

CHAPTER 4

SUMMARY AND RECOMMENDATIONS

4.1 The Committee acknowledges the efforts made over a long period by law enforcement agencies, civil liberties organisations, privacy bodies and other interested individuals and organisations to reach agreement on this legislation. It recognises the desire of all participants in the process to find a balance in the legislation between protecting the rights and privacy of individuals required to, or volunteering to, provide forensic samples while at the same time affording the police reasonable access to the powerful investigative tool of a national database.

4.2 The amendments in this Bill represent a compromise. That such a compromise does not entirely satisfy all the participants involved is unsurprising.

4.3 A number of concerns remain unresolved. Some of them, on the part of law enforcement agencies, relate to what they consider to be the unduly restrictive nature of the rules governing the collection, use, storage and destruction of forensic material. Some of these concerns have been referred to in the Report.

4.4 A greater number of concerns brought to the Committee's attention relate to what witnesses perceive as inadequate safeguards for people required to, or volunteering to, provide forensic samples and to inadequate procedures governing the disposal of forensic material. These concerns also are discussed in the Report.

4.5 The Committee considers that while some of these concerns are legitimate and have not been sufficiently addressed in the legislation further consideration is unlikely to achieve the consensus which five years of consideration and debate have failed to achieve. On these grounds the Committee proposes to recommend the passage of most of the amendments in this Bill without further change.

4.6 Because of continuing concerns about the provisions governing the information provided to volunteers before they supply forensic material (23XWR) and about the provisions regulating retention of forensic material by volunteers after consent has been withdrawn (23XWV), both of which were discussed in the previous chapter of this Report, the Committee makes recommendations in relation to each of these sections. These are phrased here in general terms but their intent is clear.

Recommendation 1

The Committee **recommends** that subsection 23XWV(3) be redrafted so that it is consistent with subsection 23XWV(2).

Recommendation 2

The Committee **recommends** that subsection 23XWR(2) be redrafted to require a constable to inform a prospective volunteer of the existence of the two volunteer databases, and of the fact that they should have a choice as to which database their information is to be held on.

4.7 There is one significant aspect of the Bill which the Committee would like to see revisited. This is the lack of uniform legislation governing the collection, use, storage and destruction of forensic material in participating jurisdictions and the consequent potential for undermining the safeguards proposed in this Bill.

4.8 This is a problem in the case of legislation now operating in Queensland and the Northern Territory. Legislation just introduced in Western Australia and Tasmania is consistent with the proposed Commonwealth legislation. (Indeed, one witness¹ has argued that the Western Australian legislation is significantly better and should provide a model for the proposed Commonwealth legislation). Legislation now operating in New South Wales, South Australia and (to a lesser extent) the Australian Capital Territory is broadly consistent with the Commonwealth legislation.

4.9 The Committee acknowledges that the Model Criminal Code Officers' Committee has recognised this problem and made strenuous, but ultimately unsuccessful, efforts to address it. The Committee also acknowledges that the Commonwealth Parliament has a very limited capacity to influence State and Territory legislation.

4.10 The Committee considers that the benefits to participating law enforcement agencies of access to a national database are considerable and that such benefits will be enhanced if all parties operate according to the highest standards.

Recommendation 3

The Committee **recommends** that the Bill be passed and that other jurisdictions be encouraged to adopt requirements as to the collection, use, storage and destruction of forensic material similar to those set out in the *Crimes Act*, as amended by the Bill.

4.11 The Committee considers that some of the remaining concerns with the proposed legislation might be addressed were the monitoring role of the Federal Privacy Commissioner extended.

Recommendation 4

The Committee **recommends** an expansion of the role of the Federal Privacy Commissioner to include: oversight of the processes governing the retention of material on the DNA database; provisions for its destruction; oversight of the functioning of the new DNA database within the laboratory; and the operation of the database under the Bill.

4.12 The Committee supports the passage of this Bill, subject to these four amendments.

Senator Marise Payne
Chair

1 *Submission 7A*, Mr Jeremy Gans