charged suspect" means a person who has been charged with, but not dealt with by a court for, a serious offence. Therefore, it allows an element of retrospectivity. Some matters may take 12 months or more to come to trial. Therefore, once a person has been charged, part 7 of the Bill will apply and the identifying particulars of that person can be obtained, even though the case is still to come before the court. The Bill also ensures that no-one can slip through the net and provides for a three-year period in which to gather identifying information from the prison population. If a person has committed a traffic offence for which he will be imprisoned -

Mrs Roberts: They are going to be or could be?

Mrs EDWARDES: They still will not have been dealt with by the court. Therefore, there is a protection given their track record and the like. It may not be a serious offence; it could be a matter of a constantly bad record. Will they slip through the net as part of the prison population but not as a person who has been charged with a serious offence?

Mrs ROBERTS: I just clarify that a serious offence will be one with a penalty of 12 months imprisonment. If someone has been charged with a traffic offence, for example, it would have to be a traffic offence for which the penalty was 12 months or more in prison.

Clause put and passed.

Clause 48 put and passed.

Clause 49: Identifying particulars may be taken -

Mrs EDWARDES: This clause deals with the identifying particulars which may be taken of child suspects. Subclause (2)(f) states that if the suspect does not consent or withdraws consent to the procedure the suspect may

be ordered to undergo the procedure, and the procedure may be done on the suspect against the suspect's will if the suspect does not obey the order. The use of the word "ordered" is interesting. I know that police officers obviously order each other in the police hierarchy etc, but I have never known the term to be used -

Mrs Roberts: There are court orders.

Mrs EDWARDES: Yes, but that is not the way it is being used in this clause. A police officer will order a suspect to undergo the procedure. I can imagine what the suspect's response will be to the police officer in no uncertain terms. In any event, reasonable force can be used. It is interesting terminology, and I wonder whether the scenario I have outlined is the one foreseen in this clause.

Mrs ROBERTS: I know people are always attributing bad motives to our Police Service and that maybe one of our police officers has had a bit too much to do with this legislation by using "police speak". However, I assure the member that the word "ordered" is in the legislation because it is a direct lift from the model Bill. I do not know why that terminology has been used.

Ms SUE WALKER: Why does a person who is presumed to be innocent before being proved guilty come under this regime?

Mrs ROBERTS: Because there is national agreement to move towards a DNA database and that we will equip police officers throughout Australia with the ability to investigate crimes in a more successful and timely fashion. That has been accepted by all jurisdictions in Australia, including the Commonwealth.

Ms SUE WALKER: Why is it that people who have not been proved guilty - and they are innocent until they are proved guilty - can have this procedure done on them?

Mrs ROBERTS: Because they are a charged suspect.

Ms SUE WALKER: Therefore, this legislation goes beyond people who are in custody for 12 months or more, and applies to anyone who is charged with a serious offence.

Mrs Roberts: Read the Bill.

Clause put and passed.

Clause 50 put and passed.

Clause 51: When identifying procedure may be done -

Mrs EDWARDES: The word "order" is again used in subclauses (2) and (3). This may be another reason that we need to relate model Bills to the language we use in Western Australia. Subclause (3) states that -

> If a charged suspect does not obey an order made under subsection (2), an officer may -
>
> (a) if the suspect is not in custody - without a warrant arrest the suspect and detain him or her for a reasonable time in order to do the identifying procedure; and
>
> (b) do the identifying procedure on the suspect against the suspect's will.

Why go through the process of arresting, because it is likely to be a non-intimate procedure? I understand that under the Misuse of Drugs Act a person can be required to drop his trousers in order to determine whether he has drugs on his person. A warrant is not needed for that and the person need not have been arrested, but he can be arrested to have a cotton bud placed in his mouth. I referred in debate on earlier clauses as to discrimination, and under the Misuse of Drugs Act even if a protected person was involved, that person would have no other protection.

Mrs ROBERTS: We are dealing in this instance with charged suspects, and people can comply and consent to undergo the identifying procedure. If they refused in that instance, they could then be summonsed to appear and undergo the procedure. If that failed they could be arrested and made to undergo that procedure.

Mrs Edwardes: Where is the summons?

Mrs ROBERTS: The offence they have been charged with might be dealt with by way of summons, but in order to obtain the identifying procedure they would have to be arrested.

Mrs EDWARDES: I am just comparing it with other legislation, and I wonder why the minister has decided that the process of arrest is the appropriate way to go in this instance, even though we may be talking about a non-intimate procedure?

Mrs ROBERTS: The member is right. It is better if people do not have to be arrested. The police do not intend to arrest people when it is not necessary. Basically, if people will not cooperate, the police believe that the best way of making them cooperate is to arrest them, because the police need to be able to detain them.

Clause put and passed.

Clause 52: Definitions -

Mrs EDWARDES: This is the important part of the legislation which is consistently referred to throughout the Bill. A "qualified person" is defined as a person who is qualified under the regulations to do the procedure. A "qualified person" is often referred to throughout this part of the Bill. I want to clarify and ensure that we are not talking only about doctors and nurses and that one of the classes of persons who has to be identified in respect of the legislation is police officers.

Mrs ROBERTS: That is right. It will vary according to the identifying procedure undertaken and whether it is an intimate or non-intimate procedure. For non-intimate procedures, it is the intention that police officers can become qualified for the purposes of the legislation. It may require them having training in, for example, taking blood from someone's finger. In any event, we will provide full training to police officers on the legislation. They will be trained properly in the use of buccal swabs.

Clause put and passed.

Clause 53 put and passed.

Clause 54: General requirements -

Mrs EDWARDES: Subclause (6) states -

> If this Part requires a power to be exercised in relation to a person by a person with specific qualifications, the officer authorised to exercise the power may authorise a person with those qualifications to exercise the power.

Can that be clarified? Who will provide authorisation? Does the authorisation have to be in writing?

Mrs ROBERTS: The authorisation could be in writing but nothing in the legislation, from what I can see, compels it. What was the other question?

Mrs Edwardes: Who will provide authorisation?

Mrs ROBERTS: The officer would do the authorisation.

Mrs Edwardes: The public officer or police officer carrying out the function can authorise a doctor, nurse or any other qualified person to carry out the function?

Mrs ROBERTS: That is right.

Clause put and passed.

Clause 55: Sex of people doing procedures -

Mrs EDWARDES: This clause deals with the sex of people doing procedures. People performing non-intimate identifying procedures can be of either sex but people performing intimate identifying procedures must have specific qualifications and must be of the same sex as the person on whom the procedure is carried out. The issue relates to the one I just raised about authorisation being in writing. If blood or other samples are to be taken, they must be taken by a doctor, nurse or other qualified person. Subclause (7) states -

> If it is necessary to ascertain the sex of a person before exercising a power under this Part on the person and the sex of the person is uncertain to the officer authorised to exercise the power -
>
> (a) the officer must ask the person to indicate whether a male or a female should exercise the power on the person and must act in accordance with the answer; and
>
> (b) in the absence of an answer, the person is to be treated as if of the sex that the person outwardly appears to the officer to be.

If a person is in a dress that person is a woman.

Mrs Roberts: That is not true. Our officers are cleverer than that; they can tell if it is a bloke in a dress.

Mrs EDWARDES: Subclause (7)(b) allows an officer to treat a person as the person outwardly appears to the officer to be. Can the minister clarify that?

Mrs ROBERTS: The member is trying to embarrass me. A procedure must be followed. An officer must ask the person. In the absence of an answer the officer must follow certain procedures. There are telltale signs as to

a person's sex. For example, males have an Adam's apple. It is often difficult dealing with people of an indeterminate sex.

Mrs Edwardes: I am being serious.

Mrs ROBERTS: In the first instance we are talking about a small number of people in the community. Only a small percentage of them would come to the notice of police officers under this legislation. Some sort of procedure has to be put in place and it is the best that people have been able to come up with.

Mrs EDWARDES: It probably represents current practice as I am not sure whether it is in any other legislation. The minister should enlighten me if it is.

Mrs ROBERTS: I am advised that it is in the commissioner's operating procedures manual as a result of the gender reassignment legislation.

Mr OMODEI: Subclause (3) states -

> A person who is present while an intimate identifying procedure is done by a person on another person (excluding a person who is present under section 54(4)) must, if practicable, be of the same sex as the person on whom the procedure is done.

The legislation contains many references to a person being of the same sex when undertaking any identifying procedure. If an intimate identifying procedure were performed on a woman, is it possible for the person carrying out the procedure to be a male if it is not practicable to have a woman do the procedure? The people concerned may be in an isolated place. The subclause appears to deviate from others in the legislation that insist on people being of the same sex when intimate procedures are performed.

Mrs ROBERTS: Subclause (3) starts with the words -

> A person who is present while an intimate identifying procedure is done. . .

That does not refer to the person performing the procedure. By way of example, a young boy may be the subject of a procedure but his mother may be present.

Mr OMODEI: In a lot of cases involving a protected person there may not be a choice. The responsible person could be of either gender in the case of a protected person. The responsible person is the normal carer for that person, either as a public advocate or a carer described in the legislation as another person. There appears to be an inconsistency. There may not always be a choice if the responsible person is a designated person. The responsible person cannot change all of a sudden because a procedure may take place.

Mrs ROBERTS: The further point I will clarify is that subclause (3) specifically excludes a person who is present under subclause (4). This applies when an identifying procedure has been done on an incapable person. Subclause(4) specifies what happens with an incapable person. To answer the other part of the member's question, my understanding is that, for example, the situation may arise in a country town, in which the person conducting the intimate identifying procedure may be a doctor and, because of a threat of violence, the doctor may require another person to be present. That is one reason that this clause is necessary.

Clause put and passed.

Clause 56: Who may do an identifying procedure -

Mrs EDWARDES: While I have been critical of some drafting aspects of this Bill, clause 56 provides a very easy-to-read table, which is very well put together.

Mr DAY: I agree with the comments of the member for Kingsley about the layout of the table. I have not examined this table in any detail prior to the last five minutes or so. I notice that, under item A3 on page 51 the people who are empowered to take a buccal swab from a person include a doctor, nurse or qualified person. I ask why that does not include a dentist.

Mrs ROBERTS: I cannot see any reason that a dentist could not do that. Maybe the regulations should list dentists as qualified persons. I suppose there would be a whole range of health professionals who could have been listed as people suitably qualified to take a buccal swab. For simplicity, the Bill has been drafted in this way.

Mr DAY: I would not want to be accused of seeking to create work for dentists. I do not think there are too many unemployed dentists who wish to work in the profession in Western Australia at the moment.

Mrs Roberts: They would probably charge too much.

Mr DAY: They would be beaten by the medical profession, I suspect. I notice that dentists are listed under item B4 on page 51, which relates to taking a dental impression. In that case it is far more appropriate to list dentists than it is to list doctors. Most doctors would not have any experience in taking dental impressions. Some may have acquired the expertise, and would be able to do it. I know this is on the run, but would the minister contemplate an amendment to insert the word "dentist" under item A3? I suggest that consideration be given to inserting the word "dentist" at this point, because members of the dental profession, more than any others, including the medical profession, have experience in doing work in people's mouths, and taking buccal swabs is something a dentist would be able to do in his sleep. I am not seeking to create work for dentists, but it could happen - I agree it would be an unusual situation - that a dentist is present, perhaps taking a dental impression, and no other qualified individual is available to take a buccal swab. I have an amendment I would like to move.

Mrs ROBERTS: I would rather give an undertaking that dentists will be included in the regulations, so that the member's concerns can be taken on board without the necessity for an amendment. Dentists can be listed along with a whole range of other qualified persons, for the purposes of taking buccal swabs. I do not have any strong view about this, if the member wants to include dentists in this clause.

Mr DAY: I move -

> Page 51, item A3 in the table - To insert after "doctor" the passage "dentist,".

It would help, for the sake of completeness, and so that the people who use this legislation will not have to refer to regulations, to know that dentists are included amongst those able to take buccal swabs.

Mrs Roberts: Why does the member not move to insert the words "dentist or dental technician"?

Mr DAY: That could be done if a definition could be agreed on. Dental prosthetists could also be included, if the minister wanted to go down that path.

Mrs EDWARDES: I support the amendment of the member for Darling Range. If it had been thought about in the development of the model Bill, I am sure the words would have been included in the first place.

Mrs ROBERTS: By way of comment, having now checked the model Bill, I can say that the model lists dentists and dental technicians. I have no idea why this table does not include those words.

Mr Omodei interjected.

Mrs ROBERTS: I think the member would have to go in the direction of Albany to find that out. I have no idea where it went to. It surely could not have been the Minister for Police who preceded the former member for Albany, because, being a dentist, I am sure he would not have eliminated himself.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 57 put and passed.

Clause 58: How samples and impressions are to be taken -

Mrs EDWARDES: This clause was referred to earlier, and deals with how samples and impressions are to be taken. If the table is referred to once again, it can be seen this refers only to DNA samples. The clause requires that samples be taken using the least painful method that is known or available to the person taking the sample or impression. It does not require the method least painful to the person from whom the sample or impression is being taken. This is an interesting turnaround. It may be easier to take blood, because that will be the least painful to the person taking the blood, as opposed to going anywhere near a person's mouth. Is that the intent of the clause?

Mrs Roberts: This clause should apply to dentists as well, given the pleasure they get from inflicting pain.

Mrs EDWARDES: Could the minister clarify what the least painful method that is known or available to the person means in accordance with the hierarchy of procedures given to the authorised person?

Mrs ROBERTS: Not only am I not a lawyer, I am also not a medical professional. It is not a matter of which procedure is intended to be applied; it is a matter of finding the least painful method of undertaking that procedure. If a blood sample is decided on, it must be taken by the least painful method.

Mrs Edwardes: Is that in each individual procedure as against comparisons of procedures?

Mrs ROBERTS: As I understand it, every procedure is considered. If a dental impression is to be taken, it must be taken by the least painful procedure. The procedure must also take into account the available services; for example, city hospitals may have better equipment or procedures or they may have a better putty to put into a person's mouth that is less painful when it is taken out.

Mr OMODEI: Does it matter where a hair sample is taken from? I can inform members from personal experience that when my young boys used to pin me down and remove hairs from my nose or ears, it was a painful experience. Does it matter from where the hair samples are taken?

Mrs Roberts: I notice that the member for Darling Range did not ask this question.

Mr OMODEI: I thought about raising the issue before, but in due respect to the police officer -

Mrs Roberts: I feel sorry for our member for Innaloo!

Mr OMODEI: Can the hair sample be taken from any part of the body? Does an area need to be specified, whether it is an armpit or hairy nose?

Mrs ROBERTS: Obviously pubic hair is regarded as intimate; therefore it is treated differently. As a general rule, the least painful place to take hair samples is from a person's head.

Mr Omodei: Does it not have to be removed from a specific area?

Mrs ROBERTS: Hair samples could be taken from a leg or an arm. This counters against a person doing a procedure determining, as the member suggested, that hair be taken from a person's nose, ear or some other place that the suspect might find quite painful.

Clause put and passed.

Clause 59 put and passed.

Clause 60: People not obliged to do procedures -

Mrs EDWARDES: Clause 60 states -

> Nothing in this Act requires a person -
>
> (a) to do an identifying procedure on another person; or
>
> (b) to take a photograph, print or impression of, or a sample from, another person's body.

I take it that this clause is an out for the doctors or nurses. If the authorised person wanted a doctor or nurse to do the procedure and they said that they were far too busy and the like, they would not be made to do it. What would happen in those instances?

Mrs ROBERTS: The table in clause 56 of the Bill lists alternatives for procedures that can be done by nurses or other qualified persons. In those circumstances, another qualified person would be found to undertake the procedure. The member is correct; this clause is an out for a doctor, a nurse or anyone else who for one reason or another did not want to undertake the identifying procedure.

Clause put and passed.

Clause 61: Definitions -

Mrs EDWARDES: This clause is very important. Indeed, part 9 is a very important part because it deals with the use and the destruction of the identifying information. The definition of a forensic database states -

> **"forensic database"** means a DNA database or another database (whether or not on a computer and however described) -

I wonder whether the minister would clarify that. The definition continues -

> that contains -
>
> (a) the information in relation to the commission of an offence that may identify the person who committed it;

The data is numbered and can obviously identifying the person. Will the minister clarify that the person's name etc is not on the database? The definition further continues -

> (b) identifying information of people lawfully obtained before the commencement of this Act;

All the data that is currently available gets transferred onto this forensic database. The definition also states -

> (c) identifying information of people (alive or deceased) obtained under this Act; or
>
> (d) identifying information of missing persons and their relatives by blood;

Where did paragraph (d) come from? Is that information currently held by another database? Will that information be transferred to this DNA database?

Mrs ROBERTS: The identifying information, including people's names, are not kept on the database; they are numbers. As the member requested, I am happy to confirm that the names and addresses of persons and that type of identification are not kept with the DNA profile.

Mrs EDWARDES: That will teach me to ask one question at a time! What is meant by "a DNA database or another database (whether or not on a computer and however described)"?

Mrs ROBERTS: For example, the other database could be a fingerprint database or a different form of forensic database that might not be on a computer, but is kept on cards or some other data system.

Mrs EDWARDES: We will probably refer to that definition as we further debate the clause. Forensic database also is defined as -

(b) identifying information of people lawfully obtained before the commencement of this Act;

Obviously, all information that was previously held can be transferred across and incorporated into the database. Are problems associated with the transfer of that information and of where and how that information is being held? In particular, might there be any continuity problems with the DNA database, which we referred to earlier, and its admissibility as evidence?

Mrs ROBERTS: I am not aware that there will be any such difficulties. However, one must keep in mind that if a crime has been committed and we have material on the database that was collected lawfully before this Act came into operation, that material is available to be used. For example, if a DNA match were made with a particular crime and if there were any doubt about the DNA match, one would consider getting a fresh DNA sample to link the person to the crime. Again, I stress that although DNA evidence is very important, it is not necessarily the only evidence that would be relied upon.

Mrs EDWARDES: Paragraph (d) of the forensic database definition states -

identifying information of missing persons and their relatives by blood;

This is what the Bill refers to as another database. Is it all being brought together in the one location and dealt with by one unit for its protection and confidentiality?

Mrs ROBERTS: Yes, it is all being managed by the one agency. However, confusion exists about the member's interpretation of paragraph (d). "Identifying relatives by blood" does not mean by taking blood samples; it is done by identifying their mother, their sister or whomever.

Mrs EDWARDES: I am referring to the information that has been collected and that the minister is linking together under the one forensic database. That can include the DNA database and any other database, however they are currently held. Is the minister bringing all the identifying particulars and information together, even though they are under separate databases, or has the minister included paragraphs (b) and (d) in this definition for the sake of convenience?

Mrs ROBERTS: I am not 100 per cent sure that I have understood the member's question. However, one of the key points is that this clause refers to other databases, which could be fingerprint databases or the like. I also draw the member's attention to clause 78 in which there is a table showing permissible comparisons. For example, the missing person's index under the column headed "F" could be regarded as a database and would then be included as part of the DNA database.

Mr OMODEI: Paragraph (b) of the forensic database definition states -

identifying information of people lawfully obtained before the commencement of this Act;

Is the minister saying that that is lawful under other Acts of Parliament - for example, section 236 of the Criminal Code and a range of other Acts - rather than lawful as applies to this legislation and the process in this legislation?

Mrs ROBERTS: Yes, what the member said is accurate. For example, we have a fingerprint database that we are not likely to throw away. Any information that has been lawfully obtained up until this time by the use of other pieces of legislation -

Mr Omodei: A lot of DNA evidence would already have been collected, but not under this legislation.

Mrs ROBERTS: DNA is taken for different purposes. For example, DNA might have been taken from crime scenes that we would consider matching up.

Mrs EDWARDES: The minister referred us to the table in clause 78; however, she is referring to a DNA index whereas paragraph (d) of the forensic database definition is not necessarily a DNA index. We are dealing with any other database.

Mrs Roberts: That is right.

Mrs EDWARDES: Therefore, we have a DNA database, a missing person's database, an old information database, a fingerprints database, etc. Is the minister bringing all those databases together under the one police unit with regard to identifying legislation?

Mrs Roberts: No.

Clause put and passed.

Clause 62: Identifying information of volunteers -

Mrs EDWARDES: Subclause (1) states -

> identifying information of a volunteer obtained under Part 4 Division 2 -

That deals with the issue of the volunteers -

> (a) must not -
>
> (i) be compared with any information in a forensic database; or
>
> (ii) be put in a forensic database,
>
> except in accordance with the decision of the volunteer, or responsible person, made or changed under section 20;

Although this appears in the negative, what is being consented to under the previous clause with volunteers can be used as appropriate identifying information in the DNA database. Subclause (1)(b) states -

> if it is a DNA profile and may be compared with information in a DNA database - may only be compared in accordance with section 78;

Clause 78 contains the table referred to by the minister. The table refers to volunteers (limited purposes) index and volunteers (unlimited purposes) index. The issue is how the comparison between DNA information taken from the crime scene is limited for the volunteers (limited purposes) index, and we will clarify what "limited" means later on. In the case of the volunteers (unlimited purposes) index, a comparison can be done with information from the crime scene and the suspect. There is a no under "Of volunteer or involved person (limited purposes)" and under "Of offender" there is a yes. If the volunteer said yes to unlimited use, unlimited time - maybe we will return to it, although it is referred to in clause 78 - paragraph (c) states that that information must be destroyed in accordance with the decision of the volunteer made or changed under section 20.

Mrs ROBERTS: This provision originates from a model Bill. When a decision was made with respect to the model Bill, we were not comfortable with making the comparison of evidence totally unlimited for those categories, even though unlimited purposes exist for the volunteers in the table under clause 78, to which the member has referred. A cautious approach has been adopted federally because the unlimited volunteers cannot be compared to the limited volunteers. Although the unlimited volunteers are agreeable to the comparison, the limited volunteers are not agreeable and, therefore, the two cannot be compared.

Mrs Edwardes: I refer again to the table. Why is it not possible to compare the DNA information from volunteers or involved person (unlimited purposes), to that of the volunteers (unlimited purposes) index?

Mrs ROBERTS: That is what the model Bill suggested. It is one of the points upon which the Commonwealth insisted.

Mrs EDWARDES: This is when some of these model Bills need to be questioned because it does not make sense to me, nor to the minister, otherwise she would have given a different answer. Perhaps, when we get to the table in clause 78, we can go through some of those aspects.

Mrs ROBERTS: Various comparisons exist under the model Bill that the Commonwealth did not think should be made, which includes comparing suspect DNA information to the suspect DNA profile, and so forth. Although there are different views about what should have occurred, it was interesting to note that the Commonwealth's perspective, expressed at the meeting I attended last week, was fairly critical of the divergences on a range of pieces of legislation. With respect to some of the legislation that we are now proceeding with, I made the point that if we waited for the Commonwealth to get its model Bill together, we could all die wondering. That is why I was keen to make it clear at that meeting that we had quite knowingly jumped the gun on some of the legislation and that if the Commonwealth wanted to watch how our legislation

worked and to use it as model legislation later on, it was welcome to do so. The Commonwealth's argument is that because this is a national database, everybody should do the same matchings, as much as possible. That would allow for greater consistency across all the jurisdictions. The Commonwealth believes that that would enhance the matching ability and reduce the opportunity for errors resulting from different jurisdictions using information. For example, information we put onto the national database using one set of criteria could be used by another jurisdiction working under different comparisons. That is likely to lead to confusion and error. The worry is that people might get off because an error is made in the matching process. The Commonwealth is determined that these matching procedures be common to all the jurisdictions.

Clause put and passed.

Clause 63 put and passed.

Clause 64: Identifying information of police officers -

Mrs EDWARDES: This clause relates to the identifying information of a person obtained under part 4, division 4, and is subject to subclause (2), which states -

> If that identifying information is a DNA profile, it may only be compared with information in a DNA database in accordance with section 78, . . .

Clause 78 contains the table to which we referred. No index in that table relates to police officers. I am not sure whether police officers would fit under the index of crime scene, volunteers, offenders, missing persons or deceased persons. They do not seem to fit in the table. The subclause continues -

> and for the purposes of that section the DNA profile is taken to have been obtained from a volunteer under Part 4 Division 2 for or in connection with the forensic purposes . . .

It seems that the police officers will be treated as volunteers - I should have read further!

According to subclause (1)(a), the information given by a police officer may, with the approval of the Commissioner of Police, be compared with other information that is or is not contained in a forensic database. I do not know what else the information could be compared with, because the definition of forensic database - which we have gone through - is extensive. The information may be compared with other information in connection with the purposes prescribed under clause 22, which is the clause that allows the Commissioner of Police to give approval. Under subclause (1)(b), the information may, with the approval of the person from whom the sample was taken, be put into a forensic database. Where will the information of a police officer be stored until he leaves the Police Force if he does not give approval for that information to be put into a forensic database?

Mrs Roberts: It might be a fingerprint rather than a DNA sample.

Mrs EDWARDES: No. Under the definition, fingerprints are included in the forensic database.

Mrs Roberts: It does not have to be in the database.

Mrs EDWARDES: It does not have to be held in a computer. What will happen to the information obtained from a police officer under the authorisation of the Commissioner of Police?

Mrs ROBERTS: I am told that the general procedure is to try to exclude as many police officers as possible. Once those exclusions are completed, there may not be any necessity to put the information in the database.

Mrs Edwardes: The information is kept until the person leaves the service. Subclause (3) says that the information must be destroyed if the person ceases to be a person under clause 22; that is, a police officer.

Mrs ROBERTS: What is the member's concern?

Mrs Edwardes: What will happen with that information if it is not stored in the forensic database? How will it be secured and who will look after it?

Mrs ROBERTS: The information given to me is that PathCentre will maintain the police officers' DNA profiles separate from the database. That will reduce the need to keep taking DNA samples from police officers.

Mrs Edwardes: Will the samples then be kept in accordance with all the normal protocols?

Mrs ROBERTS: Absolutely.

Clause put and passed.

Clause 65: Identifying information of involved people -

Mrs EDWARDES: The clauses in this part deal with the identifying information of the respective persons. This clause deals with the involved people, and prescribes what the sample can be compared with and when it must be destroyed. An involved person is a witness or a victim. In this instance, information must be destroyed within two years after the information is obtained if no person is charged with the offence for which the person is considered an involved person, or if a person is charged and criminal proceedings in respect of the charge, including proceedings on appeal, are completed.

Mrs ROBERTS: Those are protections. The other point is that that will happen only if the destruction of that information is requested.

Clause put and passed.

Clause 66: Identifying information of uncharged suspects -

Mrs EDWARDES: In this instance, the relevant offence is an offence that the suspect is suspected of having committed and for which identifying information has been obtained under part 6, or offence arising out of the same circumstances as that offence. I am not sure why that has been included in the part relating to what can be done with the identifying information rather than in the part dealing with uncharged suspects. This clause deals with what must happen to the sample, such as destruction within two years etc. If the suspect from whom identifying information is obtained is subsequently charged, clause 67 will apply, unless the information should have been destroyed. What is meant by that? Why would the information be destroyed if the suspect is charged and clause 67 then applies? The information would have been taken before the suspect was charged.

Mrs ROBERTS: Subclause (3) states -

> If a suspect from whom identifying information is obtained under Part 6 is subsequently charged with a relevant offence, section 67 applies to the information unless the information should have been destroyed.

Subclause (2)(c) states that it -

> must be destroyed if -
>
> (i) within 2 years after the information is obtained the suspect is not charged . . .
>
> (ii) the suspect is so charged but the charge is finalised without a finding of guilt,

Mrs Edwardes: Is the person charged under subclause (3) after two years? In other words, a DNA sample was taken, two years have lapsed, and he is charged two and a half years after the sample was taken.

Mrs ROBERTS: That is the assumption I am making. The DNA sample was taken at a period greater than two years before. It could potentially have been taken two and a half or three years earlier. The clause would cover that eventuality.

Clause put and passed.

Clause 67 put and passed.

Clause 68: Results of matched information to be made available to suspects -

Mrs EDWARDES: Under this clause identifying information has been received and compared with the provisions of clause 67. Clause 68 (1)(b) reads -

> the information is compared with and found to match information, whether or not in a forensic database, obtained otherwise in relation to the investigation of the offence,
>
> the officer in charge of the investigation of the offence must ensure that the results of the comparison are made available to the person.

Subclause (2) reads -

> . . . as soon as practicable after they are obtained unless to do so would prejudice the investigation of any offence.

That is a very important check and balance on the process.

Mrs Roberts: You are right.

Clause put and passed.

Clauses 69 to 71 put and passed.

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

Mrs EDWARDES: Subclause (1) reads -

> If the Supreme Court is satisfied that there is good reason to keep identifying information after the time when under this Part it must be destroyed -

It can be kept for a period set by the court and despite anything else in this part. Such an order can be amended or cancelled at any time. Under subclause (3) -

> A person whose identifying information is the subject of an application for an order under this section is entitled to be heard on the application.

Who will make the application and how will it be implemented? Will it require regulations or rules to be put in place?

Mrs ROBERTS: I understand that this is a type of safety valve or just-in-case clause. The police would need to have a good reason to keep some identifying information beyond the time limit. It might be because the police think the identifying information might assist them to solve a murder inquiry or some long and drawn out investigation. The police want the ability to apply to the Supreme Court to enable that information to be kept. As the clause specifies, the court can indicate that it be kept for a set period. The Supreme Court can also cancel or amend such an order. The person whose identifying information it is might seek to have the order of the Supreme Court cancelled at some point. The Government hopes that the provision is never or rarely used. It is a bit of a catch-all clause, so that if the police feel that they are getting pretty close to solving some major crime such as a protracted murder case, they have the ability to go to the Supreme Court to retain that DNA information.

Mrs EDWARDES: I do not have a problem with judicial supervision of the retention of the identifying information past the set time, because it must go through the proper procedures and processes. What is interesting about this clause is the omission of who will make the application. I am assuming that it is the Commissioner of Police. Is it the person with whom the identifying information resides? The clause does not restrict, limit or require.

Mrs Roberts: It could be the Commissioner of Police or the Director of Public Prosecutions.

Mrs EDWARDES: Will regulations be required in order to implement this clause? The clause is not complete. Under whose application will the Supreme Court hear matters such as this?

Mrs ROBERTS: There might need to be some clarification in the regulations. As I interjected when the member was on her feet, I anticipate that the Commissioner of Police would make such an application in most cases, but the openness of this clause allows the DPP to also seek such an order from the Supreme Court.

Clause put and passed.

Clause 73: Disclosure of identifying information -

Mrs EDWARDES: This is also an important clause because it deals with those people who have or have had access to their identifying information and the circumstances in which that information can be disclosed. It lists the circumstances; I do not propose to go through them all. It also has a catch-all provision - for any purpose prescribed by way of regulation. However, subclause (2) states that -

> This section does not apply in relation to information that cannot be used to discover the identity of a person.

If some form of identifying information does not actually identify the person from whom it was taken, it can be disclosed in any other circumstance. I am not sure what that refers to. Under subclause (3) -

> A person who has access, or has had access, to identifying information, whether or not in a forensic database, must not disclose the information except as provided by this section.

The penalty is two years imprisonment. I am not sure whether a public interest test should be applied to the penalty. The penalty appears to be quite low.

Mrs ROBERTS: The member for Kingsley drew my attention to subclause (2), which states -

> This section does not apply in relation to information that cannot be used to discover the identity of a person.

My understanding is that this clause was included so that the information could be used for things such as academic research, in which there might be some benefit in providing access to the information, so long as no-one's identity is disclosed. The penalty is two years.

Mrs Edwardes: That appears to be too low, given the sensitivity of the information. Was that compared with the model Bill or our legislation?

Mrs ROBERTS: The two years is specified in the model Bill. It is also specified in the New South Wales Bill and the commonwealth legislation.

Mrs Edwardes: It was not compared with our Criminal Code or Police Act?

Mrs ROBERTS: Those jurisdictions are generally much softer than ours.

Clause put and passed.

Clause 74: Use of illegal identifying information -

Mrs EDWARDES: Illegal identifying information is defined as any identifying information that has been obtained in contravention of this Bill or a corresponding law of a participating jurisdiction.

Mrs Roberts: You will probably take my glass tonight!

Mrs EDWARDES: If I were to take the minister's glass and get it analysed, I would get some identifying information about the minister.

Mrs Roberts: That is right. You could take a lipstick out of my handbag or a hair out of my hairbrush.

Mrs EDWARDES: If I were to take the minister's glass and get it analysed, apart from the fact that it would cost me money, I could be up for imprisonment for two years.

Mrs ROBERTS: Yes. As we have discussed, a person does not need very much to undertake a DNA analysis. A person may get a piece of a person's clothing or a hair out of a person's hairbrush, or a toothbrush, a lipstick or a range of personal belongings, and from that the person will have a DNA sample and be able to run some form of database. People may have sinister reasons for wanting to do that.

Clause put and passed.

Clause 75: Improper use of information obtained in accordance with Act -

Mrs EDWARDES: This clause deals with an illegal database. The minister said that people may have sinister reasons for obtaining a DNA sample. Has this proved to be a problem in any other jurisdiction?

Mrs ROBERTS: Not that we are aware of. This is just part of our taking a very cautious approach.

Clause put and passed.

Clause 76: Definitions -

Mrs ROBERTS: I move -

> Page 67, line 17 - To delete "3" and substitute "6".

This amendment corrects a typographical error.

Mrs EDWARDES: Part 10 of the Bill deals with DNA databases. We have dealt briefly with the table that shows the permitted comparisons with DNA database indexes. This clause defines the crime scene index. It also states that a DNA database means a database, whether or not on a computer and however described. If this provision was taken from the model Bill, it was probably drafted before CrimTrac had been finalised and before we knew the form and manner that it would take. Therefore, this definition is probably no longer needed.

Mrs ROBERTS: Because scientific development happens so fast, in the future there may be some form of database that is more high-tech than a computer; therefore, this wording may alleviate the need to amend the legislation in the future.

Amendment put and passed.

Mr MASTERS: Unfortunately I was not here in time to make a contribution at the second reading stage. I wish to raise a number of technical issues. I am not sure whether the minister's advisers have the technical background to provide an answer; if not, I will wait for some comment from the minister at the third reading stage. Part 10 is about DNA databases, and although it refers to all sorts of different databases, none of which I have a problem with, there is no definition of a DNA profile. I am a bit curious about whether some historical issues are involved or it is an oversight. I suspect it is not an oversight. I am particularly interested because a number of different techniques are available to produce a person's DNA profile. I refer to a paper entitled

"DNA Testing in Forensic Science" by Dr Bill Tilstone. That paper is from a 1991 conference; it does not say what conference. Ten years ago, three techniques were available to produce a person's DNA profile. The first technique was VNTR, which stands for variable number tandem repeat. I do not have the faintest idea what that means. The second technique was single locus VNTR. The third technique was PCR, which stands for polymerase chain reaction. The paper concludes by saying that the PCR technique is by far the most preferred.

I imagine that since those days, a lot more work has been done on the science and technology behind the production of a person's DNA profile. However, I have found it very difficult to investigate what that means. When I searched the Internet, I came up with a large number of companies, all in the United States, that are involved in DNA testing in one form or another. One company called Analytical Genetic Testing Center Inc offers a range of services, including parentage testing; inheritance reconstruction, at a cost of only $250 per person; prenatal paternity testing; testing of forensic or civil evidence; and so on. Nothing that I found on the Internet was able to give me the technical background of which technique is used to produce a DNA profile. In order to come up with an understanding of how a DNA profile is gathered I had to go to a children's web site called "Kids DNA Tracing". I will not read members the explanation provided.

Mr Kucera: It seems fairly appropriate.

Mr MASTERS: I still did not understand it, in spite of that. From what I understand of the situation, it appears that just one technique is being used to establish a person's DNA profile. It is important that the minister, as the person who at the end of the day will be responsible for everything to do with DNA databases, puts something on the record. The minister spoke a moment ago about a DNA database changing over time if there were a better technique than using computers. The same sort of logic could apply to the way in which a person's DNA profile is put together. There may be new ways of differentiating a person's DNA make-up, and instead of comparing the sort of bar code system that we have seen on television in the past, we may have an entirely new way of determining whether a sample comes from one person or another.

Mrs ROBERTS: All of Australia is using a system called Profiler Plus, which provides for 10 locus, and it is probably intentional that the model Bill and this legislation do not specify a definition of a DNA profile. I understand that in America, for example, people are looking at moving from a 10 locus system up to a 16 locus system, and then, depending on how many locus they go to, my understanding is that that would then give some level of higher probability for the accuracy of the DNA match. The scientific experts at commonwealth level who are involved with CrimTrac are happy with the Profiler Plus system and the 10 locus, but there would be some dangers in specifying that in the legislation itself because it may be that at some future time we will move to a different program or go to a higher level of locus for some reason.

Mr MASTERS: I think I know enough about the background of DNA testing to almost understand what the minister was saying. I think a locus is a position on a piece of DNA that is chosen from the suspect and the sample. I do not know how the technique is applied to find the same locus, but the Profiler Plus system uses 10 locus - that would actually be loci if one were a student of Latin, but we have to allow for American English rather than the Queen's English. I can understand why there is a reluctance to define it further if we are moving from 10 to 16 locus or using different techniques. Can the minister advise whether the Profiler Plus system in use in Australia is also the system used in the United States, or is that country looking at something a little different or more up-market?

Mrs ROBERTS: The Profiler Plus system is not used in the USA, to the best of our knowledge. It is my own thought that Profiler Plus may be used in the United Kingdom, but I am not 100 per cent confident of that.

Mr MASTERS: I ask that the minister, during the third reading stage, make some comment about the fact that we are not using the same system as the Americans, and whether there are some inherent advantages in using the British system over the American system, if that is what we are doing.

My next comment relates to the issue of quality control and the fact that this DNA profiling is an extremely powerful, new scientific forensic technique, but like any piece of science it needs to be done correctly and consistently to make sure that the answers obtained stand up in a court of law. I will quote from some material I downloaded from the Internet from the United States Department of Justice. This was a paper given by A.J. Eisenberg entitled "DNA Advisory Board Standards". It states -

> The DNA Advisory Board . . . was established by the Director of the Federal Bureau of Investigation under the DNA Identification Act of 1994 (the Act) . . .

Clearly a federal Act in the USA seeks to guarantee the quality controls that have to be enshrined in everything that is done in relation to DNA profiling. Also contained in the material I downloaded from the Internet was an

article by J. Evans from the National Association of Testing Authorities in New South Wales entitled "Forensic Science Laboratory Accreditation Criteria and ISO 17025". It states -

> In Australia, all laboratories accredited by the National Association of Testing Authorities . . . including forensic science laboratories must comply with the international laboratory accreditation standard ISO Guide 25, soon to be renamed ISO 17025.

Is the minister satisfied that in Australia, if there were a lack of federal legislation protecting or guaranteeing quality control, ISO 17025 would provide the quality of output in the DNA profiling process that I am sure the minister and everybody else here wants? Under ISO 17025 a huge range of issues are addressed - supervision, documentation, internal audit, complaints, corrective action, preventative action, qualifications of personnel and their management, training and development of personnel, evidence management, quality assurance as a separate topic, general issues and calibration of equipment, preparation of reports, accommodation and safety of the testing laboratories. Many issues are involved and I would like the minister to advise whether there is federal legislation covering this issue.

Mrs ROBERTS: Yes, there is federal legislation. By way of clarification, although I think I have clarified this a couple of times already today, participation in the CrimTrac national criminal investigation DNA database - the NCIDD - is dependent upon compliance with established standards of protocols; each laboratory submitting material to the NCIDD must be accredited to NATA - the National Association of Testing Authorities - Australian standards. At present PathCentre is NATA-accredited for forensic biology techniques, including DNA analysis, hair analysis and species determination, and operates under - this is what PathCentre has advised - Australian standard SO/IEC17025:1999, general requirements for the competence of testing and calibration laboratories, as well as the supplementary requirements for accreditation in the field of forensic science.

I am assured that by the time the legislation is proclaimed the Police Service will have in place strict guidelines, policies and procedures to ensure that all DNA-related material is handled in a manner acceptable to the standards adopted by PathCentre. Compliance with strict criteria pertaining to the continuity and security of all DNA samples is a requirement before PathCentre or another accredited institution shall receive evidence from the police.

Clause, as amended, put and passed.

Clause 77: DNA profiles lawfully obtained before commencement of Part -

Mrs EDWARDES: This clause states that DNA profiles lawfully obtained before the commencement of this part may be retained in a statistical index. I take it that all information obtained under the legislation will be recorded in a statistical index?

Mrs ROBERTS: I believe so.

Clause put and passed.

Clause 78: Permitted comparisons with DNA database indexes -

Mrs EDWARDES: This clause provides easy to read comparisons between indexes. The comparisons must not be made if the forensic purposes for which the DNA profile may be used do not include the purpose for which the comparison is sought to be made. The column at the extreme left of the table indicates the DNA profiles taken. A DNA sample from a crime scene can be compared with information in the DNA database listed under columns A to G. A DNA profile from a crime scene can be compared with all categories except those of volunteers, which are in a limited purposes index. Volunteers are defined as witnesses, victims and people from other jurisdictions, as well as deceased persons. A DNA profile of a suspect cannot be compared with the suspects index or the volunteers limited purposes index. It can be compared with the volunteers unlimited purposes index. That is probably because it is unlimited and people can use the information as they want. It must be kept in mind that it contains information on witnesses, victims and deceased persons.

I do not understand why there is a restriction on comparisons between a suspect and the suspects index. The minister said earlier that it was a national database and there was concern about ensuring that there was no contamination or statistical difference that could lead to an offender not being caught or being let off. I do not have the necessary technical skills to understand fully the total process of how information is gathered and the forensic skills necessary to determine how that might happen. It does not appear to make sense that a comparison cannot be made. If a DNA profile compares with a previous suspects index, it may mean that the suspect is appearing on more than one occasion and is involved with other crime scenes. Once a DNA profile

has been obtained, how do the police know whether the same profile has been obtained previously? Unless a comparison is made, there is no way of knowing whether the same DNA sample has been obtained previously.

Mrs ROBERTS: If a suspect were found guilty of a crime the statistic it represents would be moved to a different column on the table. A comparison could be made once it was listed on the offenders index. The member for Kingsley has acknowledged that there is a very strong push by the Commonwealth to have as much uniformity as possible when looking at permissible comparisons. It is not for any scientific reason. If certain comparisons are permissible in one jurisdiction but not another, the whole issue becomes more complicated. Commonwealth officers are urging strongly against matters becoming complicated. There may be some advantages in higher levels of comparisons being made, as suggested by the member for Kingsley. In the interests of national uniformity, I believe it is appropriate to proceed with the permissible comparisons in accordance with other jurisdictions. It is an area that should be monitored by us and nationally. After a period of monitoring, there may be an opportunity for all jurisdictions to agree on changes to the table that show the permissible comparisons. I am convinced that the commonwealth approach of uniformity between jurisdictions on comparisons is the best approach for now.

Mrs EDWARDES: I accept what the minister says. Do all jurisdictions have the same table showing permissible comparisons? Are there any differences? If all the comparisons cannot be done, how can it be known whether a DNA sample has previously been obtained?

Mrs ROBERTS: Presumably, there is a record of DNA being obtained previously.

Mrs Edwardes: If a comparison cannot be done with the index, how can it be matched?

Mrs ROBERTS: Fingerprints may be used instead of DNA in order to find a match.

Mrs Edwardes: If a person does not admit that he has previously given a DNA sample, how will it be known that he has given a sample? He may have provided a sample under a different category that is not included in one of the indexes.

Mrs ROBERTS: It will not necessarily be known unless there is some other form of record. With respect to other jurisdictions, there are some minor differences between permissible comparisons and the national database. Ours has one minor difference, which is the missing persons index. We are permitting the comparison from the suspects index to the missing persons index, as shown in the table. The Western Australia Police Service obviously has a strong feeling that this will be of great use.

Mrs Edwardes: What are the other differences from other jurisdictions?

Mrs ROBERTS: I do not have that information here. We were sent the information, and any differences were relatively minor; of a similar degree to the difference between Western Australia's and the model table of comparisons. Did the Government not provide that information to the member for Warren-Blackwood?

Mrs Edwardes: The Opposition received all that information. The minister' staff were excellent in the provision of their information.

Mr OMODEI: I cannot recall receiving the information.

Mrs Roberts: The Opposition received it all. Did the member not read it all?

Mr OMODEI: Was it that great stack of about six karri trees?

Did the other States have great divergences from the model? Is it true that Victoria and New South Wales are having difficulties with their legislation? Does that mean they have deviated from the model to some extent? Does the table have to adhere strictly to the model? Western Australia wants legislation that will work in this State. If that means there is a divergence from the model, so be it. I wonder why we should even be comparing indexes with other States. Western Australia needs legislation that works in this State. I presume the Commonwealth would like each State's legislation to mirror the model Bill as closely as possible. If that is not exactly the case, and the legislation works in Western Australia, maybe Western Australia's Bill should be used as the model.

Mrs ROBERTS: The difficulties in New South Wales and Victoria, referred to by the member, mainly centre around the threshold level at which the DNA sample may be taken. They have gone for a higher threshold level, such as the five years in the model Bill, and that is providing some difficulties in their being able to get the number of samples they would like to obtain in order to attain a greater level of success in solving crimes. Those States' Police Services strongly believe that if they had a lower threshold of 12 months, as provided for in this Bill, their legislation would operate much more effectively. That is the key point.

Two arguments come from the Commonwealth. Firstly, there is the heavy-handed approach. The States should have the model Bill, or something very close to it, or they will not be allowed to access CrimTrac and be part of the national system. Secondly, there is the need for consistency in the legislation between all the States, and I can see the potential benefits of that. The capacity to compare one class of persons on the database with another would be enhanced and made simpler and clearer if all the States could agree who they were comparing with whom. That is why I have supported going largely with the model Bill in the comparisons that can be made. I do not see the matter of the threshold as in any way impeding the model Bill or the way the database operates. All it means is that Western Australia will be able to provide to the database a greater percentage of data than some of the other jurisdictions. I understand also that, in the United Kingdom, where this system has been operating much longer, a higher level threshold originally applied, but it has now been reduced to capture a greater number of DNA profiles. I am seeking clarification of the situation in New Zealand, which also has been operating this system for some time. The chief way in which our legislation is superior is that it has that lower threshold of 12 months, which is the lowest threshold of any state jurisdiction in Australia, and much lower than the five-year threshold of the model Bill.

Mrs EDWARDES: I thank the minister for that explanation. Although I can understand to it to a limited extent, the profiles being compared nationally will be in a particular index. Therefore, if there are crime scene indexes or suspects indexes, can they be used only for the purposes outlined under Western Australian legislation, and not that of the other State, or must that State then convert that information and use it under its own legislation? Similarly, if Western Australia is receiving information from the eastern States about a suspect, can it be linked to Western Australia's missing persons index, which is information compiled for a different reason? Does Western Australia have to comply with the comparative table from the originating jurisdiction? If that is the case, I can understand why there would be a need for some form of national uniformity, because it would limit the problems involved in making the comparisons when the information that is being used is from other jurisdictions. Other than that, I believe the minister will need a mathematics qualification, and she should forget about being a lawyer or an English teacher.

Mrs ROBERTS: I was also made to teach mathematics when I was a teacher! Because I had done a couple of units of mathematics as part of my degree I could also teach mathematics. That was the nature of things - they needed somebody who could teach a combination of maths and English.

These matters are still being worked through at the national level. The member for Kingsley is right - it is very complex. Obviously, any comparative information would have to comply with the Western Australian legislation before WA could use it. That would apply for other jurisdictions as well. My understanding is that if restrictions in place on comparisons in another State were not in place in Western Australia, this State would not be able to compare the other State's data with its own, because the DNA profile would have been taken on the basis that it would be compared with only certain other categories of DNA profiles. It is complicated, and where divergences exist between the States, albeit minor ones, those matters will complicate the issue further. This is of concern to the Commonwealth, and this matter has not yet been satisfactorily concluded by the Commonwealth.

Clause put and passed.

Clause 79: Duties of database managers -

Mrs EDWARDES: Clause 79 deals with the duties of database managers. The Opposition has been told by the minister that it is likely that the management of these databases will go out to tender. The Government will be quite restricted in that process. A contract following their tender would have to outline the purposes as highlighted in the legislation. If that document does not have any commercially sensitive confidential information - I am very conscious that that is a common phrase that is bandied around far too frequently in order to keep contracts secret - I wonder whether the minister will make that document available, if not to the House, for the purposes of edification. Once the process is operational, it might be useful for members of this House to be invited to visit the database manager and get a full briefing on what occurs there.

Mrs ROBERTS: I am not aware of anything at this point that would preclude me from providing the member for Kingsley with a copy of the proposed contract that she requested. I am agreeable to that, contingent upon my not receiving any advice that this would compromise matters. I am as mindful as the member about confidentiality clauses and I look favourably on the suggestion that I provide the member with that contract. However, I will need to get further information on the advisability of making that contract available.

Clause put and passed.

Clause 80: Operators of DNA databases to be authorised -

Mrs Edwardes: This clause deals with the authorisation of a person to operate a DNA database. Clause 80(3) states -

> A person must not create, keep, operate, control or manage a DNA database except with the written authority of the Minister.

Clause 75, under the heading "Improper use of information obtained in accordance with Act" states -

> A person who - . . .
>
> (b) puts information obtained in accordance with this Act in a forensic database otherwise that in accordance with this Part,
>
> commits an offence.

The penalty for that offence is two years imprisonment; however, clause 80(3) provides a penalty of $250 000. This penalty is separate from obtaining information gained under this Bill. Previously we talked about obtaining a DNA sample from a drinking glass and so on. However, that was not technically correct in relation to that clause; it relates more to this clause and the $250 000 fine. This clause deals with the creation of a DNA database, not the use of its information.

Mrs ROBERTS: The member is right. This clause deals with the creation, keeping, operating, control or management of a DNA database, and a penalty of $250 000 is imposed on people who do so without the written authority of the minister. The other clause related to the illegal use of information; that is why the penalty differed.

Clause put and passed.

Clause 81: Evidence of refusal of consent etc. -

Mrs EDWARDES: This is a lovely clause, which states -

> Evidence that a person refused to or did not consent, or withdrew consent, to an identifying procedure being done on the person is not admissible in proceedings against the person except -

The exception is a complaint against a police officer, which is relevant under clause 81(1)(a) or (b).

Clause put and passed.

Clause 82 put and passed.

Clause 83: Evidence obtained illegally -

Mrs EDWARDES: Under this clause, if an identifying procedure is done on a person, and any requirement in relation to that procedure, including a requirement that arises before or after the actual procedure, is contravened, evidence to which this clause applies is not admissible in any criminal proceedings against the person in court unless the person does not object to the admission of the evidence; the court decides otherwise; or the court is of the opinion that the contravention arose out of a mistaken but reasonable belief as to the age of a child. That picks up one of the aspects to which I referred earlier.

Clause put and passed.

Clauses 84 and 85 put and passed.

Clause 86: Court may admit inadmissible evidence -

Mrs EDWARDES: This clause deals with the admission into court of inadmissible evidence. Clause 86(3) outlines a number of instances that the court must take into account, including -

> (a) any objection to the evidence being admitted by the person against whom the evidence may be given;

It also refers to the seriousness of the offence etc. Clause 86(2) states -

> The court may decide to admit the evidence if it is satisfied that the desirability of admitting the evidence outweighs the undesirability of admitting the evidence.

Clause put and passed.

Clause 87: Definitions -

Mrs EDWARDES: The definition of "corresponding law" under this clause is a law prescribed under section 88 to be a corresponding law. Clause 88 informs us what a corresponding law is. That is a superfluous definition.

Clause put and passed.

Clauses 88 and 89 put and passed.

Clause 90: Forensic orders registered in WA may be executed in WA -

Mrs EDWARDES: I refer to the sharing of information with other jurisdictions. When dealing with forensic orders that may be executed in Western Australia, how do we get the other information? For instance, if we reasonably suspect that a person from whom we want DNA evidence is in the eastern States, how do we get that information? Do we have to get an order from Western Australia, and physically take it east to carry it out? Do we require the police officers or the authorised persons under the Acts of the other States to carry it out because the person is - although only temporarily - residing in that area? Similarly, if an officer from the eastern States wanted DNA or any other identifying information taken from a person in Western Australia, how would that occur? That is apart from the DNA information on the database which, as the minister indicated, has not been properly worked through. I take it that an order must be sought or the officers from the eastern States must seek an order in Western Australia to access the information. However, the next clause provides a simple provision dealing with the transfer of information between minister and minister, which does not deal with the complexity under clause 90.

Mrs ROBERTS: This is one of the few clauses that I believe is clarified in the explanatory memorandum, which states -

> This section enables registered forensic orders from a participating jurisdiction to be carried out by a police officer in this State.

In the first instance, one of the other participating jurisdictions, such as New South Wales or Victoria, may have a registered forensic order, and police officers in this State would carry out that order. It then goes on to say that if the order provides for acts to be done that are different from acts authorised under this legislation, the order must be carried out in accordance with the law from the participating jurisdiction. My understanding is that if the order is made in Victoria and is to be carried out by a police officer in this State, the order must be carried out in accordance with the Victorian law, because Victoria is the participating jurisdiction. Presumably that will apply in the reverse; that is, if we obtained an order as a participating jurisdiction, that order would be carried out by a police officer in another State in accordance with our legislation.

Clause put and passed.

Clause 91: Arrangements for sharing information -

Mrs EDWARDES: This is the clause to which I referred and which relates to information-sharing arrangements between ministers in participating jurisdictions. Is this an enabling provision to facilitate the sharing of the database between jurisdictions? Why is it necessary if we are all to use CrimTrac? I thought that only one agreement between the federal Government, which is ostensibly running CrimTrac, and the States would be necessary for the database to operate in all participating jurisdictions. A State involved in CrimTrac would also be involved in the sharing of the information. Would that not have been a simpler way of effecting this?

Mrs ROBERTS: I understand that if the Minister for Police in this State comes to an information-sharing agreement with the police minister in another State, CrimTrac will apply.

Mrs Edwardes: Do you mean that CrimTrac is not an all-in agreement between participating jurisdictions and the federal Government, as has happened with other federal-state arrangements? Must each State have an agreement with every other State before it can participate?

Mrs ROBERTS: If the laws between States correspond, it is assumed that the information will be shared. That is catered for by that agreement. If the laws do not correspond, the ministers of those States will need to have some agreement for the sharing of information. If the ministers have such an agreement, CrimTrac will come into play.

Mr OMODEI: I probably missed the explanation, but subclause (1)(a) refers to the transmission of information on this State's DNA database to the authorised officer of another jurisdiction. That information is then given to the Commissioner of Police. Who is the authorised officer in each State? I gather from the answers given to the member for Kingsley that each State will have a database that may be shared by other States, and that CrimTrac will fit into that process somewhere. Will the minister explain how that will work? This clause will give us the ability to exchange or seek information from other jurisdictions. How will that fit in with CrimTrac?

Mrs ROBERTS: I understand that the Minister for Police authorises the DNA database manager to give information. That is likely to be the authorised officer about which the member asked.

Mr Omodei: The clause relates to how information is to be exchanged between States. How will that fit in with CrimTrac? A structure obviously exists whereby each State has a DNA database and is able to access the databases of other States. Where does the CrimTrac national database fit in? Is it separate?

Mrs ROBERTS: CrimTrac is essentially the big national database. In situations in which our legislation is the same as that of other States, information held by those States can be accessed very readily. If our legislation is different from another State, some agreement between the ministers may be required to enable further information to be accessed from CrimTrac.

Clause put and passed.

Clauses 92 to 94 put and passed.

Clause 95: Identifying particulars may be taken from people in custody and others (Schedule 1) -

Mrs EDWARDES: We slipped past clause 94, which requires a review of the Act to be carried out five years after commencement. That will be important, as we still do not know much of the detail about the operation of CrimTrac.

Clause 95 will allow us to take identifying particulars from people in custody; that is, remand and convicted prisoners. This clause and schedule 1 outline the process and the procedures by which that will take place. These provisions have only a three-year life span. As such, the $22 million allocated for the implementation of this Bill will be spaced out to allow those in the prison population identified as having committed a serious offence to have their identifying particulars taken. Given the amount of work that is necessary and the like, will that program be completed in three years?

Mrs ROBERTS: We have probably erred on the side of caution by allowing up to three years for that capture. It is our intention, if possible, to conduct most or all of that back capture within a six-month period. That is the aim.

Mr Omodei: You may have to build a few more jails.

Mrs ROBERTS: That aim may be misguided. At this point, the intention is to conduct that back capture within a six-month period, although we were given a generous allowance of three years to do that. Naturally, once the back capture has been completed, the procedures for convicted persons, charged suspects and the rest will come into play.

Mrs EDWARDES: The member for Warren-Blackwood made an important point about building more jails. How much money, other than the $22 million, is it estimated will be needed to cater for prisoners who are likely to spend longer in prison as a result of this legislation? Based on experiences in other jurisdictions, there will be a cost.

Mrs ROBERTS: Based on what has occurred elsewhere, particularly in the United Kingdom, the Department of Justice is anticipating a two per cent increase in the bed count, or muster. One point that was highlighted to me was that where this provision has been adopted elsewhere, those jurisdictions have been surprised by how many people captured by it are already in jail. The member for Kingsley is right; it has an impact if it means that those people are kept in jail for a longer period because they are convicted of more offences.

Clause put and passed.

Clause 96 put and passed.

Schedule 1 -

Mrs ROBERTS: I move -

> Page 83, line 32 - To delete "an intensive supervision" and substitute "a community".

The intention of the Bill in relation to back capture was to sample all convicted serious offenders who were under the control of the Department of Justice. The Sentencing Act 1995 defines "community order" as including community-based and intensive supervision orders. This amendment will enable all convicted serious offenders on community orders to be sampled as intended.

Mrs EDWARDES: The Opposition supports the amendment. We have spent some time going through the process of all the categories, so we do not need to go through each clause in schedule 1. The process for

obtaining and using identifying information from people in prison and remand centres is essentially the same as that used for charged suspects. Can the minister clarify that point or identify any particular difference?

Mrs ROBERTS: I confirm that the member's understanding of the matter is correct.

Amendment put and passed.

Schedule, as amended, put and passed.

Schedule 2 -

Mrs EDWARDES: Schedule 2 deals with consequential amendments to a series of Acts. Section 236 of the Criminal Code is amended, including the addition of a new paragraph. Section 236 deals with samples taken from an accused person in custody. The amendment would provide that -

> This section does not authorise the taking of an identifying particular (within the meaning of section 34 -

The reference to section 34 relates to the Bill currently before the House. Clause 34 of the Bill concerns identifying particulars of uncharged suspects, including DNA profiles. The amendment continues further -

> and does not apply to such an identifying particular taken under that Act.

What is the reason for the insertion of the new paragraph?

Mrs ROBERTS: As members are aware, the Criminal Investigation (Identifying People) Bill applies to people who are imprisoned for the 12-month threshold and higher, whereas the Criminal Code covers everybody.

Mrs EDWARDES: Therefore, the information gained under section 236 of the Criminal Code will be limited to those people under the 12-month maximum sentence of imprisonment. If that is not the case, what will happen with the information gained? Will it be incorporated in the database?

Mrs ROBERTS: Under section 236 of the Criminal Code, police can collect samples other than that which would be collected for the DNA database, such as a victim's blood or gunshot residue.

Mrs EDWARDES: Where the material obtained under section 236 of the code refers to a serious offence, as defined in the Bill before us, will that information be incorporated in the database? In what circumstances would that section of the code be used apart from with the taking of samples and the other aspects of that section?

Mrs ROBERTS: It would have a very limited use with identifying particulars.

Mrs Edwardes: If the information gained under this section fits within the DNA database and indexes, would it be included, and if not, why not?

Mrs ROBERTS: The amendment refers to this Bill. It needs to comply with the Bill. What has been suggested to me is that it would be an unlawful sample for the purposes of this legislation; therefore, it could not be used for any comparative purposes.

Mrs Edwardes: So even though DNA samples taken previously under section 236 might not have been taken in accordance with this Bill, they are accepted by virtue of the provisions of this Bill. However, if they are taken afterwards and do not comply with this legislation, they are outside the database.

Mrs ROBERTS: Are you talking about samples taken previously under section 236? Once this legislation is enacted, the samples would not be taken under the provisions of section 236 of the code.

Mrs Edwardes: The previous examples have already been transferred. Clause 77 refers to DNA profiles lawfully obtained before the commencement of that part. Any DNA sample taken previously under section 236 of the code forms part of the statistical index. Does it not form part of the DNA database? Is it used only on the statistical index?

Mrs ROBERTS: That is right. The member has answered her own question.

Mrs EDWARDES: That leads us to the valuable information that is already contained in a DNA database somewhere. Will that information be used for identification purposes, after which the police will have to get another sample, which complies with all the provisions of this Bill, in order to get to the offender?

Mrs Roberts: Yes.

Mrs ROBERTS: I move -

> Page 88, line 23 to page 89, line 5 - To delete the lines.

Due to the definition of the term "serious offence" being prescribed as those offences carrying a prescribed penalty of 12 months imprisonment or more, the consequential amendment to the Court Security and Custodial Services Act 1999 is no longer required.

Amendment put and passed.

Schedule, as amended, put and passed.

Title put and passed.

Third Reading

Point of Order

Mrs EDWARDES: The minister has not had the opportunity of providing the information that she said she would provide to us at the third reading stage. The minister is battling.

Mrs ROBERTS: I will certainly provide to members the information that I said I would provide. I expect all that information can be provided tomorrow. I do not believe any of these matters are so contentious in nature that we want to delay the progress of this Bill. If members are unhappy with any matters, they have the opportunity to make amendments in the other House, and the Bill will then come back to this House.

Debate Resumed

MRS ROBERTS (Midland - Minister for Police and Emergency Services) [10.51 pm]: I move -

That the Bill be now read a third time.

MR OMODEI (Warren-Blackwood) [10.51 pm]: I am disappointed that the minister has not given the Opposition the opportunity of taking a break between today and tomorrow to examine some of the points that the minister made during the consideration in detail. We have tried to cooperate as best we can to facilitate the passage of this important legislation. The member for Kingsley certainly ensured that there was close scrutiny of the legislation. We could have taken a longer and possibly more tortuous examination of the legislation. However, fundamentally we agree with the legislation and believe it is a step in the right direction to meet the requirements of the federal Minister for Justice and Customs, Senator Ellison, and the requirement that the federal Government has placed on the States to comply, as much as possible, with the model 1995 legislation as brought down by the Model Criminal Code Officers Committee and the deliberations that have occurred over a long time.

I am pleased the minister has clarified the points that the member for Kingsley and I raised during the second reading debate. We raised 11 points, and again I am disappointed that the minister has not given us the opportunity of considering her responses. My query about the minister's comment that the previous Government had delayed this legislation revolved around the minister's comment that there was a letter from the federal Attorney General. The letter that I received was from the then federal Minister for Justice and Customs, Hon Amanda Vanstone. I am pleased that the minister took the opportunity of tabling the letter from the current Minister for Justice and Customs, Senator Ellison, because it throws some light on the situation.

This legislation has gone through an extensive process over the past four or five years since the criminal code officers committee came down with the model forensic procedures Bill and a common approach by all the jurisdictions in Australia. I still have doubts about some of the answers from the minister on how the system will work. Obviously each State will be able to access the database of another State, with permission from the authorised officer and the Commissioner of Police. I am still not clear about how CrimTrac will operate and whether our information will automatically go into the CrimTrac process and whether another forensic database will exist in each State. The minister mentioned that there are differences between the legislation of the various States and the model 1995 forensic procedures legislation. It is fundamental to the success of this legislation that we have a common database and that each State also has the ability to access information from the other States. We understand from the information the minister has provided that the legislation this Parliament has processed over the past couple of weeks is the best legislation in Australia. I hope that is the case. I understand that some problems are being experienced by other States, and we will watch with close interest any issues that may arise.

Having read the letter from Senator Ellison, I will be making contact with his office to ascertain the issues to which the minister has responded, and also how the process was handled by the previous Minister for Police, Hon Kevin Prince. When I examined the detail and the copious quantity of legislation that exists in the other jurisdictions in Australia, it seemed to me that there was great cooperation between Ministers of Police and former Ministers of Police, and Ministers for Justice, to bring about mirror legislation across Australia. That is in conflict with the impression that the minister gave during her second reading speech, in which on three occasions she referred in some unkind way to the previous minister and the previous Government with regard to

the legislation. When I examined the legislation in the other jurisdictions and when that legislation had been brought into the various Parliaments, I found that most of it had been in place only in the last half of 2000. Our legislation was brought into this Parliament in November 2000, but unfortunately there was not an appropriate length of time for that legislation to be passed, albeit that the former Government had all the right intentions of getting the legislation into this place and passed to comply with the requirements of the Standing Committee of Attorneys General and the police ministers' conferences. The Liberal Party had no intention of holding up the legislation. I note from the minister's second reading speech that the legislation the Labor Party had drafted had to be changed significantly; firstly, to come close to the previous Government's legislation; and, secondly, in the light of the developments that have occurred through the ministers' conferences and the requirements of the commonwealth minister. The legislation has obviously been changed for the better, and if it becomes the model legislation for Australia - and by that I mean not the model in comparison with the model Act that is being proposed by the Commonwealth, but model legislation that works effectively to solve not only crimes that are being committed but also crimes that have been committed in the past - that will be a feather in both the minister's and the Government's cap. The Opposition will cooperate to make sure that the Western Australia Police Service is given all the powers it needs to use this legislation.

I also note with interest the minister's comments on the impact on prisons in Western Australia. She spoke about a two per cent increase in the requirement for beds, or whatever the formula is for prisons in this State. If a number of prisoners are to be found to have committed more crimes and they stay in prison longer, that means more than a two per cent increase in the space required in our prisons. The advice I have received is that 90 per cent of the crimes are committed by 10 per cent of the population, and the majority of that 10 per cent is already in our justice system. If that is the case, significantly more crimes will be solved.

It will be very interesting to note the back-capture of criminals. In my speech in the second reading debate I referred to information that I had gleaned from some of the criminologists in the United Kingdom, who indicated that 95 per cent of crimes there are committed by five per cent of the people. If that is the case, and we take DNA profiles from all of the people in our justice system who have been given a penalty in excess of 12 months, a large number of people will have a profile that can be used and cross-matched right across the system.

Members on this side are pleased to have participated in the debate. The legislation appears to have satisfied most of the requirements of the model 1995 Bill as proffered by the Commonwealth. We will be able to solve a lot more crimes in Western Australia and provide our Police Service with some tools to make it easier to solve crime. We support the legislation. I am a little disappointed that we were not given the opportunity to continue this debate tomorrow - we have not saved a great amount of time and the hour is late - as that would have allowed us to conclude the debate in an acceptable manner.

MRS EDWARDES (Kingsley) [11.03 pm]: I pick up the point raised by the member for Warren-Blackwood about the third reading debate. This procedure does not allow for completeness, particularly when members on this side and on the government side have worked together on this legislation. The normal procedure is far more effective when we have legislation that is complex and very important, both to the police and to the community.

The community has in the past expressed concern about the collection of DNA data. The member for Kalgoorlie suggested that we ought to be taking DNA data from every single person who is born and that it be retained on a database. That view is not widely accepted by the community. Some concern was expressed as to when the destruction of DNA material would occur. That issue has been addressed and I have not received any further calls in that respect.

I acknowledge the briefing by the minister's office and the police officers; it was provided in a timely fashion and met our needs. The minister indicated that if we had further concerns with any of the clauses we could have gone back to the officers in the first instance, but that is not necessarily the process and procedure of this House. If we are concerned about a major issue, members on the government side know that I am one of the first people to say that I think we will have a problem with it and that we will provide amendments - although at the moment we are only just keeping up with the legislation that is going through this House. Legislation is being rushed through this House. Legislation is being laid on the Table of the House for the appropriate time, but that does not necessarily mean we are being given an opportunity to examine it properly, particularly bearing in mind the level of complexity of the issues raised in the legislation. For instance, the Law Society of Western Australia will not have an opportunity to take this legislation to its full council until next Monday. The legislation will have gone through the lower House by the time the Law Society has its next full council meeting - that is how quick the legislation is going through this House. I have never known the Law Society or any other appropriate body that has an interest and a stake in legislation to not be provided adequate opportunity to comment. The Law Society has been talking about DNA for the past 12 years. It has been talking about the use of DNA databases for a long time in its magazine *Brief*. The Parliament is being asked to consider this piece of legislation and it should have had the benefit of the experience and advice of that organisation. Even though the

standing orders have been suspended, with a complex and important piece of legislation like this it would have been far more appropriate for the third reading to be held over until the next day. When legislation has not been complex, the Government knows we have readily moved straight to the third reading; we have dealt with all the stages of the legislation. I am sure the Government would understand, given the amount of legislation I have been dealing with, that it has received a high level of cooperation, and I am a bit disappointed that cooperation from the Government side did not occur in this instance.

The Opposition has a number of issues. The model Bill was referred to on a regular basis, particularly when the minister was not able to explain why a particular clause was included. When we are dealing with pieces of model legislation we need to question whether they are consistent with what we already have in Western Australia, and penalties are a prime example. I do not know whether the eastern States have softer penalties, but if we look at similar offences in the Criminal Code, the penalties in this piece of legislation are a bit soft by comparison. The Government has also included some changes that better reflect the size of our State, and one is the use of justices of the peace where appropriate as against the use of magistrates. That is a key difference between legislation on the eastern seaboard and legislation in Western Australia. It adequately reflects our needs in this State.

Other clauses in the Bills make no sense whatsoever and I am sorry that I cannot bring them to the attention of the minister during this third reading debate. I hope she will keep her commitment and provide us with information that she has promised. I am not sure how she can do that under the standing orders. It will obviously not happen before the Bill is transmitted to the other House. It is a shame. At least it will be on the record for the future. It is a very important thing. When people look at the legislation they will read the first reading, the second reading debate, the consideration in detail and the third reading debate. Any information introduced into the Parliament at a later time that may relate to aspects of the consideration in detail will not be easily picked up through reading the *Hansard*. That is a flaw in the minister saying that she will let the House know. It is outside the debate and does not allow for people in the future to look back at the debate. People do read the *Hansard*, particularly when interpreting legislation. Every word of the minister and members of the House is hung on when people determine what was meant by the Parliament in passing legislation. It is a critical element of the debate and our law making powers. We have the power to let people know, particularly the judiciary, how we feel about things in this State.

I pointed out what I believe to be serious discrimination against witnesses and victims - those regarded as involved persons. A mentally capable person can give consent or withdraw consent to the taking of identifying information at any point. However, if consent is not given or is withdrawn, no power is contained in the legislation for identifying information to be taken from a person. I highlighted the examples of bikie gangs. It was the subject of debate last week as the House debated the Criminal Investigation (Exceptional Powers) and Fortification Removal Bill. Witnesses and victims to a crime operate under a code of silence if they are members of a bikie gang. They will not give up identifying information. If they do not give it up the legislation has no power to compel people. If a person is mentally incapable of doing so and the responsible person is considered a suspect in a crime, a warrant can be sought in an endeavour to obtain identifying information. It is highly discriminatory.

Mr Omodei: It means that the most vulnerable members of society are not being looked after.

Mrs EDWARDES: For all the right reasons, the minister has put in place what she believes are safeguards. I believe the safeguards are discriminatory. The debate revealed that the only way around this is to put in place another guardian. If a responsible person is a suspect in a crime and is removed from looking after a vulnerable person, who will look after the vulnerable person?

Mrs Roberts: We are dealing with crimes of child abuse and sexual abuse.

Mrs EDWARDES: The minister has put in place an untimely process by ensuring that a warrant has to be obtained from a magistrate instead of a justice of the peace. Given a State the size of Western Australia, the minister has dismissed the issue of timeliness as being a critical issue.

Mrs Roberts: I do not agree.

Mrs EDWARDES: The minister may disagree; however, that is the case. The issue could have been easily dealt with. Instead of discriminating against the vulnerable in the community, the same power could be given to involved persons. If they do not give consent or they withdraw it at some point, a warrant could be sought from a court. An independent person in a court will look at the information. The difference is that the legislation pertains to a responsible person who is a suspect. All of a sudden, they are left hanging in the air. A court can send a copy of the order to the public advocate but nothing will be put in place for the vulnerable person. Such a person is likely to be at risk. Such people are being discriminated against. The minister says that they are being

discriminated against for all the right reasons. She does not accept the term "discrimination"; however, there is discrimination between a mentally capable person and a vulnerable person.

The minister has put in place distinctions between a justice of the peace and a magistrate as compared to the model Bill. They are important as they pick up on the remoteness of regions in Western Australia. For vulnerable people, officers must apply to a magistrate. Justices of the peace were used in the first place because of the timeliness of the process. If it is appropriate to use a justice of the peace in all other instances, why is it not appropriate to use one for vulnerable people when there is judicial supervision? All the same reasonable grounds have to be in place. The use of a justice of the peace in such an instance would afford a vulnerable person easy, quick access and allow the police to deal with the issue at a much earlier stage. We can throw out some of our principles for very good reason, but I think it is misplaced, particularly given that there is judicial supervision of the information.

I raised the definition of "suspect" in clause 34. The minister said she would get back to the House about the phrase "lawful custody". The phrase will create potential legal challenges when identified particulars are taken from an unchallenged suspect. The minister's explanation was that the provision was in the model Bill. It may very well be but we do not have the same legislation as States on the eastern seaboard. There may be very good reasons why there is a difference in definitions between the eastern States and Western Australia. As I pointed out, model Bills need to be tested against the legislation and practices in Western Australia, otherwise they will not be an effective tool for us.

The drafting of the legislation leaves a lot to be desired. The model Bill was drafted by draftspersons around Australia trying to pick up the differences and diversities between the States and the Territories in legislation, practices and procedures. It does not necessarily work. I acknowledge the need for uniformity, particularly with this legislation. During the second reading debate I raised the need to ensure that whatever samples were taken were able to be admissible as evidence. Any break in continuity allows challenges to the process and the procedure. A national database with national protocols overcomes to a greater extent some of the issues faced by other jurisdictions in ensuring evidence is admissible in court.

The drafting has not picked up all of the needs of Western Australia. It has been very difficult and complex in the way it has dealt with the definitions. Including definitions in each part is not a good drafting method, and I encourage parliamentary counsel to rethink that idea. One clause that I constantly highlighted was the reference to part 8. It was not necessary to indicate in each part that any identifying procedure under that part needed to be done in accordance with part 8, because every identifying procedure taken under the Bill, except for deceased persons, was intended to be in accordance with part 8. This practice is picked up from the model legislation on which this Bill was based and the drafting style is not Western Australian.

One of the other matters the minister intended to come back to the Opposition on was the operation of the Coroners Act and how, in the identification of deceased persons, the information should be made available to the families of deceased persons. The time has long gone when people could deal with deceased persons without the knowledge of the family. I would like the community to be reassured that whatever procedure is put in place in the Bill before the House will be adhered to by the coroner prior to any DNA sample being taken. From my knowledge of the Coroners Act, in this instance, an appeal is not available.

It is not satisfactory to move to the third reading on such a complex piece of legislation, when the consideration in detail stage has been dealt with over a long period. It would have been more appropriate to have dealt with the third reading the next day. It would have taken the same amount of time. It is not something that has delayed the legislation going through this House, and as such it is a little disappointing.

MRS ROBERTS (Midland - Minister for Police and Emergency Services) [11.23 pm]: I agree with the members for Warren-Blackwood and Kingsley. I too would have preferred that more time was available to consider this legislation, and look at the third reading tomorrow. As members are aware, we are fast approaching the end of the year, and my priority for this legislation is to enable it to get to the Legislative Council tomorrow. Once it gets to the Legislative Council, it must lie on the table for a week. The Legislative Council, as members will be aware, will be sitting to a later date in December than this House. Despite that, unless the legislation can get to the Legislative Council tomorrow, there will be no undertaking that the Bill will go through the Legislative Council before the end of this year.

This, perhaps, has been one of the most well-considered pieces of legislation in the period that it, or similar drafts, have been considered. Apart from the consideration that has been given to this Bill this year, a very similar Bill was introduced by the previous Minister for Police last year. That draft was around for the best part of a year. I have outlined the differences between that Bill and the present one. In the course of the debate, there have not been any significant matters at issue. The only such matter seems to be the member for Kingsley saying that protected persons should be able to go for the lower bar of a justice of the peace, rather than the

higher bar of a magistrate. She has acknowledged that other categories of persons in the model forensic procedures Bill all have to go for that higher bar of magistrate, and there is no access to justices of the peace. The Government diverges on that point, for which the member for Kingsley has commended it, to allow justices of the peace to handle a number of matters. The Government was not prepared to diverge in the area of protected persons, because it wanted to err on the side of caution with those protected persons, and afford them better protection; in effect to discriminate in their favour.

The member for Kingsley has not outlined any other more satisfactory procedure to enable the concerns I have raised to be alleviated. I am worried that her suggestion could lead to cases in which responsible persons, or perhaps the spouse of a responsible person, exerted pressure to prevent the identification procedure on the protected persons, because those persons may be suspects, or they may have a relationship with a suspect. The Government thought that having the higher bar of a magistrate adjudicating on these matters is the appropriate way to go.

Members opposite know as well as I do that this legislation has been around for a long time. Of course there are matters that come up in the consideration in detail stage that had not been contemplated in earlier considerations of the Bill. However, the Government and the Opposition have agreed on 99 per cent of matters. There are some matters on which I have said that I will get back to members and provide them with further information.

Mr Omodei: It is just disappointing that the minister did not allow the third reading to take place tomorrow. She has treated the Opposition with disdain, and there will be other opportunities for the Opposition to make this known.

Mrs ROBERTS: I had hoped not to incur the wrath and vengeance of the member for Warren-Blackwood, but I really am quite aware of the pressing legislative timetable in the Legislative Council, and I am very concerned that the Government is able to get this legislation enacted at the earliest possible opportunity. Unless it is transmitted to the Council forthwith, that will not occur.

In conclusion, despite some of the interjections of the member for Warren-Blackwood, I thank members opposite for their cooperation with the Bill and for their mainly very positive comments.

Question put and passed.

Bill read a third time and transmitted to the Council.