

## CHAPTER 2

### THE BILL

#### Purpose of the Bill

2.1 *The Crimes Amendment (Forensic Procedures) Bill 2000* proposes to amend the *Crimes Act 1914* to reflect recent developments in forensic procedures and to facilitate the establishment of the CrimTrac national DNA database. Most amendments relate to Part 1D of the *Crimes Act 1914*, which deals with forensic procedures. A small number relate to Part 1A of the Act, and to Schedule 2 of the *Mutual Assistance in Criminal Matters Act 1987*.

#### *The Objectives of the Bill*

2.2 The objectives of the Bill are set out in the Explanatory Memorandum to the Bill as follows:

- a) to amend existing forensic procedures provisions in Part 1D of the *Crimes Act 1914* to facilitate the establishment of the CrimTrac national DNA database system by enabling the taking of forensic material from any serious convicted offender still under sentence;
- b) to provide for safeguards in Part 1D of the *Crimes Act 1914* in relation to the taking of forensic material from volunteers for use in criminal investigations and placement of DNA information on the national DNA database system;
- c) to provide in Part 1D, procedures for the matching and use of DNA information obtained from forensic material designed to ensure there is no misuse of that information;
- d) to provide in Part 1A for adequate procedures for the making of orders by State and Territory judges, magistrates and other court officers in relation to criminal matters, whether they be orders authorising the carrying out of forensic procedures, or other matters;
- e) to provide in Part 1D of the *Crimes Act 1914* for appropriate interjurisdictional recognition of orders under that Part or under equivalent State and Territory legislation; and
- f) to make minor amendments to the *Mutual Assistance in Criminal Matters Act 1987* to ensure that Australia can fulfil its international obligations in providing assistance to foreign countries in the enforcement of foreign orders which preserve suspected proceeds of crime.<sup>1</sup>

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1 Explanatory Memorandum to the *Crimes Amendment (Forensic Procedures) Bill 2000*, p 2

## Provisions of the Bill

2.3 Proposed amendments to Part 1A of the *Crimes Act 1914* outline the circumstances in which a Commonwealth law relating to criminal matters confers on State and Territory officials a function that is not judicial but is conferred in a personal and voluntary capacity. This is a technical change necessary to uphold the doctrine of the separation of powers (new 4AAA and 4AAB).

2.4 The major amendments relate to Part 1D of the *Crimes Act 1914*. Proposed new Division 6A regulates the carrying out of forensic procedures on prescribed and serious offenders ‘under sentence’. It describes the nature of the procedures, their authorisation in circumstances in which the offender consents or withholds consent and safeguards for offenders before, during and after the taking of forensic material.

2.5 Proposed new Division 6B regulates the taking of forensic material from volunteers. Slightly different requirements govern the taking of forensic material from suspects (who are covered specifically in the existing *Crimes Act 1914*), convicted offenders and volunteers. The proposed amendments in new Division 6B give greater protection to volunteers than is afforded to suspects and offenders.

2.6 Proposed new Division 8A is intended to regulate the national DNA database now being established, by

- defining the various indexes which will form part of the database;
- setting out offences and penalties relating to improper access to, use of and supply of material stored on the database;
- setting out, in tabular form, permissible matching of material from the various indexes of which the database is composed, and penalties for improper matching; and
- listing regulations governing the recording, retention and removal of material on the DNA database and penalties for improper recording, retention and removal.

2.7 The amendments proposed in the new Division 8A are designed to ensure that the investigative tool of the DNA database is not misused by law enforcement agencies and that the privacy of people supplying material to the database is protected.

2.8 Proposed new Division 11 deals with interjurisdictional enforcement. It is designed to facilitate the establishment of a national database by allowing orders for forensic procedures to be served on people in other States and Territories suspected of committing a Commonwealth offence. It also set out rules governing the sharing of information from the database with participating jurisdictions.

2.9 On an unrelated matter, the Bill proposes to amend Schedule 2 of the *Mutual Assistance in Criminal Matters Act 1987* to ensure that a foreign restraining order, once registered in an Australian court, has the same effect as a domestic restraining order. The purpose of this amendment is to assist other countries by securing proceeds of crime located in Australia.