CHAPTER 3

ISSUES AND CONCERNS

Introduction

3.1 Many of the issues and concerns arising from the introduction of DNA testing have been addressed during the development of previous amendments to those parts of the *Crimes Act 1914* which deal with forensic testing. Most of the concerns raised during discussions on the *Crimes Amendment (Forensic Procedures) Bill 1995*, for example, were addressed when the *Crimes Amendment (Forensic Procedures) Bill 1997* was enacted.

3.2 Similarly, the Model Criminal Code Officers' Committee held very wide- ranging discussions before drawing up the Model Bill on which the 1997 changes were based.

3.3 However, despite broad agreement on many of the issues related to forensic testing generally, some concerns were not, or could not, be addressed in the 1997 amendments. Some of these have been addressed in the current legislation. Others have again been brought to this Committee's attention in submissions and during public hearings on the current Bill and are discussed below.

Consideration of the Issues

3.4 This chapter examines each of the objectives of the Bill, as set out in the Explanatory Memorandum to the Bill. It considers the extent to which the objectives have been achieved in the current legislation and highlights any significant outstanding concerns brought to the Committee's attention. The issues can be divided into matters where there are limited if any problems and those which have raised concerns which some witnesses believe are not fully addressed by the provisions. Objectives (b), (d) and (e) come into the first category, and (a), (c) and (f) into the second.

Issues which have been satisfactorily resolved

Objective (b)

3.5 This objective of the legislation is to provide safeguards with respect to use of DNA material.[1]

3.6 The proposed legislation, in new Division 6B, extends to volunteers the provisions in the existing Crimes Act which relate to the taking of forensic material from suspects. However, it gives greater protection to volunteers than is afforded to suspects or offenders. This is particularly so in the case of a child or incapable person. Even where a parent or guardian has given permission for a forensic procedure, the legislation prohibits it where the child or incapable person objects. This is the position whether the request is made by a constable or by a magistrate. It can be overruled only in very strictly defined circumstances.

---

1 (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

3.7 The provisions relating to informed consent are more detailed for volunteers than for suspects or offenders. The legislation lists the matters of which a volunteer must be advised, in the presence of an independent person, before giving consent to a forensic procedure. They include:

- The fact that the volunteer is under no obligation to undergo the procedure.
- The fact that the volunteer has a right to seek legal advice before consenting to a procedure.
- The fact that the volunteer may withhold consent at any time, both to undergoing the procedure and to retention and storage of material so obtained.
- Information about the index on which it is intended to store the volunteer's sample and the purposes for which it is intended to be used.

3.8 These safeguards have been introduced to reflect the widely held view that the legislation should recognise the special position of volunteers and should afford them greater protection than is offered to suspects and offenders. Such safeguards are also important in building public support and cooperation for the database.

3.9 Objective (b) has been partly fulfilled in proposed new Division 6B. It provides specific additional safeguards 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.

3.10 While the legislation adequately addresses many of the concerns raised at hearings held on earlier legislation by this Committee and by the Model Criminal Code Officers' Committee, doubts remain about certain aspects of the legislation affecting volunteers. Most relate to the storage and destruction of forensic material from volunteers, rather than to the taking of forensic samples.

3.11 Material from volunteers may be stored on one of two databases. One is the volunteers (limited purposes) index. Information on this database can be used only for a specific purpose, of which the volunteer must be informed before providing the sample. Information must be destroyed at the conclusion of the particular inquiry for which it was requested. The second database is the volunteers (unlimited purposes) index. Material on this database may be used for a very wide range of purposes and may be stored on the database for as long as the volunteer agrees. It is this database which has been the focus of concern.

3.12 The New South Wales Privacy Commissioner, for example, argued that samples from volunteers should be used only to eliminate them from a specific inquiry and should be destroyed after completion of the particular investigation.[2]

3.13 A similar view was expressed by the Australian Privacy Charter Council in a submission to the Model Criminal Code Officers' Committee.

---

2 *Submission 6,* New South Wales Privacy Commissioner, p 3

> Whatever the justification for the use of DNA samples for targeted law enforcement investigations, it should not be permitted to build up a permanent database of DNA information about people who are in no way suspected of any wrongdoing. If it is considered desirable to allow people to volunteer samples to help eliminate suspects (and we do not necessarily accept this case), then these samples must be destroyed soon after completion of the particular investigation.[3]

3.14 The Committee is also concerned about the provisions governing the information which a constable must provide to a volunteer, or the parent or guardian of a volunteer, before that person gives consent to a forensic procedure. The relevant section is 23XWR, and especially subsection 23XWR(2).

3.15 Nowhere in that subsection is a constable required to inform a volunteer that there are two volunteer indexes, the limited purposes index and the unlimited purposes index. The Committee suggests that such information is important to volunteers, that they should be advised of the existence of the two databases and that they should have a choice as to which database their information is to be placed on. It recommends accordingly in chapter 4.

3.16 The Committee has a further concern about the retention of material from volunteers. It notes an inconsistency in section 23XWV of the legislation. Subsection (2) refers to the retention of 'forensic material taken or information obtained from carrying out a forensic procedure.' Subsection (3) however refers only to 'forensic material obtained from carrying out the procedures' and omits the phrase '… taken or information obtained.' The Attorney-General's Department agreed at public hearings that such an inconsistency exists. Accordingly the Committee suggests that the inconsistency be removed through amendment of subsection 23XWV(3) to make it consistent with subsection 23XWV(2). It recommends accordingly in chapter 4.

Conclusion

3.17 There is general (but not universal) agreement that the proposed legislation adequately safeguards volunteers during the taking of forensic material. The Committee notes the concerns about the storage of this material in respect of the volunteers (unlimited purposes) index, and considers that its recommendations may assist in protecting affected individuals.

Objective (d)

3.18 The fourth objective of the proposed amendments is to ensure certain decisions are not 'judicial' decisions.[4]

3.19 These amendments provide for State and Territory judges, magistrates and other court officials, when dealing with non judicial Commonwealth criminal law matters (for

---

3 Australian Privacy Charter Council in submission to Model Criminal Code Officers' Committee Final Report. *Model Forensic Procedures Bill and the Proposed National DNA Database,* February 2000, Explanatory Notes, p 8

4 *(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*

example, when ordering the carrying out of forensic procedures) to be deemed to be acting in a personal and voluntary capacity rather than a judicial one.

3.20 They are technical changes necessary to uphold the doctrine of the separation of powers. Without these amendments judicial office holders such as magistrates would be performing functions which are not strictly judicial in their judicial capacity, thus undermining the constitutional requirement for a separation of judicial power from legislative and executive powers.

Conclusion

3.21 These changes are not controversial and no concerns have been raised with the Committee about the likely impact of their introduction.

Objective (f)

3.22 The last objective of the Bill is to allow for the enforcement of foreign orders in Australia.[5]

3.23 These amendments are unrelated to any others in the Bill. They make changes to the *Mutual Assistance in Criminal Matters Act 1987* rather than to the *Crimes Act 1914.*

3.24 The changes are minor and designed 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.

Conclusion

3.25 These amendments are not controversial and no concerns were raised with the Committee about their introduction.

Issues still requiring further consideration

Objective (a)

3.26 The first objective is to expand the CrimTrac database by taking forensic material from 'any serious convicted offender still under sentence'.[6]

3.27 The existing Crimes Act describes the procedures for taking forensic material from suspects, and does not specifically mention offenders. Proposed new Division 6A extends these provisions (with some modifications) to serious and prescribed offenders under sentence. It defines intimate and non-intimate forensic procedures, explains who can authorise each type of procedure (with authority being more limited in the case of intimate procedures) and the processes which must be followed. It also sets out the requirement to

---

5 *(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*

6 *(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*

obtain informed consent from offenders and procedures to be followed where offenders withhold consent.

3.28 Objective (a) has been met in proposed new Division 6A. It specifically authorises the taking of material from any serious convicted offender under sentence and, to this extent, facilitates the establishment of a national DNA database.

3.29 A number of concerns raised in hearings held on earlier legislation with this Committee and in discussions with the Model Criminal Code Officers' Committee have been addressed in the draft legislation.

3.30 One of these is the requirement for court authorisation for the taking of intimate forensic samples from non consenting serious offenders. Another is the definition of the taking of buccal swabs as an intimate forensic procedure. This affects authorisation procedures in cases in which offenders do not consent. Law enforcement agencies oppose this modification and continue to argue for the reclassification of the taking of buccal swabs as a non intimate procedure, at the very least in cases in which offenders consent to the procedure.[7]

3.31 A number of other concerns were brought to the Committee's attention in relation to the taking of forensic material from convicted offenders. The New South Wales Privacy Commissioner, for example, questioned the need to authorise police officers to take non intimate samples from offenders without their consent.

> Division 6A authorises constables to obtain non-intimate samples without consent from any person who has been convicted of a serious offence or fingerprints from people convicted of prescribed offences, and of intimate samples by order of a judge or magistrate, regardless of whether they are under arrest or in custody at the time, or have just been convicted. This represents a significant expansion of the limited right to take samples at the time of conviction and from people in custody under section 23YQ. The exercise of these powers could involve a significantly greater level of intrusion. [8]

3.32 Related concerns were brought to the Committee's attention by the ACT Bar Association. It considered the definition of authorised applicant for carrying out forensic procedures (section 23WA(1)) was too broad and should be reworded to exclude junior officers.[9]

3.33 This view was challenged by the Attorney-General's Department:

> The Committee should note that, at present, the definition of *authorised applicant* in section 23WA of the *Crimes Act 1914* refers to a constable in charge of a police station and an investigating constable in relation to a relevant offence. It makes sense that an investigating constable be able to appear before a magistrate to justify why a forensic procedure is justified: the investigating constable has an intimate

---

7 See for example submissions from the Tasmanian, Victorian and New South Wales police to the Model Criminal Code Officers' Committee Final Report. *Model Forensic Procedures Bill and the Proposed National DNA Database,* February 2000, Explanatory Notes, p 6

8 *Submission 6*, New South Wales Privacy Commissioner, p 3

9 *Submission 2*, The Australian Capital Territory Bar Association, p 1

> knowledge of the investigation and the circumstances surrounding the relevant offence…. In 1997 the Parliament had no difficulty with this definition.[10]

3.34 The ACT Bar Association also considered that the authority to conduct non-intimate forensic procedures should not rest with a constable of police.[11] Again, the Attorney-General's Department disagreed.

> At present, Division 4 of Part 1D of the *Crimes Act 1914* permits senior constables to authorise non-intimate forensic procedures (eg, hair samples) in the suspect context. If the suggestion of the ACT Bar Association was adopted then non-intimate forensic procedures would be treated differently in the offender and suspect contexts: a non-intimate hair sample could be taken from a non-consenting suspect by order of a senior constable but the same sample from a non-consenting convicted serious offender would require court approval. There is no justification for a different approach.[12]

3.35 Another concern related to the retrospective nature of some aspects of the legislation. Sir Harry Gibbs, for example, while generally supporting the Model Bill on which this legislation is largely based, expressed reservations about its retrospectivity provisions.

> There is however one provision that seems to me to be doubtful in point of principle. That is s.51 [now 23XWB (3)] which provides that a forensic procedure may be carried out on a person found guilty of a serious offence before the section came into operation, if that person is serving a term of imprisonment. This seems to me to offend the principle that no person should suffer any adverse consequence from committing an offence unless that consequence was provided for by the law at the time the offence was committed.[13]

3.36 A further concern raised in evidence to the Committee[14] relates to the authorisation of those helping to carry out a forensic procedure to 'use reasonable force.'

3.37 While a number of issues are still causing concern, the objectives set out in (a) will be achieved by this legislation.

Objective (c)

3.38 The third objective of the Bill relates to the protection of matched data.[15]

3.39 The CrimTrac database, when fully operational, will consist of eight indexes. These include, in addition to the two volunteers indexes referred to above, a crime scene index, a

---

10 *Submission 10*, Attorney-General's Department, p. 2

11 *Submission 2*, The Australian Capital Territory Bar Association, p 1

12 *Submission 10*, Attorney-General's Department, p 2

13 Sir Harry Gibbs in submission to Model Criminal Code Officers' Committee Final Report. *Model Forensic Procedures Bill and the Proposed National DNA Database,* February 2000, Explanatory Notes, p 7

14 *Submission 1*, Justice Action New South Wales, p 8

15 *(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*

serious offenders index, a suspects index and a missing persons index. The process of comparing two DNA profiles on different indexes is known as matching.

3.40 Concern was expressed during development of this legislation that DNA in any one index could be matched with DNA on any other index, thus greatly increasing the scope of the data base and bypassing some of the safeguards built into the legislation to protect material taken from volunteers and others.

3.41 To address these concerns the current legislation contains a table setting out the rules governing permissible matching (section 23YDAF). Briefly, these limit the matching of samples from the suspect, offender or volunteer indexes with samples from the crime scene index. Penalties for improper matching are also set out in the legislation (section 23YDAF(2)).

3.42 The legislation also attempts to address concerns about improper use of forensic material stored on the database. It regulates access to, use of and supply of material stored on the database and sets out offences and penalties for improper access to, use and supply of such material.

3.43 It regulates the recording, retention and removal (destruction) of material on the database and penalties for improper recording, retention and removal.

3.44 These provisions together attempt to address a range of concerns related to the potential for misuse of information stored on the database. Other specific amendments have a similar purpose, for example the requirement to destroy forensic material taken from an offender once a conviction is quashed, and the requirement to destroy forensic material ruled inadmissible as evidence.

3.45 Objective (c) has been largely met in proposed new Division 8A. To the extent that regulations governing permissible matching and regulations governing access, use and destruction of forensic material, (with significant penalties for non compliance), minimise the potential for misuse of information on the database, they can be said to address concerns raised during development of the legislation.

3.46 Indeed, some evidence to the Committee suggested that they are too restrictive:

> Victoria Police voiced its strong disagreement with the rationale for limiting permissible matching for the various types of sample in its submission on the 2000 Model Bill. While the Force accepts that the policy decision has been made to retain the matching limits in the Bill, Victoria Police reiterates its concern that some of the limits are overly restrictive and hamper the effective operation of the intent of the legislation.[16]

The meaning of 'destruction'

3.47 A number of concerns remain, relating primarily to the destruction of material on the database. The legislation equates destruction of material on the database with de-identifying it, that is, separating the material from the name, sex and other identifiers to which it is

16 *Submission 3,* Victoria Police, pp 1-2

attached when collected. A number of submissions maintained that this is not an adequate means of destruction as the potential exists for re-identification at some later stage.

> Like the Model 2000 Bill, the Crimes Amendment (Forensic Procedures) Bill 2000 maintains the fiction that to destroy the 'identifying information' which might link a donor to a profile is equivalent to destroying the data. It is more akin to the police keeping an exonerated suspect's mugshot while erasing his name and claiming to have thereby destroyed the file.
>
> …even more disturbing is that unlike the Model Bill, the Commonwealth proposal extends this inadequate definition of 'destruction' to forensic material itself. We are being asked to accept that laboratories no longer have our tissue sample if they simply erase the name on the slide. Apparently the lab or agency will then be free to do as they please with our genetic material or the millions of duplicates made using PCR technology.[17]

Lack of uniformity in 'destruction'

3.48 At present there is no uniform regulation of the destruction of forensic samples on the CrimTrac database. Arrangements vary between jurisdictions.

> On destruction, we are very much reliant upon what the jurisdictions determine to be destruction dates but as part of the system we will build, they will have to enter a destruction date as the profile is entered into the system. There will be a requirement for the data to come to CrimTrac with the destruction date on it. Some destruction dates will be forever. A convicted serious offender who goes on the database stays on the database, according to the legislation.[18]

3.49 Similar concerns were raised by the New South Wales Privacy Commissioner, who suggested that de-identified material was being stored in order to use it for statistical purposes, without the knowledge or consent of those who had provided it.

> Any existing genetic sample which is capable of being analysed is capable of identifying the individual to whom it relates. Consequently the attempt in proposed section 23WA(5) to equate destruction of forensic material with destruction of the means of identifying the material with the person from whom it was taken or to whom it relates is problematic. It may reduce but not eliminate the risk of samples which the police are no longer authorised to hold from being used to implicate the person to whom a sample relates for an offence.
>
> …Merely deidentifying samples increases the likelihood that they will in fact be used for research or statistical as distinct from forensic purposes
>
> …I therefore recommend the amendment of section 23WA(5) to mandate the destruction of samples when no longer required. If samples are to be retained for statistical purposes, this should be with the informed and explicit consent of individuals who voluntarily provide them.[19]

---

17 *Submission 1,* Justice Action New South Wales, pp 2-3

18 *Transcript of evidence*, CrimTrac Agency, Proof Hansard, p 14

19 *Submission 6,* Privacy Commissioner of New South Wales, p 3

3.50 The statistical use of depersonalised samples was confirmed by CrimTrac:

> From our point of view, destruction occurs as soon as the sample is taken off the system or, alternatively, any link to the reference data that came with the sample is removed. In other words, it is entirely depersonalised. The reason for that is that we wish to maintain a statistical database, and the statistical database will contain profiles which are not linked at all to any reference data that comes in with them.[20]

Government response to these concerns

3.51 The Attorney-General's Department considers concerns about the destruction requirements in the Bill are unfounded.

> It is just not practicable to destroy every remnant of a sample. The destruction of any identifying link between a particular person and his or her sample will be effective. There are strong incentives to ensure proper destruction occurs: the failure to adequately destroy these identifying links constitutes an offence. Further, any evidence obtained and subsequently relied upon from a failure to properly destroy the identifying links will be inadmissible evidence pursuant to sections 23XX and 23XT.[21]

Conclusion

3.52 Concerns have been expressed about the indefinite retention of material on the database. These concerns have been most strongly expressed in relation to material collected from volunteers but are not restricted to that group. The Committee suggests that this might be one of the issues monitored by the Federal Privacy Commissioner, as discussed later in this chapter and in chapter 4, where a recommendation is made to this effect.

Objective (e)

3.53 Objective (e) concerns the sharing of data.[22] The Bill adds a new Division (11) to Part 1D of the *Crimes Act 1914*. It regulates the exchange of DNA material between the Commonwealth and the States and Territories and its use by all participating governments, given that all jurisdictions will provide data, and have access, to the national database.

3.54 The legislation allows for the sharing between jurisdictions of information on the database as long as its collection was undertaken in accordance with the laws applying in the jurisdiction concerned.

3.55 This remains the most contentious aspect of the proposed new legislation. Law enforcement agencies strongly support these provisions, arguing that they are crucial to the successful establishment and functioning of a truly national database. This view is shared by CrimTrac:

> We have always viewed the exchange of information between jurisdictions as being the critical factor. It is, to be frank, the issue which has taken us the greatest

---

20 *Transcript of evidence*, CrimTrac Agency, Proof Hansard, p 15

21 *Submission 10,* Attorney-General's Department, p 6

22 *(e) to provide in part ID of the Crimes Act 1914 for appropriate interjurisdictional recognition of orders under that Part or under equivalent State and Territory legislation*

> amount of time and effort in working with jurisdictions to get some common agreement.[23]

3.56 In contrast, civil liberties and privacy groups have expressed grave concerns about the interjurisdictional aspects of the legislation. They recognise the need for a national database and the concomitant need to share information between jurisdictions. They point out, however, that in some jurisdictions the laws governing the collection of forensic material are much less restrictive than those proposed in these amendments. Some States, for example, have no privacy provisions.

3.57 The consequence of this would be that although this legislation allows for the sharing of information from other jurisdictions only in cases in which it was collected in conformity with the laws applying in their jurisdictions, these safeguards could be substantially undermined. There is the potential for an unplanned expansion of the scope and functions of the national database and of a reduction in safeguards to the level of those applying in the least restrictive jurisdictions. This has been termed the 'lowest common denominator approach' by the New South Wales Privacy Commissioner.

> The effect of this section appears to be to allow the Commonwealth or any State or Territory agency to avoid the restrictions on access or use if this is authorised by legislation in the jurisdiction placing the data on the National Database. It would also allow agencies of a State or Territory to access or use any information on the National Database as authorised by its own legislation. This might not be a problem if all States and Territories passed laws which were consistent with the model code provisions. In fact there has been something of a bidding war between some States and Territories, encouraged by their Police Commissioners and by a desire to appear "tough on crime", to minimise and downgrade the recommended protective provisions. This is likely to create a political climate where governments will face renewed pressure to do away with the remaining safeguards, leaving police with virtually unrestricted access to the DNA database for matching and identification purposes.[24]

3.58 These views were shared by the Federal Privacy Commissioner.[25] As indicated by the Commissioner, the Model Criminal Code Officers' Committee recognised the potential

---

23 *Transcript of evidence,* CrimTrac Agency, Proof Hansard, p 11

24 Submission 6, New South Wales Privacy Commissioner, p 4. The Commissioner continued: 'My office has consistently supported a codified national approach to the collection and use of DNA evidence as preferable to the largely informal process which has existed up until now. However the current amendments effectively sanction the lowest common denominator approach, whereby the standards appear to be set by the State or Territory which has conceded the most to the demands of local law enforcement agencies for minimal constraints.'

25 'It is important to note that the development of the Model Bill, particularly its provisions concerning exchange and matching of DNA samples between jurisdictions, was predicated on the expectation that it would be uniformly enacted by all States and Territories as well as the Commonwealth Government. Unless the Model Bill is adopted uniformly, the arrangements for the DNA system as a whole would allow an agency in one State to obtain information collected in another jurisdiction in circumstances that would not be allowed in its own State. This would be a diminution of the rights of the citizens of that State as established under that State's laws.'

The Privacy Commissioner's view is that the Model Bill provides an adequate minimum standard for the authorisation and collection of DNA samples if it is enacted by all participating jurisdictions. 'Arrangements that could compromise the minimum standards therefore require very careful scrutiny.' *Submission 4A,* Federal Privacy Commissioner, pp 2-4

threat to the integrity of the national database posed by the lack of uniform legislation governing the collection, use, storage and destruction of forensic material.

3.59 The commentaries accompanying the development of the Model Bill state that the provisions relating to the sharing of information between jurisdictions have been included on the assumption that all jurisdictions will adopt a uniform legislative approach to the collection and use of forensic material.

> It is not desirable that variations of the nature described…should be allowed to undermine the DNA database legislative requirements. The Committee therefore believes a consistent approach between jurisdictions is very important in combating this type of problem. Therefore the Committee only favours recommending the first provision [now 23YP and 23YUB] if there is consistency and does so on the basis that in preparing the model it must assume there will be consistency.[26]

3.60 If it proved impossible to achieve such uniformity then the Model Criminal Code Officers' Committee recommended a change to the proposed legislation so that it did not allow material collected legally in one jurisdiction from being used in another jurisdiction where its collection would have been illegal.

3.61 In fact, neither of these approaches has been adopted in the proposed legislation. It has been drafted on the assumption that a substantially uniform legislative approach has been, or will be, adopted in all jurisdictions. In the absence of such uniformity the concerns raised by privacy and civil rights groups remain unresolved.

3.62 While the objective of (e) is achieved in this legislation, which sets out the provisions governing the exchange of information between jurisdictions, the manner in which it is proposed to achieve the objective gives rise to a number of concerns, as described above.

3.63 The Committee is strongly of the view that uniform adoption of the highest standards in the collection, use and disposal of information is fundamental to the effectiveness of legislation. Recommendation 3 in chapter 4 addresses this issue.

Other issues

3.64 One concern less directly related to the objectives includes the limited provision for independent monitoring of the database itself, of the privacy aspects of the legislation and of the laboratories which process the samples for the database. Another is the potential for deliberate or inadvertent contamination of forensic samples, either within the laboratories processing them or at the point of collection. A range of specific technical issues was also raised in evidence to the Committee.[27]

3.65 The Committee notes the Government's intention[28] that the Federal Privacy Commissioner monitor CrimTrac's administration of the national DNA database system. It supports this approach but would like to see the Federal Privacy Commissioner's role

---

26 Model Criminal Code Officers' Committee Discussion Paper, *Model Forensic Procedures Bill and the Proposed National DNA Database,* May 1999, p 89

27 Particularly in *Submission No 7,* Mr Jeremy Gans

28 Second Reading Speech, p 4

extended beyond CrimTrac's administration of the database. An expanded role, for example, could include oversight of the processes governing the retention of material on the DNA database and other oversighting functions. These are noted in Recommendation 4 of chapter 4.