

Ombudsman review of DNA sampling and other forensic procedures

A report on the Ombudsman's four year review of DNA sampling and other types of forensic procedures was tabled in Parliament today. The report deals with forensic procedures conducted on suspects and volunteers under the *Crimes (Forensic Procedures) Act 2000* and follows the Ombudsman's 2004 report on the DNA sampling of convicted offenders.

The Ombudsman found that the police powers under review were generally exercised with due regard to the rights and interests of suspects and volunteers.

However, there were also instances of procedures being conducted unlawfully, and forensic material being retained in circumstances where the law required it to be destroyed. **'The complexity of the legislation means that it can be difficult for police officers to comply with their obligations,'** said the Ombudsman, Bruce Barbour. **'While thousands of police officers are accredited, a lack of practice means many are unfamiliar with some of the requirements. I have recommended simplifying some aspects, and moving responsibility for DNA sampling to a small team of specialist officers within each local command.'**

The Ombudsman also expressed concern about DNA records being inaccurate, after an Ombudsman audit identified discrepancies between police and laboratory records. There were also instances where police took action against the wrong person after moving forensic procedure information from one person's police record to another. In one case this led to a man being convicted for offences he did not commit. **'Having inaccurate information on the DNA database or the police computer system can have serious implications for the administration of justice,'** said Mr Barbour. **'It will also dent public confidence in the use of DNA evidence in the investigation and prosecution of crime.'**

The Ombudsman also found significant delays in the DNA analysis service provided by the NSW Health Division of Analytical Laboratories, DAL. **'While the DNA laboratory, DAL, has achieved some good results, it is unable to process the ever increasing number of DNA samples submitted by NSW Police,'** Mr Barbour said. **'This has resulted in a large backlog, court delays, and concerns about evidence of potential significance remaining unexamined.'** While outsourcing and other strategies are being trialled, the Ombudsman has recommended the government consider the long term position of DNA analysis services including funding, independence and research and development.

A brief summary of facts and figures is outlined on the following page. Full details of the review are contained in the report.

Copies of the Ombudsman's report are available at www.ombo.nsw.gov.au.

FACTS AND FIGURES

The Ombudsman reviewed the use of police powers to take DNA samples and conduct other types of forensic procedures for four years, from 1 January 2001. During this time:

Police powers

- Police conducted 10,348 forensic procedures on suspects and volunteers. [p.57]
- Of the 9,455 forensic procedures conducted on suspects, 77% were DNA samples and 18% were photographs. Of the 893 forensic procedures conducted on volunteers, 91% were DNA samples and 4% were photographs. The rest were fingerprints, swabs or other types of forensic procedures. [p.57]
- The vast majority of DNA samples (96%) were taken by buccal swab. Less than 4% were taken by hair sample and less than 1% by blood sample. [p.146]
- Of the forensic procedures conducted on suspects, 93% were conducted on men and 7% were on women. [p.62]
- Police conducted less than 500 procedures on children. As with adults, DNA samples were the most common type of forensic procedure conducted, followed by photographs. 70% of the forensic procedures conducted on child suspects were conducted on children aged 16 or over. Forensic procedures were conducted in the child population at a much lower rate than in the adult population. [p.62]
- At least 6% of forensic procedures conducted on suspects were conducted on Aboriginal or Torres Strait Islander people. The actual figure is likely to be higher as police recorded the person's Aboriginal or Torres Strait Islander status as unknown for 61% of procedures. [p.63]
- According to police figures, over 96% of DNA samples were taken by consent. [p.88]
- 7 out of 80 police commands advised they had used force to conduct forensic procedures. We found no evidence of force being used unlawfully. [p.156]
- On at least 13 occasions, police moved forensic procedure information onto the wrong person's record. On two occasions, the wrong person was charged, including one occasion where the wrong person was convicted and given a custodial sentence. On the other 11 occasions the mistake was corrected before any action was taken against the wrong person. [p.229]
- The Ombudsman received 78 telephone inquiries and 23 written complaints relating to forensic procedures conducted on suspects and volunteers. [p.273]

The DNA database

- The NSW Health Division of Analytical Laboratories (DAL) loaded over 25,000 DNA profiles from people onto the DNA database, including 8,699 from suspects and 831 from volunteers. The rest were from convicted offenders. DAL also loaded over 14,000 DNA profiles derived from crime scenes onto the database. [p.58]
- The number of DNA cases submitted to DAL for analysis increased more than eightfold, from 1,046 in 2000 to 9,113 in 2004. The number of items requiring analysis within in each case has also increased. [p.206]
- DAL estimates that it made over 3,000 'warm links' from DNA evidence, which means that about a third of the forensic procedures conducted on suspects resulted in the suspect being positively linked to the offence under investigation. [p.194]
- DAL also made 2,251 'cold links' where a suspect was linked to an unsolved crime scene through a match made on the DNA database. 141 people were linked to more than 5 crime scenes, including 17 who were linked to more than 10 crime scenes and one who was linked to 25 different crime scenes. The majority of cold links were for high volume property crimes, but a significant number were for serious offences, including murder and manslaughter, sexual assault and robbery. [p.195] Cold links may have played some role in up to 2000 convictions. [p.65]
- DAL estimates that about 480 suspects were eliminated from police investigations through DNA analysis, which indicates that for every elimination, there are between 6 and 7 warm links. This shows that DNA analysis is used more often to implicate rather than exculpate suspects. [p.196]
- A backlog of over 7000 cases accumulated at DAL. Most of these cases involved less serious, high volume property crime, but some involved serious offences including murder, manslaughter, sexual assault, robbery and home invasion. [p.207]
- DAL was not able to meet agreed turnaround times. For the cases DAL finalised in December 2004, the average time between DAL receiving a DNA case and providing its analysis report to police was 260 days for murder and manslaughter, 288 days for sexual assault, 150 days for break, enter and steal and 61 days for malicious damage. More serious offences took longer to finalise because more complex analysis was undertaken, and more items were tested. [p.209]
- DNA profiles obtained from volunteers were almost always retained on the database, although the volunteer may not have been advised this would occur. DNA profiles obtained from suspects were not always destroyed in accordance with legislative requirements. [p.264]

For further information see the full Ombudsman report at www.ombo.nsw.gov.au