

CRIMINAL INVESTIGATION (IDENTIFYING PEOPLE) AMENDMENT BILL 2012

Introduction and First Reading

Bill introduced, on motion by **Mr R.F. Johnson (Minister for Police)**, and read a first time.

Explanatory memorandum presented by the minister.

Second Reading

MR R.F. JOHNSON (Hillarys — Minister for Police) [3.06 pm]: I move —

That the bill be now read a second time.

On 20 April 2009, Hon Robert Anderson, QC, handed down the Statutory Review Reference Group's report on the statutory review of the Criminal Investigation (Identifying People) Act 2002. The review made 31 recommendations and 15 other findings in respect of the Criminal Investigation (Identifying People) Act 2002 of which a number require legislative amendment to satisfy. On 25 May 2011, the Criminal Investigation (Identifying People) Amendment Act 2011 was passed by Parliament. This act dealt with various recommendations of the review that related to the matching rules for DNA profiles. This bill follows on where that left off in progressively dealing with and implementing the recommendations of the review.

The science of biometrics being used in criminal investigations is constantly being advanced and improved. There are methods such as iris scanning, computerised voice recognition and the analysis of auto-antibodies in bodily fluids that are currently being developed and finetuned with the intention of putting the methods to use in the investigation of crime. This bill makes provision for the further development of the science of biometrics by enabling regulations to be made to broaden the definition of what is considered an "identifying particular" under the act. This regulation-making power is appropriately balanced. It will enable new developments in the science to be swiftly brought under the legislative regime, but also does not take away Parliament's ability to disallow such matters if they are not considered appropriate. Currently, there is a difference between the types of identifying particulars that can be taken from charged and uncharged suspects. The review found that there was no good reason for this disparity and recommended that the definitions be aligned. This bill makes changes to sections 34 and 47 of the act to provide a consistency in approach with these two categories of suspect.

The review also identified that it was somewhat curious as to why the act does not have a power to take identifying particulars from convicted persons, given that there is a database index for this category of person and most other Australian jurisdictions have an equivalent power. It is a legitimate right of government to positively identify criminals and therefore this bill proposes to address this issue by inserting a new part, providing power for police to obtain identifying particulars from a person who is convicted of a serious offence—12 months' imprisonment or more. This power balances out the rights of individuals by limiting the time frame in which such particulars may be obtained to six months after the relevant conviction.

The bill also simplifies the process of taking identifying particulars from charged suspects by removing the threshold requirement for an officer to reasonably suspect that any or all of a charged suspect's identifying particulars "... are not or may not be held by the WA Police ... or are or may be needed to verify the person's identity with identification particulars already held by the WA Police". The review found that whilst this threshold requirement provided some protection to a suspect from unnecessary police interference, it was a small protection and was outweighed by the need for police records to be reliable, complete and able to be used in the prosecution process.

Changes are also being made to the manner in which consent is requested from charged suspects. It has long been argued by police that the consent process for charged suspects has little application. This is demonstrated by the fact that regardless of whether the charged suspect consents, the procedure may still be done on the suspect against their will without requiring any further authority of a warrant or order. The consent process is particularly problematic for police when the person is aggressive, affected by drugs or otherwise has a difficulty understanding the process. The review recommended the consent process be removed, but only for non-intimate procedures not including DNA. On consideration of this recommendation, it has been decided that the partial removal of the consent process would achieve little as DNA is obtained from most charged suspects. Accordingly, this bill addresses this issue by simplifying the consent process by enabling officers to bypass the process when it is not practicable to obtain consent. It also finetunes the process to enable information to be provided to the charged suspect in written form and removes the unnecessary requirement to record all responses of the charged suspect.

To accommodate the inclusion of the new power to obtain identifying particulars from convicted persons and also to complement the changes to the charged suspects process, a consequential amendment has been made to section 132 of the Criminal Investigation Act 2006 to enable officers to enter property to arrest a person

who tries to evade police attempts to obtain his or her identifying particulars. This is particularly necessary in the case of convicted persons as the person is not generally in police custody when the particulars are sought.

The bill also contains amendments to section 16 of the act that will enable police to request a person to remove headwear or do other things to facilitate the officer being able to confirm a person's identity. This amendment stems out of a New South Wales case where a woman wearing a burqa was not able to be identified as being the person who made a false report to police. Upon hearing about this case, the government has taken swift action to ensure that similar injustices do not occur in Western Australia. These amendments provide a very explicit power to ensure that the intent of section 16 is met in all cases, including when the subject person refuses to remove an obstruction that is preventing the officer from being able to identify the person's face. This provision is drafted in such a way as to apply the new powers to other acts from which police source powers to request or require a person to provide personal details.

Finally, the bill tidies up some anomalies by enabling warrants to be applied for when a responsible person cannot be located to provide consent for juveniles; clarifying the ability to take teeth and bone samples from deceased persons; and removing redundant DNA index definitions.

I commend the bill to the house.

Debate adjourned, on motion by **Mr M. McGowan (Leader of the Opposition)**.