

CRIMINAL INVESTIGATION (IDENTIFYING PEOPLE) AMENDMENT BILL 2011

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Peter Collier (Minister for Energy)**, read a first time.

[Quorum formed.]

Second Reading

HON PETER COLLIER (North Metropolitan — Minister for Energy) [6.11 pm]: I move —

That the bill be now read a second time.

On 20 April 2009, Hon Robert Anderson, QC, handed down the Criminal Investigation (Identifying People) Act 2002 Statutory Review Reference Group's report titled "Criminal Investigation (Identifying People) Act 2002: Statutory Review". The review made 31 recommendations and 15 other findings on the Criminal Investigation (Identifying People) Act 2002, of which a number require legislative amendment to satisfy. The government is currently working on numerous amendments to address the recommendations of this review; however, it has been decided to introduce this bill urgently to address critical issues with the matching rules of DNA profiles as dealt with in recommendations 9, 25 and 26.

Section 78 of the act provides for the permitted matches that may take place on the DNA database. This is currently provided in table format and sets out the various indexes across the horizontal axis, and the different types of DNA profiles on the vertical axis. Where the various indexes intersect with the types of DNA profiles in the table, the instructions "yes", "no" or "if within limit" are inserted to direct the database manager on which matches can occur within the database. The primary focus of this bill is to amend the matching rules currently provided in section 78 to adopt the nationally agreed matching rules for DNA profiles.

On 16 November 2006, the fifty-first Australasian Police Ministers' Council considered agenda item 1.8 relating to resolving the impediments to the national exchange of DNA data. This meeting passed a resolution "that jurisdictions aim to develop matching rules that achieve, or move towards achieving, the effect of the Queensland matching table". The focus of this resolution was to resolve the disparities that existed in matching rules from one jurisdiction to another that were severely restricting the effectiveness of the National Criminal Investigation DNA Database. Since this time, the commonwealth, the Australian Capital Territory, South Australia, Victoria and Tasmania have all made changes to their legislation to achieve matching rules consistent with the national model. This bill seeks to bring Western Australia in line with this model to not only enhance the ability of the national database, but also overcome several local issues and anomalies with the matching rules that compromise the ability of police to investigate crime.

This bill will enhance the ability of PathWest to create statistical datasets. To be able to present accurate DNA evidence in court, the forensic biology laboratory at PathWest relies on statistical datasets. These are statistical sets of DNA profiles grouped according to declared ethnicity. Analysis of these datasets is completed to extract data on the frequency of matches of particular parts of a person's DNA profile. This information allows expert forensic statisticians to calculate probabilities that are used to weight DNA evidence. To generate these statistical datasets, expert forensic statisticians require duplicate data within a DNA database to be investigated so that the same person does not appear on the database more than once. A large percentage of the DNA profiles held on the Western Australian DNA database are those in the suspects index. The current matching rules in section 78 of the act do not allow DNA profiles of suspects to be compared with the suspects index; therefore PathWest is unable to establish matches within the suspects index for the purpose of extracting duplicate samples. This bill will resolve this by allowing these profiles to be compared both within and outside of a database environment.

This bill will resolve an anomaly in section 78 that currently results in there being different rules for DNA profiles, depending on the order in which they are loaded into the database. This has been referred to as "asymmetry of the matching table". This has substantially limited the comparisons that may be made on the national database, as the national rules for WA comparisons have had to be limited to the most restrictive rule.

The bill will also resolve an issue with matching rules for the profiles of deceased persons. Section 63 of the act currently provides rules for dealing with "identifying information" of deceased people, and generally provides power to the State Coroner to determine the rules for matching DNA profiles of deceased persons. However, the section currently has a circular reference, with section 78 of the act, making it unclear which comparisons can be made with other types of profiles on the database. This is resolved in the bill by repealing section 78 of the act and making it clear in section 63 that all comparisons of DNA profiles of deceased persons are to be in accordance with the direction of the coroner.

Another issue that will be resolved by this bill is the application of DNA technology to some sexual assault cases. There are occasions when the DNA profile obtained from a child volunteer needs to be compared with the DNA profile obtained from the victim of a sexual assault and the DNA profile of a suspect to determine whether the suspect is a parent of the child. Currently, the DNA profile of the suspect can be compared with both volunteers—the victim and the child—but recent legal opinion has cast doubt on whether the act authorises the comparison of the two volunteer profiles. This situation is currently impeding the progression of several police investigations and court cases involving this kind of testing. The adoption of the national matching rules, as provided for in this bill, puts this question beyond doubt and will ensure that police can continue to utilise this technology to assist in investigating these heinous offences.

Finally, clause 11 of the bill will insert a transitional provision that will ensure that the matching rules provided by the amendments contained in this bill will apply to DNA profiles currently stored within the DNA database, or otherwise lawfully obtained, before or after the commencement of the legislation.

I commend the bill to the house.

Debate adjourned, pursuant to standing orders.