

EVIDENCE AMENDMENT BILL 2004

EXPLANATORY MEMORANDUM

This Bill amends the *Evidence Act 1906* (WA) to prescribe a process for the provision of DNA evidence in court.

- Clause 1** sets out the short title of the Bill.
- Clause 2** provides that the Act comes into operation on a day to be fixed by proclamation.
- Clause 3** provides that the amendments are to the *Evidence Act 1906* (WA).
- Clause 4** inserts proposed section 50B after section 50A.

Proposed section 50B(1) defines a number of terms for the purposes of the section.

Proposed section 50B(2) states that the section applies to criminal proceedings.

Proposed section 50B(3) sets out that a certificate which is purported to be signed by a forensic scientist is evidence that a stated thing was received at a particular laboratory on a particular day, that the thing was examined between particular days or on a particular day, that one or a number of DNA profiles were obtained from the thing, and that a forensic scientist has examined the procedures used during the examination and confirms that all quality assurance procedures were complied with.

Proposed section 50B(4) states that if a party intends to rely on a certificate they must give a copy of the certificate to the other party at least 10 days before the hearing and call the forensic scientist to give evidence at the hearing.

Proposed section 50B(5) allows a party to make a written request to the CEO of PATHCENTRE (or any other prescribed laboratory) requesting a copy of the laboratory's records relating to the receipt, storage or examination of the thing, and those documents must be provided within 7 days of receiving the request.

Proposed section 50B subsections (6) to (8) set out the process for challenging the certificate, by providing 5 days written notice to each party, and by calling any member in the receipt, storage or examination process to give evidence. The court may grant leave to challenge the certificate if satisfied that an irregularity exists and it is in the interest of justice to do so.

Proposed section 50B(9) establishes the presumption that any equipment used in the examination process is taken to be accurate unless there is evidence to the contrary.

Proposed section 50B(10) states that any document required to be given to another party pursuant to the section may be given personally, by post, facsimile or electronically.

Proposed section 50B(11) gives the court the power to extend or abridge any time period prescribed in the section whether or not the application is made before the time expires.